

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4313/October 31, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-16462

In the Matter of

LYNN TILTON;	:	
PATRIARCH PARTNERS, LLC;	:	
PATRIARCH PARTNERS VIII, LLC;	:	PROTECTIVE 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 is expected to last two to three weeks.

At the October 19, 2016, prehearing conference, the undersigned provisionally granted Respondents' Motion for Protective Order covering Respondents' Exhibit 495 and those portions of expected hearing testimony that will address the financial information contained in that exhibit. Under consideration is the parties' proposed protective order. It is undisputed that Respondents' Exhibit 495 contains highly sensitive, confidential financial information (termed "private financial data" in the proposed order) about several of the portfolio companies in whose debt the Zohar Funds have invested. Although the record in a Commission administrative proceeding is presumed to be public, the harm resulting from public disclosure of such material would outweigh the benefits of disclosure. *See* 17 C.F.R. § 201.322(b). Disclosure of such material is presumed harmful; it is specifically limited in various contexts, for example, Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). Accordingly, a protective order will be issued.¹

¹ This Order includes minor additions to and deletions from the phraseology of the proposed order. Additions are bolded and deletions are struck through. Also, provisions governing the use of the sealed material in filings and disclosure of such material are added. Lastly, the ordering clauses before each paragraph in the proposed order are removed and instead the paragraphs are numbered.

1. Respondents' Exhibit 495 shall not be used by the SEC Division of Enforcement (Division) or its counsel or agents except for the purposes of this action.

2. During so much of Respondent Lynn Tilton's testimony as concerns Respondents' Exhibit 495 or otherwise concerns the Portfolio Companies' private financial data, this hearing shall be closed to all persons other than the following:

- a) The Administrative Law Judge presiding in this matter;
- b) A hearing reporter, who will be separately instructed to seal the protected portions of the hearing;
- c) Counsel who have appeared of record in this matter and employees or consultants to such counsel, including individuals providing technical and audiovisual support;
- d) Any person who has submitted an expert report in this matter;
- e) Respondent Lynn Tilton, as the testifying witness; **and**
- f) **Court security personnel.**

3. **Respondents' Exhibit 495 and any sealed testimony addressing that exhibit may be disclosed to:**

- a) **The Office of Administrative Law Judges and its employees or agents;**
- b) **The Office of the Secretary and its employees or agents;**
- c) **The Commission and any employees or agents it designates in the handling of any appeal;**
- d) **Counsel who have appeared of record in this matter (including any counsel who appears of record in any appeal) and employees or agents of such counsel;**
- e) **Any person who has submitted an expert report in this matter; and**
- f) **Respondent Lynn Tilton.**

4. Under no circumstance, other than those specifically provided for in this Order or in a subsequent Order of the Administrative Law Judge **or the Commission**, shall the Division or its counsel or agents disclose any part of Respondents' Exhibit 495, or permit the same to be disclosed, to any person other than those specified above who are granted access to the protected testimony.

5. Each person specified above who is given access to the protected testimony and to Respondents' Exhibit 495 shall keep the information disclosed therein secure and confidential, and refrain from disclosing it. In particular, counsel for the Division of Enforcement is cautioned that any disclosure of protected information to fact witnesses or other cooperating persons would constitute a violation of this order.

6. Should any party seek to use the protected testimony or Respondents' Exhibit 495 in connection with **the filing or** hearing in this matter (other than in that portion of the hearing closed to the public pursuant to this Order), the party must do so under seal or after seeking a protective order of a scope equal to this Order.

7. **If any text of a brief, motion, or other pleading filed in this proceeding is based on or derived from Respondents' Exhibit 495 and any sealed testimony addressing that exhibit, the party making the filing shall: a) file a version clearly labeled "under seal" pursuant to this Protective Order that sets off, with double brackets, the text that is based on**

or derived from the protected material (e.g., [[text]]); and b) file a public redacted version removing the text that is based on or derived from the protected material.

8. In the event any of the protected testimony or Respondents' Exhibit 495 is used in any manner in this proceeding, the testimony and information disclosed therein shall not lose their confidential status through such use.

9. The disclosure of private financial data through the protected testimony or Respondents' Exhibit 495 in this proceeding shall not be deemed a waiver of any applicable privilege or other basis for confidentiality.

10. Any exhibit, testimony, or other information protected by this Order may be examined on appeal to the Commission but shall not lose their confidential status through such an appeal, **unless the Commission orders otherwise.**

11. At the conclusion of this matter, including any appeal to the Commission, any record of the protected testimony or Respondents' Exhibit 495 in the custody or control of any counsel or agent of the Division shall be either destroyed by the Division or returned to Respondents for destruction, consistent with the Division's statutory document preservation obligations. Counsel for the Division shall notify Respondents of compliance with this paragraph no more than 90 days after the final conclusion of this matter.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge