

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. (“JAY”) LATHEN, JR.,
EDEN ARC CAPITAL
MANAGEMENT, LLC,
and EDEN ARC CAPITAL
ADVISORS, LLC,

Respondents.

**DECLARATION OF JANNA I. BERKE REGARDING DISCLOSURE OF THE
DIVISION OF ENFORCEMENT’S INVESTIGATIVE FILES**

I, Janna I. Berke, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am Counsel in the New York Regional Office of the Division of Enforcement (“Division”). I submit this Declaration as directed by the Court’s October 12, 2016 Order on the Division’s Motion to Quash, instructing the Division to file a declaration, in response to one submitted by Respondents, addressing how the Division’s investigative file was “disclosed and the specific manner in which the disclosed documents are maintained by the Division, including whether the Division’s investigative file is maintained in an undifferentiated collection.” (October 12, 2016 Order at 1-2.)

2. I base the information below both on my personal knowledge and on information collected by me through communications with the Information Technology staff in the Division.

I. Production of the Division's Investigative Files

3. The Division has produced to Respondents, pursuant to Rule 230(a), its investigative file. 17 C.F.R. § 201.230(a). The file consists of documents that have been produced in "Concordance format," which is a format that Respondents represented would be acceptable to them. See Exhibit A (August 22, 2016 Letter from Harlan Protass to Judith Weinstock) at 2 ("We understand that the Commission typically produces the aforementioned materials [the Division's investigative file] on Concordance. Production of such materials in that form is acceptable to us.").

4. I have been informed by members of our Information Technology staff that production of the Division's investigative file in Concordance format is standard procedure in Administrative Proceedings, unless respondents request a different format. Indeed, when the Division requests documents from third parties during the course of its investigations, it generally requests that those productions be made to the Division in Concordance format. See Exhibit B (the SEC's Data Delivery Standards).

5. By producing documents in Concordance format, we provide respondents, where available, with: (1) image (.TIFF) files, which contain images of documents; (2) meta-data (.DAT) files, which contain meta-data for documents (for example, "to," "from/author," "cc," "bcc," and "date" information on emails and documents); (3) image cross-reference (.OPT) files, which link meta-data to images; (4) native files (copies of the original underlying documents) where those files were provided to us by the producing party; (5) searchable text (OCR) files, which allows for searching text in the images. The SEC's Data Delivery Standards (Exhibit B) also describe the information associated with Concordance-ready productions.

6. Also included in the "meta-data" file produced by the Division is information identifying the original producing party and the date on which the production was made to the

Division. Thus, whatever viewing tool Respondents are using should enable them to sort the file by producing party. An example of the information stored in a meta-data file is attached hereto as Exhibit C. Column A describes all potential fields of information that could be associated with a particular document. Column B reflects the information populated for one document, to give an example.

A. *Third Party Productions*¹

7. The bulk of the Division's typical investigative file was documents collected from third parties, either voluntarily or pursuant to investigative subpoena or regulatory request. While the Division regularly asks producing parties to comply with its Data Delivery Standards (Exhibit B), third parties often produce documents in non-Concordance formats that do not comply with the Data Delivery Standards. Where a third party makes a production to the Division in non-Concordance format, certain data listed in paragraph 4 might not be included and is not available, and would therefore not be included in a production to respondents. In those circumstances, the missing data is available to neither the Division nor the respondents to whom the Division produces its investigative files.

i. *Meta-Data*

8. For example, if a third party produced a document to the Division without meta-data, then certain fields in the meta-data files might be unavailable. Nonetheless, the Division's electronic platform ("Recommind") makes an attempt to extract as much data as possible from the underlying document (for example, document date, author, etc.) to create a meta-data file. If it was

¹ Third parties are asked to make document productions to the Division by sending the document to the Division's "Central Processing Unit." The documents are from there loaded onto Recommind; and, from there, produced to Respondents. Third party productions are therefore produced to Respondents as they are ordinarily maintained. See FED. R. CIV. P. 34(b)(2)(E).

possible to extract meta-data where it was not otherwise provided, such information was turned over to Respondents, so they have the same meta-data file that the Division has.

9. In any event, to the best of my knowledge, regardless of what meta-data was provided to the Division or the Division was otherwise able to extract, information about what third party produced each document to the Division was provided to Respondents for all of the Documents.

