

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10120 / August 15, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 78572 / August 15, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4485 / August 15, 2016

INVESTMENT COMPANY ACT OF 1940
Release No. 32214 / August 15, 2016

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.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Donald F. (“Jay”) Lathen, Jr. (“Lathen”), Eden Arc Capital Management, LLC (“EACM”), and Eden Arc Capital Advisors, LLC (“EACA”), Sections 203(e), (f) and (k) of the Investment Advisors Act of 1940 (“Advisers Act”) against Lathen and EACM, and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Lathen.

II.

A. SUMMARY

After an investigation, the Division of Enforcement alleges that:

1. Since approximately March 2011, Respondents engaged in a fraudulent scheme involving the establishment of a fund that would profit from the use of misrepresentations and omissions of material facts to issuers of medium and long-term bonds and notes (“bonds”) by falsely portraying Lathen and other individuals as owners of those bonds, in order to redeem the instruments prior to maturity at par pursuant to survivor options, in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities.

2. Since approximately October 2012 through approximately February 2016, EACM willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the “custody rule”) and Lathen willfully aided, abetted, and caused EACM’s custody rule violations by failing to custody the funds and securities of EACM’s client, Eden Arc Capital Partners, LP (“EACP” or the “Fund”) in an account under EACP’s name or in an account that contained only clients’ funds and securities, under EACM’s name as agent or trustee for the clients. Instead, Lathen and EACM placed EACP’s funds and securities in brokerage accounts titled in the name of Lathen and various third parties.

B. RESPONDENTS

3. **Donald F. “Jay” Lathen, Jr. (“Lathen”)**, age 48, is a resident of New York, NY. Lathen is the sole owner and control person, CEO, CFO and Chief Compliance Officer of Eden Arc Capital Management, LLC (“EACM”), which is the adviser to Eden Arc Capital Partners, LP (“EACP” or “the Fund”). Lathen is also the 100% owner of Eden Arc Capital Advisors, LLC (“EACA”).

4. **Eden Arc Capital Management, LLC (“EACM”)**, incorporated in Delaware, is an investment adviser that was registered with the Commission between October 31, 2012 and February 23, 2016, with its principal place of business in New York, NY. It is the adviser to Eden Arc Capital Partners, LP (“EACP” or “the Fund”) and receives management fees from the Fund, with different investors paying different fees, ranging from 0.5% to 2% of assets under management. Lathen is the sole member of EACM.

5. **Eden Arc Capital Advisors, LLC (“EACA”)**, incorporated in Delaware, is the general partner of Eden Arc Capital Partners, LP. Its principal place of business is New York, NY. Lathen is 100% owner of EACA. EACA receives incentive fees from the

Fund ranging from 16% to 30% of fund profits, with different investors paying different fees.

C. **RELATED ENTITIES**

6. **Eden Arc Capital Partners, LP (“EACP” or the “Fund”)** is a pooled investment vehicle that Lathen started in 2011. At its peak, EACP had approximately \$52 million of assets and 22 investors, including the general partner, EACA. According to EACM’s January 2016 amendment to its Form ADV, EACP had over \$31 million of assets. EACP is a Delaware limited partnership with its principal place of business in New York, NY.

7. **EndCare** is a marketing vehicle that Lathen founded to attract terminally ill individuals. In the EndCare marketing materials, Lathen described EndCare as an “end of life financial assistance program.” In the Fund’s March 2011 Private Placement Memorandum, it states, “In July 2009, Mr. Lathen founded and has been the President and CEO of EndCare, a specialty investment company focused on survivor’s option corporate bonds.”

D. **FACTS**

The Fund’s Strategy: Investing in Instruments with “Survivor Options”

8. Beginning in or around March 2011, Lathen began obtaining subscriptions to the Fund.

9. As described to current and prospective investors in the Fund’s documents, the Fund’s investment strategy involved purchasing medium and long-term bonds and certificates of deposit (“CDs”) that contain “survivor options” or “death puts” (“Survivor Option Investments” or “SO Investments”). The Fund’s March 2011 Private Placement Memorandum (“PPM”), which lists EACA as the general partner, explained that such provisions “allow the investment, typically a fixed income security, to be sold back or “put” to the issuer, at par plus accrued interest, upon the death of the holder.”

10. The PPM further explained: “By purchasing SO Investments at a discount to par, the Partnership hopes to generate superior uncorrelated risk-adjusted returns through an eventual exercise of the survivor’s option put right.” According to the PPM, “there are numerous opportunities to purchase SO Investments in the secondary market at a discount to par.”

11. In addition to purchasing the SO Investments at a discount, the Fund – which as a corporate entity cannot die – employed a strategy to exercise the death puts, and to do so with sufficient speed and certainty to lock in high yields resulting from the ability to quickly sell the SO Investments back to the issuers at par.

12. Accordingly, the PPM defined the “key element” of EACP’s strategy as acquiring “[Survivor Option] Investments in joint accounts” with terminally ill individuals (“Participants”) who “must have a life expectancy of less than 6 months as determined by a physician.”

13. In return, the PPM stated that the Fund would compensate the Participants “for agreeing to be an owner of a joint account.” Meanwhile, because the strategy required an additional natural person to be on the joint accounts with Participants, Lathen himself would “serve as Nominee for the Partnership on the Joint Accounts for no consideration” according to the PPM.

14. On or around April 19, 2011, the Fund opened and began executing the strategy described in its offering documents.

15. On or around May 1, 2011, the Fund entered into an Investment Management Agreement with EACM. Also parties to the Investment Management Agreement were Lathen and Lathen’s relative, described in the Investment Management Agreement as “nominees for the Investment Manager.”

16. The Investment Management Agreement authorized Lathen and his relative to act on behalf of EACM and the Fund, and to purchase SO Investments and establish joint accounts with Participants.

17. Paragraph 4 of the Investment Management Agreement (“Appointment of Nominees”) provided, in relevant part:

...In performing its duties hereunder, the Nominees covenant and agree that:

- (a) It will hold, as and from the date hereof, the SO Investment, and all right, title and interest therein and benefit to be derived therefrom, as nominee for and on behalf of the Partnership [Fund] only;
- (b) It has no legal or beneficial interest in the SO Investments;
- (c) All other attributes of the beneficial ownership of the SO Investments shall be and remain in Partnership;

The Fund’s Use of Participants and Joint Brokerage Accounts

18. On or around May 8, 2011, through Endcare, Lathen began signing up terminally ill Participants in order to purchase SO Investments for the Fund.

19. Using contacts at nursing homes and hospices to identify patients that had a prognosis of less than six months left to live, and conducting due diligence into the patients’ medical condition, Lathen found Participants he could use to execute the Fund’s

strategy. In return for agreeing to become a joint owner on an account with Lathen and/or another individual, the Participants were promised a fixed fee—typically, \$10,000.

20. Lathen required the Participants or their agents to sign a Participant Agreement in which the Participants agreed to “become joint owner with Lathen and/or one or more designee(s)...appointed by Lathen on one or more brokerage Account(s).”

21. Lathen required the Participants or their agents to sign a Limited Power of Attorney form, appointing Lathen and EACM the “true and lawful attorney” to “open, manage, handle, and direct brokerage accounts titled in the undersigned’s name either individually or jointly,” among other powers.

22. On or around May 8, 2011, Lathen began submitting applications to the Fund’s prime broker to open joint accounts on behalf of himself and Participants, and at times an additional account holder (Lathen’s relative).

23. Lathen included his relative as an additional account holder so that if Lathen were to unexpectedly pre-decease the terminally ill individual, the relative could return the assets in the joint accounts to the Fund.

24. The account opening form listed Lathen, the Participant, and at times Lathen’s relative, as joint owners, purportedly holding the assets in the account as joint tenants with right of survivorship.

25. In reality, Lathen, the Participant, and Lathen’s relative were not owners of the accounts or the assets therein, but nominees for the Fund.

26. Since May 2011, Lathen signed up over 60 Participants for use as nominees on the Fund’s brokerage accounts.

27. None of the Participants ever received more money than the initial one-time fee they were paid after the brokerage account was opened and the securities were purchased in the account.

