

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 4314/October 31, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-16462

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In the Matter of

LYNN TILTON;	:	
PATRIARCH PARTNERS, LLC;	:	
PATRIARCH PARTNERS VIII, LLC;	:	ORDER
PATRIARCH PARTNERS XIV, LLC; and	:	
PATRIARCH PARTNERS XV, LLC	:	

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The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on March 30, 2015. The OIP alleges that Respondents violated the antifraud provisions of the Investment Advisers Act of 1940 in their operation of three collateral loan obligation funds (known as the Zohar Funds) by reporting misleading values for the assets held by the funds and failing to disclose a conflict of interest arising from Lynn Tilton's undisclosed approach to categorization of assets. The proceeding was stayed by order of the U.S. Court of Appeals for the Second Circuit between September 17, 2015, and June 2016. *See Tilton v. SEC*, 824 F.3d 276, 291 (2d Cir. 2016); *Tilton v. SEC*, No. 15-2103 (2d Cir.), ECF Nos. 76, 125. The hearing commenced on October 24, 2016, and is expected to last two to three weeks.

Under further consideration is Respondents' October 17, 2016, Motion to Compel the Office of Litigation and Administrative Practice to Produce Documents Responsive to Respondents' Subpoenas. The Motion to Compel states that Respondents and the Commission's Office of Litigation and Administrative Practice (OLAP) held numerous meet and confers to resolve any privilege assertions, but that OLAP continues to withhold inter-agency communications that the undersigned had ordered to be released. Ex. 2 of the Declaration of Mary Beth Maloney attached to the Motion to Compel is a privilege log sent to Respondents on October 14, 2016. Next to each withheld document is a privilege claim of work product doctrine, law enforcement privilege, and/or deliberative process privilege. But no particularized showing as to the applicability of any privilege has been made. OLAP was therefore ordered to submit the withheld items to the undersigned for *in camera* review. *See Lynn Tilton*, Admin. Proc. Rulings Release No. 4274, 2016 SEC LEXIS 3917 (A.L.J. Oct. 18, 2016).

On October 21, 2016, OLAP submitted the withheld documents and a verified explanation of privileges asserted in its privilege log for *in camera* review. As the review progressed, it became clear that the privilege log sent to Respondents on October 14 does not provide sufficient information to enable Respondents to assess and respond to any claimed

privilege. See *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 473-74 (2d Cir. 1996) (privilege log “contain[ing] a cursory description of each document, the date, author, recipient, and ‘comments’” with “general allegations of privilege” found deficient). The privilege log’s subject headings state only whether each document is an “immunity request” or an “investigative information request.” In at least some instances, a privilege log with greater description of the nature of documents, without revealing their purported privileged content, could have resolved any privilege dispute or demonstrated that certain documents do not contain useful information. For example, the “immunity request” that is the subject of several emails does not relate to any witness expected to testify at the hearing.

Further, OLAP’s verified explanation revises its position on asserted privileges as to certain documents. Also, although OLAP invokes the law enforcement and deliberative process privileges as a basis for withholding several documents, it has not provided an appropriate declaration supporting those privileges with an explanation delineating the declarant’s authority to invoke them. See *Landry v. FDIC*, 204 F.3d 1125, 1135 (D.C. Cir. 2000); *Northrop Corp. v. McDonnell Douglas Corp.*, 751 F.2d 395, 405 n.11 (D.C. Cir. 1984).

By November 3, 2016, OLAP shall file and serve on Respondents a revised privilege log and an appropriate declaration in accordance with this Order. By November 7, 2016, Respondents may file a written response. No oral argument will be permitted.

IT IS SO ORDERED.

/s/ Carol Fox Foelak  
Carol Fox Foelak  
Administrative Law Judge