10. Thus, the meta-data files provided by the Division to Respondents in this case give Respondents the ability to sort their productions in all events by producing party. And the vast majority of documents are also sortable by additional information supplied as meta-data, for example: bates number, document or email date, document or email author, email recipient, document size, and other characteristics.

ii. The Ability to Search

11. As another example, if a third party did not produce OCR files to the Division, search capabilities could be limited (for both the Division and for Respondents). For example, if a third party scanned in a paper document that was responsive to an SEC subpoena, regulatory request or voluntary request, and simply produced a single .PDF file to the Division, then such a file may or may not be searchable. In such instances, Recommind would make an automatic attempt to create an OCR file for that document—to make the text of the .PDF file searchable. Those attempts are sometimes successful, and sometimes not. If an OCR file was successfully created by Recommind in this case, such a file was produced to Respondents.

iii. The Division Produced to Respondents the Searchability and Meta-Data Information That Was Available to it in Connection with its Investigative File

12. In all instances the Division produced to Respondents third party productions as they exist on Recommind. Thus, if a .PDF document was produced to the Division in non-searchable format, and Recommind was able to create an OCR file for that document to make it searchable, the same OCR file was turned over to Respondents here, so that they could have the same search capabilities that the Division has. Similarly, if a third party produced a document without meta-data and the Division was able to extract meta-data from that document, the meta-data file created would have been produced to Respondents.

B. Non-Third Party Productions

13. Non-privileged documents that the Division created during the course of the investigation, and that did not come in from producing third parties—for example, correspondence, subpoenas, and testimony transcripts—were loaded onto Recommind and produced to Respondents in Concordance format (*i.e.*, as both native files and searchable images with meta-data).

14. The Division's files were produced with information about the producing party (*i.e.*, the SEC) and additional electronic information, as discussed above (¶¶ 5-6), relating to author, creation date, recipient, as well as with text searching capabilities, so Respondents can collect and sort them as desired. Thus, the files are not "undifferentiated" or without organization. See *United States v. O'Keefe*, 537 F.Supp.2d 14, 19-20 (D.D.C. 2008).²

² The Division has recently become aware of an issue with approximately 20 emails produced from its own files. The text in these emails appears to be cut off in the middle, so certain text is lost at the end of the emails. We have undertaken an effort to try to restore these emails to their full content. As soon as that effort is complete, Concordance format versions will be produced to

II. Respondents' Stated Issues with the Production

15. In his October 24, 2016 Declaration ("Protass Decl."), Harlan Protass, counsel for Respondents, raises a number of issues with the Division's production of its investigative file. Each is addressed below.

A. *The Size of the Investigative File*

16. Mr. Protass states that the Division's investigative file contains "a huge amount of documents and information – approximately 193,000 documents composed of more than 600,000 individual pages." (Protass Decl., ¶ 3.) In fact, the Division has produced approximately 195,122 documents, with approximately 628,267 pages.³ Of those documents, approximately 152,092—or 77.9%—were produced by Respondents and Donald Lathen's wife, Kathleen Lathen. Because the Division provided information about producing parties as part of its meta-data files, Respondents should be able to filter out the approximately 43,030 documents that Respondents did not produce, and review or run searches only against those documents.

B. *Improperly Combined Files*

17. Mr. Protass states that "a significant number" of documents in the investigative file consist of large "scanned 'documents,'" which, he states, "appear to have been created by combining separate documents of different types – in no apparent order and for no apparent reason

Respondents. That process should be complete no later than next week, and hopefully sooner. Respondents have not raised any issues concerning these emails to the Division to date.

³ A small number of these documents are third party productions that have been produced to the Division following the institution of this action and are thus not technically part of the Division's investigative files, but which the Division determined to produce in any event. See Rule 230(a)(2), 17 C.F.R. § 201.230(a)(1) ("[T]he Division of Enforcement shall make available for inspection and copying by any party documents obtained by the Division *prior to the institution of proceedings*, in connection with the investigation leading to the Divisions recommendation to institute proceedings" certain specified categories of documents.") (emphasis added).

– into one scanned .PDF ‘document.’” (Id., ¶ 4.) Mr. Protass points to no specific example to support his claim.⁴

18. The Division produced third party production files to Respondents as they were produced to the Division.⁵ Thus, if a producing party scanned a number of hard copy files responsive to a Division subpoena together into one .PDF file, the Division maintained that document as one .PDF file in its own records and it produced that one .PDF file to Respondents; such a document would not have been broken down into smaller documents by the Division because to do so would have altered the document from the form in which it was produced to the Division. With regard to files that the Division created (such as correspondence and subpoenas) the Division did not scan multiple documents into one .PDF for production.

C. *Lack of Information Sufficient to Organize the Produced Files*

19. Mr. Protass claims that Respondent’s outside vendor created 130 “folders” to sort the investigative file production, but those folders “remain unidentified and unlabeled because the Division’s investigative file does not contain information upon which further identification, organization, or analysis could be based.” (Id., ¶ 6.)

20. Although the Division does not claim to know what Respondents’ outside vendors’ procedures, processes and capabilities may be, Mr. Protass’ claim that the investigative file does “not contain information upon which further identification, organization, or analysis could be

⁴ Exhibit 1 to Mr. Protass’s Declaration—though not cited in his Paragraph 4—appears to be a large scanned document. It further appears, however, to be a collection of redemption request packages submitted to CIT Bank and therefore, seems unlikely to have been bundled “in no apparent order and for no apparent reason.” (Id.)

⁵ Nonetheless, the Division may have produced *additional* meta-data or search capabilities that were not provided by third parties, as discussed above. That information, however, does not alter the original produced file in any way.

based” is untrue. As discussed in Section I above, the Division has produced information upon which identification, organization and analysis could be based.

D. *Limited Ability to Perform Keyword Searches*

21. Mr. Protass next claims that “[m]any of the documents in the Division’s investigative file were scanned and processed such that they cannot be effectively keyword searched.” (*Id.*, ¶ 11.) He points to a document bearing bates numbers CIT Bank Subpoena (NY-9197 – 2015-000001 – 000367).

22. First, as the bates numbers indicate, that document was produced by CIT Bank, and then turned over to Respondents as part of the investigative file. As discussed above, if a document was produced to the Division in poor quality, the Division will make an attempt to extract data, and whatever information it is able to extract will be turned over to Respondents. But, the Division cannot in all events restore a document of poor quality. Second, if a third party produced documents in such poor quality that it simply cannot be searched, then it cannot be searched by either the Division or the Respondents. The Division does not reap a benefit by receiving and then turning over poorly produced documents.⁶ Finally, upon opening Exhibit 1 to the October 24, 2016 declaration on the Division’s Recommind platform, I was successfully able to search for certain key words in that document. I was also able to retrieve that document on Recommind by using search terms, evidencing that at least certain portions of the document are able to be searched.

⁶ Respondents have made no allegation that any of the Division’s own documents (those identified as created/produced by the SEC) is of such poor quality that it cannot be searched.

III. Respondents Have the Information That Would Be Provided to Them in an Index or in Any Follow-Up Production

23. As noted above, the Division produced to Respondents the same information underlying each document that the Division has on its document review platform, including information about which parties made the production of each document to the Division.

24. The Division has also given Respondents files which enable Respondents to search documents to the same extent that the Division has such capabilities on Recommind.

25. Thus, Respondents are in the same position as the Division in terms of being able to create an index of the investigative file, or being able to search for documents in the investigative files (which the Division would have to do if it was ordered to reproduce its investigative file in a different order, as Respondents appear to request).

IV. An Index Will Not Resolve the Issues Mr. Protass Cites in His Declaration

26. Mr. Protass suggests that Respondents are seeking “discrete categories of documents.” (*Id.*, ¶ 9.) But he does not explain what “discrete categories” he is seeking. Furthermore, whatever unknown discrete categories of documents he may be seeking are ones that the Division will have to work to organize in that manner on Respondents’ behalf. For example, Mr. Protass complains that he seeks certain affirmations, declarations or affidavits—although he does not identify which ones. Because the Division has not itself sought to collect all such affirmations, declarations and affidavits in a discrete file, it would have to perform the same searches Mr. Protass would (and should be capable of doing based on the files provided to him) to create such a category.⁷

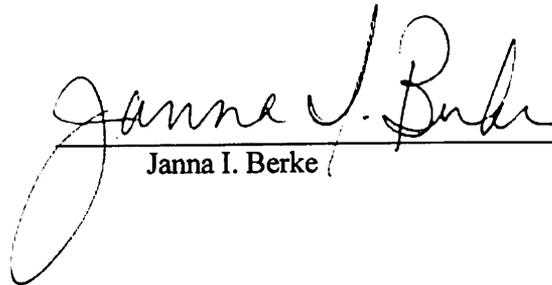
⁷ As a general matter, when the staff seeks business records from third parties, it often seeks and receives business records declarations from producing parties.

V. The Division Remains Available to Discuss Whatever Technical Issues Respondents Encounter in an Effort to Assist Them or Their Vendor in Respondents' Review of the Division's Production

27. At no time prior to filing their application for a Subpoena to the Commission on September 21, 2016, or since, have Respondents brought their technical issues to the Division for assistance. Had they done so, the Division would have made its IT staff available to Respondents or to Respondents' counsel's IT staff or vendor to attempt to sort out the problems they cite. The Division, however, remains available to attempt to work through these issues with Respondents or their vendor.

28. Accordingly, the Division opposes Respondents' request for an Order requiring the Division to reproduce the documents that have already been produced, as well as Respondents' request for an index of the investigative file.

Dated: October 31, 2016
New York, New York



Janna I. Berke

EXHIBIT A

August 22, 2016

VIA ELECTRONIC MAIL

Judith A. Weinstock, Esq.
U.S. Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281-1022

Re: In the Matter of Donald F. Lathen, Jr., et al.,
(Administrative Proceeding File No. 3-17387)

Dear Ms. Weinstock:

As you know, we accepted service of the Order Instituting Proceedings (the "OIP") with respect to the referenced matter on behalf of respondents Donald F. Lathen, Jr., Eden Arc Capital Management, LLC and Eden Arc Capital Advisors, LLC by e-mail on August 16, 2016 and by UPS overnight service on August 17, 2016. We write today with respect to the Commission's discovery obligations pursuant to Rule 230 of the Commission's Rules of Practice ("Rule 230").

More particularly, we ask that the Commission make the following materials available inspection and copying pursuant to Rule 230 on or before August 23, 2016:

- The Commission's entire investigative file relating to In the Matter of Eden Arc Capital Management, LLC, NY-9197 and any and all other documents and information the disclosure of which is required by Rule 230, including, but not limited to, all documents that you obtained before initiation of the referenced matter, all subpoenas issued by the Commission in connection with the aforementioned investigation and all responses thereto, all other written or oral request for documents or information made to individuals not employed by the Commission and all responses thereto, and all notes of all interviews undertaken in connection with the aforementioned investigation (and all summaries thereof that do not constitute attorney work product); and

- Any exculpatory and impeachment materials as required by Brady v. Maryland, 373 U.S. 83, 86 (1963) and its progeny which, at its core, is information “that would suggest to any prosecutor that the defense would want to know about it” because it helps the defense. Leka v. Portuondo, 257 F.3d 89, 99 (2d Cir. 2001) (2d Cir. 2001).¹

We understand that the Commission typically produces the aforementioned materials on Concordance. Production of such materials in that form is acceptable to us. Indeed, we expect that the Commission likely collected and stored such materials in Concordance during the course of its investigation and that that Concordance file therefore can be produced this week. Please confirm the foregoing and please advise me if you would like me to provide you with an external hard drive for the production of that Concordance file. Additionally, please produce an index of the materials you are producing at the time of their production. To the extent that the Commission refuses to produce materials that are part of its investigative file on the basis of a claim of privilege, please provide us with a log of such materials along with an explanation as to the basis for withholding same. See 17 C.F.R. 201.230(c).

¹ Among other things, Brady requires the production of all favorable evidence provided by a witness, whether it is recorded or not. See United States v. Rodriguez, 496 F.3d 221, 226 (2d Cir. 2007) (rejecting the notion that the “[w]hen the government is in possession of material information that impeaches its witness or exculpates the defendant [it can avoid] the obligation under Brady to disclose the information by not writing it down”). The Commission is obligated by Brady to provide exculpatory information in its actual or constructive possession even if it does not commit that information to writing. For example, if the Commission interviews a witness and learns of exculpatory information but does not write that information down or avoids inquiring about it during a transcribed interview, it must still provide that information to us. See Id.

Brady also applies whether or not the Commission calls the witness to testify at any hearing, see United States v. Fisher, 106 F.3d 622, 634-35 (5th Cir. 1997), and may require disclosure of exculpatory witnesses known to the Commission, see Leka, 257 F.3d at 93; United States v. Cadet, 727 F.2d 1453, 1469 (9th Cir. 1984). Finally, Brady requires the Commission to identify Brady material as such—burying favorable evidence in general pre-hearing discovery constitutes suppression. See, e.g., United States v. Gil, 297 F.3d 93, 106 (2d Cir. 2002) (labeling Brady material as general pre-trial discovery material and producing it as part of a large production of discovery material on the eve of trial constitutes suppression); see also, United States v. Thomas, 981 F.Supp.2d 229, 239 (S.D.N.Y. 2013) (prosecutors “cannot hide Brady material as an exculpatory needle in a haystack of discovery materials”).

In addition to our general Brady request, we specifically request that the Commission produce the following categories of Brady material: (1) evidence that in any way conflicts with a statement made by any witness, irrespective of whether that statement (or the favorable evidence) was recorded or made under oath; and (2) evidence that undermines the credibility of any witness to the events in question.

Thank you for your attention to this matter.