28. Since May 2011, Lathen has opened up over 60 accounts with the Fund’s prime brokers, listing Lathen and the respective Participant as joint account holders. None of those accounts listed the Fund as an owner, or Lathen and the Participant as nominees, trustees or agents for the Fund.

29. Every account that Lathen opened from May 2011 forward was opened as purported joint account with rights of survivorship between Lathen and a Participant (and at times Lathen’s relative as a third accountholder).

30. At all relevant times, as Lathen himself was aware, the Fund could not lawfully be a joint owner on such accounts because, as a corporate entity, it would not have been entitled to “survivorship” rights.

EACP's Funding of the Joint Accounts

31. In or around May 2011, EACP began funding the various joint accounts in order to purchase SO Investments, in accordance with the Fund's disclosed investment strategy.

32. Since May 2011, the Fund purchased approximately 2350 SO Investments from dozens of issuers through the joint accounts. The Fund's money, together with margin loans advanced by the Fund's prime brokers, represented the sole source of purchase monies for the SO Investments.

33. Since May 2011, the Fund paid all costs associated with the joint accounts and the SO Investments contained in the accounts, including brokerage fees, margin calls, and income taxes.

34. Neither Lathen nor any of the Participants ever provided any purchase money for the SO Investments or paid any of the costs associated with holding the investments in the joint accounts.

The Fund Profits from the Survivor Options Through Lathen's Misrepresentations And Omissions to the Issuers of the Instruments

35. Since May 2011, when Lathen began purchasing SO Investments in the joint accounts, his purpose in purchasing the bonds and CDs was to redeem them prior to maturity upon the death of the Participants.

36. Beginning in August 2011, Lathen began to "put" the SO Investments back to the respective issuers by exercising the survivor option upon the death of the Fund's nominee Participants.

37. In order to exercise the survivor option, the SO Investments required redemption by a surviving owner. Therefore, when a Participant died, Lathen redeemed the instruments at full face value by sending letters to the issuers, which were located in various states, stating that the "joint owner" or "joint and beneficial owner" on the account that held the SO Investment had died. Lathen also represented that as the "surviving joint owner on the account," he was immediately entitled to redemption.

38. Lathen knew, or was reckless in not knowing, that those representations were false. Lathen, EACM, and EACA also omitted to disclose material information, such details of EACA and EACM's relationship to the investments, and documents, such as the PPM, Participant Agreements, the Investment Management Agreement, the Profit Sharing Agreement, and the Discretionary Line Agreement, that would have disclosed the falsity of the ownership language in his redemption letters.

39. As a result of Respondents' misrepresentations and/or omissions, issuers paid out over \$100 million dollars in early redemptions.

40. Although Lathen caused the issuers to pay that money to him directly, as the purported surviving joint owner of the SO Investments, all of the money actually belonged to the Fund.

The Fund's Performance

41. The Fund has received all income generated in the joint accounts, including income interest on the SO Investments while they were held in the accounts, and all gains from the early redemptions of the SO Investments.

42. In each year since inception, the Fund has had its financial statements audited.

43. In each year since inception, Lathen and EACM have calculated the Fund's assets based on the Fair Value of the SO Investments held in the joint accounts, as indicated in the Fund's audited financial statements.

44. In each year since inception, Lathen and EACM have calculated the Fund's income as the income generated through the ownership and redemption of the SO Investments, as reflected in the Fund's audited financial statements.

45. Since inception, the Fund has earned over \$9.5 million in profits, largely through early redemption of SO bonds and CDs held in the joint accounts.

Lathen Attempts to Change the Fund's Governing Documents In Order to Further Disguise the Scheme

46. In January 2013, Lathen replaced the Investment Management Agreement with a Discretionary Line Agreement between the Fund and Lathen, and a Profit Sharing Agreement between the Fund, Lathen, and EACM.

47. Whereas the Investment Management Agreement explicitly provided that Lathen and EACM were the managers of the Fund's investments, which were held by the Fund's Nominees and Participants, the new agreements purported to change the relationship between the parties to that of a lender (the Fund) and a borrower (Lathen). Thus, under the Discretionary Line Agreement, the Fund was to advance money to Lathen, on a non-recourse basis, at a rate of prime plus three percent per annum.

