

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4672/March 10, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-16462

In the Matter of

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

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 concluded on November 10, 2016. The parties completed their post-hearing briefing with opposition filings on January 13, 2017.

Stay

Under consideration is Respondents' February 23, 2017, Motion to Stay and responsive pleadings. The Motion to Stay concerns the argument of Respondents and others that administrative proceedings such as the instant proceeding are unconstitutional because the presiding administrative law judges were appointed in violation of the U.S. Constitution. Specifically, Respondents point to *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016) (holding such proceedings to be unconstitutional), and the February 16, 2017, grant of rehearing en banc of *Raymond J. Lucia Cos.*, 832 F.3d 277 (D.C. Cir. 2016) (holding such proceedings to be constitutional). In light of these developments, and the possibility that the issue may reach the Supreme Court, Respondents argue that a stay of this proceeding is appropriate. Respondents also point to the Supreme Court's recent grant of certiorari in *SEC v. Kokesh*, 834 F.3d 1158 (10th Cir. 2016), which presents the question of whether the five-year statute of limitations applicable to civil penalties applies to disgorgement, noting that the Division of Enforcement has requested disgorgement based in part on conduct more than five years before the date of the OIP.

The stay will not be granted. Respondents' suggestion that a stay would avoid unnecessary expenditure of resources on a proceeding whose constitutionality is in question overlooks the fact that the parties have completed their post-hearing briefing.¹ At any rate, the Commission's rules of practice do not provide for the undersigned to grant stays of indefinite duration except for stays "during the pendency of a criminal investigation or prosecution arising out of the same or similar facts that are at issue" in the administrative proceeding. 17 C.F.R. § 201.210(c)(3). *See also* 17 C.F.R. § 201.161(c)(2) (authorizing stays of limited duration pending Commission consideration of offers of settlement). The possibility, not to mention the timing, of any future Supreme Court opinion on the constitutional issue is speculative, and the Commission has not disavowed its previous stance that its proceedings are constitutional.

Interlocutory Review

Respondents' request for certification for interlocutory review pursuant to 17 C.F.R. § 201.400 (Rule 400) of a decision by the undersigned not to stay the proceeding will be denied.

Rule 400(c)(2) provides, in relevant part:

(c) *Certification Process.* A ruling submitted to the Commission for interlocutory review must be certified in writing by the hearing officer The hearing officer shall not certify a ruling unless:

. . .

(2) upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that:

(i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) an immediate review of the order may materially advance the completion of the proceeding.

Concerning Rule 400(c)(2)(i), the Commission has not disavowed its position that its proceedings are constitutional. As a consequence, immediate review of this order will not materially advance the completion of this proceeding.

IT IS SO ORDERED.

/S/ Carol Fox Foelak

Carol Fox Foelak

Administrative Law Judge

¹ Respondents also advert to irreparable reputational harm to Respondents and negative impact on distressed companies in which they have invested that would occur from a negative ruling in this case if not foreclosed by a stay. During the hearing Respondents voiced a more optimistic outlook on the possible outcome in urging that the post-hearing briefing and initial decision occur quickly. *See* Tr. 3633-37 (Nov. 9, 2016).