Very truly yours,

Harlan Protass by *Wayne Cooper*
Harlan Protass

cc: Janna Berke, Esq. (via e-mail)
Alexander Janghorbani (via e-mail)

EXHIBIT B



U.S. Securities and Exchange Commission

Data Delivery Standards

The following outlines the technical requirements for producing scanned paper collections, email and electronic document/native file collections to the Securities and Exchange Commission. The SEC uses Recommind® Accelerate v4.5 software to search, review and retrieve documents produced to us in electronic format. Any proposed production in a format other than those identified below, the proposed use of Predictive Coding, computer-assisted review or technology-assisted review (TAR), or the use of de-duplication during the processing of documents, must be discussed with and approved by the legal and technical staff of the Division of Enforcement (ENF) and the methodology must be disclosed in the cover letter. We appreciate your efforts in assisting us by preparing data in a format that will enable our staff to use the data efficiently.

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General Instructions

- 1. A cover letter should be included with each production. This letter MUST be imaged and provided as the first record in the load file.
The following information should be included in the letter:
a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media.
b. List of custodians, identifying:
1) The Bates range (and any gaps therein) for each custodian
2) Total number of records for each custodian
3) Total number of images for each custodian
4) Total number of native files for each custodian
c. List of fields in the order in which they are listed in the data file.
d. Time zone in which emails were standardized during conversion (email collections only).
2. Documents created or stored electronically MUST be produced in their original electronic format, not printed to paper or PDF.
3. Data can be produced on CD, DVD or hard drive; use the media requiring the least number of deliverables.
4. Label all media with the following:
a. Case number
b. Production date
c. Bates range
d. Disk number (1 of X), if applicable

5. Organize productions by custodian, unless otherwise instructed. All documents from an individual custodian should be confined to a single load file.
6. All productions should be checked and produced free of computer viruses.
7. All produced media should be encrypted.
8. Passwords for documents, files, compressed archives and encrypted media should be provided separately either via email or in a separate cover letter from the data.

Delivery Formats

I. Structured Data - *Concordance*® Format

The SEC prefers that all data be produced in structured format prepared for *Concordance*®. All scanned paper, email and native file collections should be converted / processed to TIFF files, Bates numbered, and include fully searchable text. Additionally, email and native file collections should include linked native files.

Bates numbering documents:

The Bates number must be a unique, consistently formatted identifier, i.e., an alpha prefix along with a fixed length number for EACH custodian, i.e., ABC000001. This format MUST remain consistent across all production numbers for each custodian. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted.

The following describes the specifications for producing image-based productions to the SEC and the load files required for *Concordance*® and *Concordance Image*®.

1. Images

- a. Images should be single-page, Group IV TIFF files, scanned at 300 dpi.
- b. File names cannot contain embedded spaces.
- c. Bates numbers should be endorsed on the lower right corner of all images.
- d. The number of TIFF files per folder should not exceed 500 files.
- e. Rendering to images PowerPoint, AUTOCAD/ photographs and Excel files:
 - 1) PowerPoint: All pages of the file should be scanned in full slide image format, with any speaker notes following the appropriate slide image.
 - 2) AUTOCAD/ photographs: If possible, files should be scanned to single page JPEG (.JPG) file format.
 - 3) Excel: TIFF images of spreadsheets are not useful for review purposes; because the imaging process can often generate thousands of pages per file, a placeholder image, named by the *IMAGEID* of the file, may be used instead.

2. *Concordance Image*® Cross-Reference File

The image cross-reference file is needed to link the images to the database. It is a comma-delimited file consisting of seven fields per line. There must be a line in the cross-reference file for every image in the database.

The format is as follows:

ImageID, VolumeLabel, ImageFilePath, DocumentBreak, FolderBreak, BoxBreak, PageCount

ImageID: The unique designation that *Concordance*® and *Concordance Image*® use to identify an image.
Note: This imageID key must be a unique and fixed length number. This number will be used in the .DAT file as the ImageID field that links the database to the images. The format of this image key must be consistent across all productions. We recommend that the format be a 7 digit number to allow for the possible increase in the size of a production.

VolumeLabel: Optional

ImageFilePath: The full path to the image file.

DocumentBreak: The letter "Y" denotes the first page of a document. If this field is blank, then the page is not the first page of a document.

FolderBreak: Leave empty

BoxBreak: Leave empty

PageCount: Optional

Sample

```
IMG0000001,,E:\001\IMG0000001.TIF,Y,,,
IMG0000002,,E:\001\IMG0000002.TIF,,,,
IMG0000003,,E:\001\IMG0000003.TIF,,,,
IMG0000004,,E:\001\IMG0000003.TIF,Y,,,
IMG0000005,,E:\001\IMG0000003.TIF,Y,,,
IMG0000006,,E:\001\IMG0000003.TIF,,,,
```

3. **Concordance® Data File**

The data file (.DAT) contains all of the fielded information that will be loaded into the *Concordance®* database.

- a. The first line of the .DAT file must be a header row identifying the field names.
- b. The .DAT file must use the following *Concordance®* default delimiters:

Comma	␣	ASCII character (020)
Quote	␣	ASCII character (254)
Newline	␣	ASCII character (174)
- c. Date fields should be provided in the format: mm/dd/yyyy
- d. All attachments should sequentially follow the parent document/email.
- e. All metadata associated with email, audio files, and native electronic document collections must be produced (see pages 4-5).
- f. The .DAT file for scanned paper collections must contain, at a minimum, the following fields:
 - 1) FIRSTBATES: Beginning Bates number
 - 2) LASTBATES: Ending Bates number
 - 3) IMAGEID: Image Key field
 - 4) CUSTODIAN: Individual from whom the document originated
 - 5) OCRTEXT: Optical Character Recognition (file path, or text)

Sample of .DAT file (when text files are provided separately)

```
␣FIRSTBATES␣␣LASTBATES␣␣IMAGEID␣␣CUSTODIAN␣␣OCRTEXT␣
␣PC00000001␣␣PC00000002␣␣IMG0000001␣␣Smith, John␣␣E:\TEXT\PC00000001.TXT␣
␣PC00000003␣␣PC00000003␣␣IMG0000003␣␣Smith, John␣␣E:\TEXT\PC00000003.TXT␣
␣PC00000004␣␣PC00000005␣␣IMG0000004␣␣Smith, John␣␣E:\TEXT\PC00000004.TXT␣
```

Sample of .DAT file (with text)

```
␣FIRSTBATES␣␣LASTBATES␣␣IMAGEID␣␣CUSTODIAN␣␣OCRTEXT␣
␣PC00000001␣␣PC00000002␣␣IMG0000001␣␣Smith, John␣␣*** IMG0000001 ***␣The world of
investing is fascinating and complex, and it can be very fruitful. But unlike the banking
world, where deposits are guaranteed by the federal government, stocks, bonds and other
securities can lose value. There are no guarantees. That's why investing is not a spectator
sport. By far the best way for investors to protect the money they put into the securities
markets is to do research and ask questions.␣␣*** IMG0000002 ***␣The laws and rules that
govern the securities industry in the United States derive from a simple and
straightforward concept: all investors, whether large institutions or private individuals,
should have access to certain basic facts about an investment prior to buying it, and so
long as they hold it. To achieve this, the SEC requires public companies to disclose
meaningful financial and other information to the public. This provides a common pool of
knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a
particular security. Only through the steady flow of timely, comprehensive, and accurate
information can people make sound investment decisions.␣
␣PC00000003␣␣PC00000003␣␣IMG0000003␣␣Smith, John␣␣***IMG0000003 ***␣The result of this
information flow is a far more active, efficient, and transparent capital market that
facilitates the capital formation so important to our nation's economy.␣
␣PC00000004␣␣PC00000005␣␣IMG0000004␣␣Smith, John␣␣*** IMG0000004 ***␣To insure that
this objective is always being met, the SEC continually works with all major market
participants, including especially the investors in our securities markets, to listen to
their concerns and to learn from their experience.␣␣*** IMG0000005 ***␣The SEC oversees
the key participants in the securities world, including securities exchanges, securities
brokers and dealers, investment advisors, and mutual funds. Here the SEC is concerned
primarily with promoting the disclosure of important market-related information,
maintaining fair dealing, and protecting against fraud.␣
```

The text and metadata of Email and the attachments, and native file document collections should be extracted and provided in a .DAT file using the field definition and formatting described below:

Field Name	Sample Data	Description
FIRSTBATES	EDC0000001	First Bates number of native file document/email
LASTBATES	EDC0000001	Last Bates number of native file document/email **The LASTBATES field should be populated for single page documents/emails.
ATTACHRANGE	EDC0000001 - EDC0000015	Bates number of the first page of the parent document to the Bates number of the last page of the last attachment "child" document
BEGATTACH	EDC0000001	First Bates number of attachment range
ENDATTACH	EDC0000015	Last Bates number of attachment range
PARENT_BATES	EDC0000001	First Bates number of parent document/Email **This PARENT_BATES field should be populated in each record representing an attachment "child" document
CHILD_BATES	EDC0000002; EDC0000014	First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments **The CHILD_BATES field should be populated in each record representing a "parent" document
CUSTODIAN	Smith, John	Email: mailbox where the email resided Native: Individual from whom the document originated
FROM	John Smith	Email: Sender Native: Author(s) of document **semi-colon should be used to separate multiple Entries
TO	Coffman, Janice; LeeW [mailto:LeeW@MSN.com]	Recipient(s) **semi-colon should be used to separate multiple Entries
CC	Frank Thompson [mailto:frank_Thompson@cdt.com]	Carbon copy recipient(s) **semi-colon should be used to separate multiple Entries
BCC	John Cain	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple Entries
SUBJECT	Board Meeting Minutes	Email: Subject line of the email Native: Title of document (if available)
DATE_SENT	10/12/2010	Email: Date the email was sent Native: (empty)
TIME_SENT	07:05 PM	Email: Time the email was sent Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
LINK	D:\001\ EDC0000001.msg	Hyperlink to the email or native file document **The linked file must be named per the FIRSTBATES number
MIME_TYPE	MSG	The content type of an Email or native file document as identified/extracted from the header
FILE_EXTEN	MSG	The file type extension representing the Email or native file document; will vary depending on the email format
AUTHOR	John Smith	Email: (empty) Native: Author of the document
DATE_CREATED	10/10/2010	Email: (empty) Native: Date the document was created