48. However, as reflected in the corresponding Profit Sharing Agreement, Lathen simultaneously promised the Fund that he would return all profits and losses he derived from the joint accounts to the Fund.

49. In fact, since the new agreements were executed in January 2013, the Fund—not Lathen, nor any of the Participants—has continued to earn all income associated with the ownership of the SO Investments in the joint accounts.

50. Just as before the new agreements were executed in January 2013, the Fund’s audited financial statements have continued to calculate the Fund’s assets based on the Fair Value of the SO Investments held in the joint accounts, and continued to attribute to the Fund all income associated with the ownership and redemption of those SO Investments.

51. For example, Note (1) to the Fund’s audited financial statements for 2014 explains that the Fund’s money is “deposited into the Joint Accounts and used to acquire investments in securities which contain a ‘survivor’s option’ or similar feature... Under the Agreements it has executed with the Managing Member... [the Fund] is entitled to receive all of the profits and/or losses from the Joint Accounts.”

52. In addition, just as before the new agreements were executed in January 2013, Lathen and the Participants do not pay taxes on the gains in the joint accounts.

53. In February 2015, Lathen further modified the Discretionary Line Agreement by including the Participants as borrowers, on a non-recourse basis.

54. As with the January 2013 change to the Fund’s documents, the addition of the Participants as borrowers has not changed the economic reality of the relationship between the Fund and the accounts held by the Lathen, the Participants, and Lathen’s relative: all profits have continued to flow to the Fund from the joint accounts; no Participant has paid any interest to the Fund as a result of the Discretionary Line Agreement; and the accounting for the Fund’s assets and net income in its audited financial statements has not changed.

55. As indicated by the fact that the Discretionary Line Agreement and Profit Sharing Agreement did not have any economic impact on the Fund, Lathen’s replacement of the Investment Management Agreement with a purported lending relationship between the Fund and its manager was done with the intent to hide what had been plainly stated in the Investment Management Agreement: that the Fund was the real owner of all the assets in the joint accounts held by persons that were acting as nominees for the Fund.

56. Since the Fund began, Lathen has similarly altered the agreements that he signed with the Participants in an effort to obscure the Participants’ lack of ownership rights over the accounts he opened using their names.

57. In early versions of the agreement (the “Participant Agreement”), Participants agreed that they “will not be permitted to pledge, borrow against, withdraw or exercise any right of ownership with respect to the Investments or other assets in the Account(s) without the express written permission of Lathen, which permission may be withheld in Lathen’s sole discretion.” In later versions, Lathen removed that language, but

the agreements nonetheless stated: “Participant shall have no additional payments with respect to the account(s) unless the Account(s) are terminated and the funds in the Account(s) disbursed prior to Participant’s death,” but “Lathen does not intend to terminate the Account(s) during Participant’s lifetime and, therefore, it is unlikely that Participant or Participant’s estate will receive any additional amounts.”

58. While early Participant Agreements did not make any mention of what might happen in the unlikely event that Lathen were to pre-decease the terminally ill Participant, later versions attempted to create some appearance of survivorship rights for the Participants in such a scenario.

59. However, Lathen’s changes to the Participant Agreement did not actually change the Participants’ lack of ownership rights over the accounts.

60. At all times since the Fund’s inception, Lathen has maintained the unfettered ability to move securities into and out of the accounts without consent from or notice to the Participants. That ability to disregard any illusory rights of the Participants is in fact a point on which he has assured prospective fund investors: “Jay Lathen has full discretion to move assets from one JTWROS [joint tenancy with right of survivorship] account to another at any time.”

61. For example, when one Participant signed her Participant Agreement when her death was particularly imminent, Lathen funded her account by making journal transfers from other Participants’ accounts because, as Lathen explained, she “was very sick and we knew she was very sick. And so, there was a desire to move a significant amount of positions into her account before she perished.”

62. In another instance, upon learning that one Participant had been cured, Lathen transferred the cash and positions out of the account he held with the Participant, even though she was still alive and had been named on the account documents as a joint owner of her account.