TIME_CREATED	10:25 AM	Email: (empty) Native: Time the document was created **This data must be a separate field and cannot be combined with the DATE_CREATED field
DATE_MOD	10/12/2010	Email: (empty) Native: Date the document was last modified
TIME_MOD	07:00 PM	Email: (empty) Native: Time the document was last modified **This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_ACCESSD	10/12/2010	Email: (empty) Native: Date the document was last accessed
TIME_ACCESSD	07:00 PM	Email: (empty) Native: Time the document was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSD field
PRINTED_DATE	10/12/2010	Email: (empty) Native: Date the document was last printed
FILE_SIZE	5,952	Size of native file document/email in KB
PGCOUNT	1	Number of pages in native file document/email
PATH	J:\Shared\SmithJ\October Agenda.doc	Email: (empty) Native: Path where native file document was stored including original file name.
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes.msg	Email: original location of email including original file name. Native: (empty)
INTMSGID	<000805c2c71b\$75977050\$cb8306d1@MSN>	Email: Unique Message ID Native: (empty)
MD5HASH	d131dd02c5e6eec4693d9a0698aff95c2fcab58712467eab4004583eb8fb7f89	MD5 Hash value of the document.
TEXT	<p>From: Smith, John Sent: Tuesday, October 12, 2010 07:05 PM To: Coffman, Janice Subject: Board Meeting Minutes</p> <p>Janice: Attached is a copy of the September Board Meeting Minutes and the draft agenda for October. Please let me know if you have any questions.</p> <p>John Smith Assistant Director Information Technology Phone: (202) 555-1111 Fax: (202) 555-1112 Email: jsmith@xyz.com</p>	Extracted text of the native file document/email

4. Text

Searchable text of the entire document must be provided for every record, at the document level.

- a. Extracted text must be provided for all documents that originated in electronic format. The text files should include page breaks that correspond to the "pagination" of the image files. Note: Any document in which text cannot be extracted must be OCR'd, particularly in the case of PDFs without embedded text.
- b. OCR text must be provided for all documents that originated in hard copy format. A page marker should be placed at the beginning, or end, of each page of text, e.g. *** IMG0000001 *** whenever possible. The data surrounded by asterisks is the *Concordance*® ImageID .

Sample page markers with OCR text:

*** IMG0000001 ***

The world of investing is fascinating and complex, and it can be very fruitful. But unlike the banking world, where deposits are guaranteed by the federal government, stocks, bonds and other securities can lose value. There are no guarantees. That's why investing is not a spectator sport. By far the best way for investors to protect the money they put into the securities markets is to do research and ask questions.

*** IMG0000002 ***

The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions.

- c. For redacted documents, provide the full text for the redacted version.
- d. Delivery
The text can be delivered two ways:
 - 1) As multi-page ASCII text files with the files named the same as the ImageID field. Text files can be placed in a separate folder or included with the .TIF files. The number of files per folder should be limited to 500 files.
 - 2) Included in the .DAT file.

5. Linked Native Files

Copies of original email and native file documents/attachments must be included for all electronic productions.

- a. Native file documents must be named per the FIRSTBATES number.
- b. The full path of the native file must be provided in the .DAT file for the LINK field.
- c. The number of native files per folder should not exceed 500 files.

II. Native File Production

The SEC will also accept native file productions. The files must be produced as they are maintained in the normal course of business. Data must be organized by custodian named file folders.

III. Audio Files

Audio files from telephone recording systems must be produced in a format that is playable using Microsoft Windows Media Player™. Additionally, the call information (metadata) related to each audio recording MUST be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file.

The metadata must include, at a minimum, the following fields:

- 1) Caller Name: Caller's name or account/identification number
- 2) Originating Number: Caller's phone number
- 3) Called Party Name: Called party's name
- 4) Terminating Number: Called party's phone number

- 5) Date: Date of call
- 6) Time: Time of call
- 7) Filename: Filename of audio file

IV. Video Files

Video files must be produced in a format that is playable using Microsoft Windows Media Player™.

V. Electronic Trade and Bank Records

When producing electronic trade and bank records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.
2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

VI. Electronic Phone Records

When producing electronic phone records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details. Data must be formatted in its native format (i.e. dates in a date format, numbers in an appropriate numerical format, and numbers with leading zeros as text).
2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

The metadata must include, at a minimum, the following fields in separate columns:

- 1) Account Number: Caller's telephone account number
- 2) Originating Number: Caller's phone number
- 3) Terminating Number: Called party's phone number
- 4) Connection Date: Date of call
- 5) Connection Time: Start time of call
- 6) End Time: End time of call
- 7) Elapsed Time: Duration in minutes of the call

Each field of data must be loaded into a separate column. For example, Connection Date and Connection Time must be produced in separate columns and not combined into a single column containing both pieces of information. Any fields of data that are provided in addition to those listed here must also be loaded into separate columns.

EXHIBIT C

COLUMN A	COLUMN B
All Available Fields the Division Produced -(Reflected in the Header of All .DAT Files Produced)	Example of Fields Populated for Bates Number SEC-EDENARC-E-0025453
SECFIRST	SEC-NY-09197-000147843
SECLAST	SEC-NY-09197-000147843
SECFIRSTATTACH	SEC-NY-09197-000147843
SECLASTATTACH	SEC-NY-09197-000147843
FirstBates	SEC-EDENARC-E-0025453
LastBates	SEC-EDENARC-E-0025453
FirstAttach	SEC-EDENARC-E-0025453
LastAttach	SEC-EDENARC-E-0025453
AttachRange	
Child_Bates	
Date_Time_Accessed	
Date_Time_Accessed (time)	
Hashvalue_CSV	
Original Image ID	
INTFILEPATH	
MessageID_CSV	
Mimetype-CSV	
Original_Firstbates	
Original_Lastbates	
Parent_Bates	
FilePath	
Page_Count	
Printed_Date	
Printed_Date (time)	
Production_Party_Source	
Producing Party	EDEN_ARC
Production Date	20150925
Time Zone	
Date Received	20140626
Date Received (time)	9:46
Email BCC	
Email CC	patrick horsman <patrick@bluesand.com>
Email From	jay lathen <jaylathen@edenarccapital.com>
Email From/Author	jaylathen
Read/Unread	Read
Email Recipient Name	michael;patrick
Email To	michael cooney <michael@bluesand.com>
Office Flags	
Creation Date	20150812
Creation Date (time)	11:09
Custodian	
File Name	
File Size	25088

COLUMN A	COLUMN B
Folder Name	AllJayEACemails7412to81215_128749_Email_002
Importance	Normal
Modification Date	20150812
Modification Date (time)	15:12
MD5 Hash	
ID	_NY_01:00073818
Sent Date	20140626
Sent Date (time)	9:46
Subject	Re: i am talking to Seward & Kissel at 1:30 pm tomorrow. will letyou know hot it goes
Text file	SEC-NY-09197_20160810\IMAGES_TEXT\000\147\SEC-NY-09197-000147843.txt
Native file	SEC-NY-09197_20160810\NATIVES\000\147\SEC-NY-09197-000147843.msg

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. ("JAY") LATHEN, JR.,
EDEN ARC CAPITAL
MANAGEMENT, LLC,
and EDEN ARC CAPITAL
ADVISORS, LLC,

Respondents.

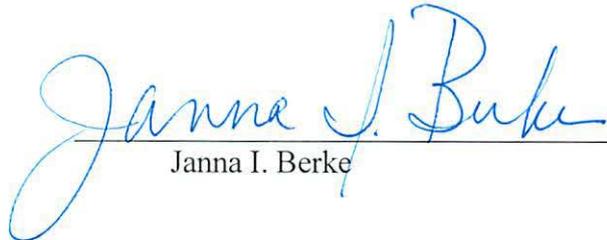
Certificate of Service

I hereby certify that I served the Declaration of Janna I. Berke Regarding Disclosure of the Division of Enforcement's Investigative Files, dated October 31, 2016 and attached exhibits by the means indicated below:

Harlan Protass
Clayman & Rosenberg LLP
305 Madison Avenue, Ste 1301
New York, New York 10165
Attorneys for Respondents
(By E-mail, Oct. 31, 2016)

The Honorable James E. Grimes
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
(By E-mail, October 31, 2016)

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557
(UPS (original and three copies), Oct. 31, 2016;
Fax, Oct. 31, 2016)



Janna I. Berke