63. On at least one occasion, when a government entity inquired about one of the Participants for the purpose of determining the Participant’s eligibility for public assistance, EACP represented that the Participant – who at the time was listed as an owner on a joint account – would not be entitled to any funds beyond the initial \$10,000 payment “now or in the future.”

64. Despite the changes that Lathen has made to the Fund and Participant documents over the years, the representations he has made to issuers in order to redeem the SO Investments have continued to be false.

EACM’s Failure to Custody the Fund’s Assets in the Fund’s Name, as Aided, Abetted, and Caused by Lathen

65. In October 2012, EACM, through Lathen, registered with the Commission as an investment adviser by filing a Form ADV (Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers), signed by Lathen. From that point through January 2016, EACM has filed a number of amendments to its Form ADV.

66. As reflected in each of EACM's amendments to its Form ADV through January 2016, Lathen maintained Fund assets in brokerage accounts in the names of the Participants and Lathen, and at times, Lathen's relative. Specifically, in each Form ADV through January 2016, EACM has represented that (i) the custodian of the Fund's assets is the prime broker where the joint accounts are held, (ii) the amount of regulatory assets under management is the value of the assets held in the joint accounts, and (iii) that EACM or a related person has custody of client assets.

67. The funds and securities held in the joint accounts belong to EACP. Lathen and EACM failed to custody the assets of EACP in accounts in EACP's name or in an account that contained only EACP's assets, under EACM's name as agent or trustee for EACP.

Lathen, EACM, and EACA's Profits from the Scheme

68. Through December of 2015, Lathen set up over 60 joint brokerage accounts with various Participants. The Fund's profits through December 2015 have been over \$9.5 million. And, for the period from May 2011 through September 2015, EACM has claimed total returns for the Fund of 74.73%.

69. Respondents have profited through this strategy. Specifically, Lathen (as the principal of EACM) and EACM have profited through their fraudulent activity through management fees of between .5% and 2% of assets under management. In addition, Lathen (as the sole owner of the EACA), and EACA profited through their fraudulent activity through performance fees of between 16% and 30% of Fund profits.

70. Lathen, EACA, and EACM have obtained these profits by means of a scheme to defraud issuers. Lathen, EACA, and EACM have made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Such statements and omissions operated as a fraud against the issuers of the bonds.

E. VIOLATIONS

71. As a result of the bond-related conduct described above, from approximately March 2011, Respondents violated Section 17(a) of the Securities Act, directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale of securities, have: (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of untrue statements of material fact, or have omitted to state

material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, and courses of business which operated or would have operated as a fraud or deceit upon purchasers.

72. As a result of the bond-related conduct described above, from approximately March 2011, Respondents violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, directly or indirectly, singly or in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, have (a) employed devices, scheme and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon investors.

73. As a result of the conduct described above, from approximately October 2012 through approximately February 2016, EACM violated and Lathen willfully aided and abetted and caused EACM's violations of Section 206(4) of the Advisers Act, which prohibits fraudulent conduct by an investment adviser, and Rule 206(4)-2 thereunder, which requires client funds and securities to be held in an account under EACP's name, or in an account that contained only EACP's funds and securities, under EACM's name as agent or trustee for EACP.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against EACM pursuant to Sections 203(e) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Lathen pursuant to Sections 203(f) of the Advisers Act including, but not limited to, disgorgement and civil penalties pursuant to Section 203 of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Lathen pursuant to Section 9(b) of the Investment Company Act including, but not limited

to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

E. Whether, pursuant to Section 8A of the Securities Act, and Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and whether Respondents should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act, Section 21B(a) of the Exchange Act, and whether Respondents should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, and Sections 21B(e) and 21C(e) of the Exchange Act.

F. Whether, pursuant to Section 203(k) of the Advisers Act, EACM and Lathen should be ordered to cease and desist from committing or causing violations of and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder, whether Lathen and EACM should be ordered to pay a civil penalty pursuant to Section 203(i) of the Advisers Act, and whether Lathen and EACM should be ordered to pay disgorgement pursuant to Section 203 of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary