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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of, LYNN TILTON PATRIARCH PARTNERS, LLC, PATRIARCH PARTNERS VIII, LLC, PATRIARCH PARTNERS XIV, LLC and PATRIARCH PARTNERS XV, LLC Respondents.	:	Administrative Proceeding File No. 3-16462 Judge Carol Fox Foelak

MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION OF NON-PARTY VÄRDE PARTNERS, INC. TO QUASH THE SUBPOENA SERVED BY RESPONDENTS

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August 11, 2016

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Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Patriarch" or "Respondents"), respectfully submit this brief in opposition to the motion by non-party Värde Partners, Inc. ("Värde") to quash the subpoena, dated August 17, 2015 (the "Subpoena"), which Your Honor issued to Värde at Respondents' request.

INTRODUCTION

The SEC's Enforcement Division (the "Division") has been in contact with Värde subsequent to the issuance of the Order Instituting Proceedings ("OIP"), and Värde employees appear on the Division's list of potential trial witnesses against Respondents. *See* Declaration of Lisa H. Rubin, Aug. 11, 2016 ("Rubin Decl."), Exs. 1 & 2. Yet there exists no record of Värde's communications with or production of documents to the Division; indeed, the investigative record produced to Respondents is entirely devoid of documents from Värde or statements made by Värde-affiliated witnesses. The Division never issued any investigative subpoena to Värde or its employees, never disclosed any interview transcript with Värde, and never disclosed any notes of its contacts with Värde. Compounding the underdeveloped investigative record are the SEC Rules of Practice, 17 C.F.R. pt. 201 (the "Rules"), which leave Respondents without traditional discovery tools that would otherwise shed light on Värde's role in the Division's theories. Respondents therefore requested (and Your Honor issued) the Subpoena to Värde. Without documents responsive to the Subpoena, Respondents will be completely in the dark as to Värde's trial testimony until the moment a Värde employee takes the stand, will be deprived of a meaningful opportunity to cross-examine any Värde witnesses, and will be further hamstrung in their ability to defend themselves against the Division's baseless charges. Yet Värde now seeks to have the Subpoena quashed in its entirety, based on the meritless suggestion that the Subpoena is unreasonable, oppressive, or unduly burdensome. While the Subpoena may

be inconvenient to Värde in the ways subpoenas are often inconvenient to third parties, the importance of the requested documents to Respondents' ability to meaningfully challenge and cross-examine Division-designated witnesses at trial far outweighs any purported concern.

Respondents have little information regarding the scope of Värde's anticipated testimony at trial. On May 29, 2015, at Respondents' insistence and Your Honor's direction, the Division informed Respondents that it had contacted fifteen additional investors, including Värde, after filing the OIP. *See* Rubin Decl., Ex. 1. Then, on August 7, 2015, the Division disclosed that it might call four of those investors, including Värde, to testify at trial. *See* Rubin Decl., Ex. 2 (Division Witness List). There are, however, no interview transcripts or notes of the Division's contact with those investors—at least none that the Division has shared with Respondents.

As part of the August 7, 2015 witness list, the Division stated that Messrs. Jeremy Hedberg and/or Matt Mach, of Värde, "may be called to testify regarding Värde Partners' investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Värde Partners' investment." *Id.* This single line is the sole source of information available to Respondents regarding the anticipated scope and substance of Värde's testimony.

In light of the Division's exceedingly limited disclosure regarding Värde's anticipated testimony—and the absence of any meaningful discovery regarding the Division's communications with Värde—it is critical that Respondents have full and immediate access to the information sought in the Subpoena. The motion to quash should be denied in its entirety because the Subpoena's requests fit well within what the Division disclosed as the scope of Värde's potential testimony. The information sought is not only relevant but necessary to a fair

examination of any Värde witness. Without it, Respondents will be unable to defend themselves adequately or fairly against the Division's case at trial.

Respondents' overwhelming need for the information requested outweighs any purported burden or overbreadth objections and renders the Subpoena eminently reasonable, and indeed absolutely critical. Värde's objections are largely conclusory or baseless; for example, Respondents are no longer registered investment advisers and no longer "competing" with Värde. To the extent Värde's concern regarding the disclosure of confidential, proprietary information—an assertion on which much of Värde's motion hinges—has any validity, it is well-settled that any such concern is resolved easily by the use of routine safeguards such as a protective order. *See, e.g., In re Morgan Asset Mgmt., Inc.* et al, Administrative Proceedings Rulings Release No. 658, SEC Docket 3382 (ALJ July 20, 2010) ("Respondents are willing to enter into a protective order restricting their use of confidential business information. No more is required."). Indeed, Your Honor approved just such an order in this proceeding when Rabobank International, New York Branch ("Rabobank") expressed similar concerns in response to a subpoena by Respondents.

Värde's arguments pervert "the fundamental principle that the public has a right to every man's evidence," *Univ. of Pa. v. EEOC*, 493 U.S. 182, 189 (1990) (internal quotation omitted), by belittling a duly ordered Subpoena because it does not want to be inconvenienced to comply. Any inconvenience to Värde is minor in the face of the profound consequences for Respondents if the extreme information asymmetry in the Division's favor is not remedied and, as a result, the Division prevails in treating Respondents as wrongdoers and obtains an order of disgorgement in the amount of at least $208 million and a permanent bar from the industry. The motion to quash should be denied in its entirety.

LEGAL STANDARDS

Rule 232(c)(2) provides that "the hearing officer or the Commission shall quash or modify" a subpoena if compliance with the subpoena would be "unreasonable, oppressive or unduly burdensome." Värde, as the movant, has the initial burden to show that the Subpoena is unreasonable, oppressive, or unduly burdensome. *See In re Clean Energy Capital, LLC*, Administrative Proceedings Rulings Release No. 1653, SEC Docket 2285 (ALJ July 25, 2014). Värde has failed to make the necessary showing here. Moreover, even if Värde could meet its initial burden, Respondents would defeat the motion by showing, as they do here, that the information requested is "relevant and non-privileged," and "crucial to the preparation of their case." *Id.*

ARGUMENT

I. The Documents Sought Are Necessary To Respondents' Ability To Prepare For And Rebut The Division's Theories, And They Are Vital To Meaningful Cross-Examination Of Disclosed Witnesses.

Without explanation, Värde asserts that the materials requested in the Subpoena are irrelevant. *See* Mem. of Non-Party Värde Partners, Inc. in Support of Mot. to Quash Subpoena Served by Respondents, Aug. 4, 2016 ("Värde Mem."), at 15-16. To the contrary, the Subpoena directly targets the Division's allegations and Värde's potential testimony at trial. Specifically, the OIP focuses on investors' valuations of the Zohar Funds; the Division contacted investors before and after the filing of the OIP; and the Division has acknowledged that it may call Värde

to testify at trial with respect to its valuation of the Funds.[1] Quashing the Subpoena would deprive Respondents of critical information that relates directly to the Division's theory.[2]

A. The Division Has Put Investors' Subjective Knowledge And Valuation Of The Zohar Funds At Issue In This Case.

Värde misapprehends the allegations in this proceeding by reading investors out of the OIP. *See* Värde Mem. at 10. ("[T]he Division's enforcement action . . . does not focus on the internal valuations, methodologies, and procedures of Zohar Fund *investors* or the prices paid by such investors." (emphasis in original)). To the contrary, the OIP focuses on investors and puts their subjective valuations of the Zohar Funds directly at issue. *See* OIP ¶ 51 ("Respondents' approach to categorization, and the resulting impact on the OC Ratio test, were important to investors . . . ."); *id.* ¶ 57 ("Information in the financial statements about the value of the Funds' assets was important to investors.").

Moreover, in briefing since the issuance of the OIP, the Division has continued to focus on investors' subjective knowledge. *See* Division of Enforcement's Br. in Opp. to Respondents' Mot. for a More Definite Statement at 4 (Apr. 29, 2015) ("[T]he Division alleges that investors were not aware that Respondents were using subjective judgment . . . ."); *id.* ("[I]nvestors were not aware of this underlying conflict . . . ."); *id.* at 5 (describing "Defrauded Investors"); *id.* at 7

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[1] The Division has not taken a position on Värde's motion to quash.

[2] Respondents intend to challenge the admissibility of evidence regarding the subjective views of investors as irrelevant to the charges and inadmissible on other grounds. Nevertheless, the Division has designated Värde a potential witness, and the Division's case appears to rely heavily on assertions regarding the subjective perspectives of investors on various topics. Respondents therefore need the subpoenaed documents to adequately prepare for trial and cross-examination, unless and until Your Honor rules that such testimony and other evidence is inadmissible and, separately, to the extent such documents relate to other relevant issues.

("Notably, the OIP here . . . alleges that Respondents' misrepresentations and omissions affected all of the funds' investors."). Similarly, an expert retained by the Division has opined about the capacity of the Zohar Funds' investors to accurately model the Funds' risk profile. *See* Rubin Decl., Ex. 3 at 58-60 (Expert Report of Michael G. Mayer). Another expert retained by the Division has opined about what financial data "are important considerations for CDO investors," Rubin Decl., Ex. 4 ¶ 27 (Expert Report of Ira Wagner), and concluded that without certain information "investors cannot accurately assess the risk in their investments in the Zohar CLOs," *id.* ¶ 44.

The Division has not merely focused on investors' subjective knowledge and valuation strategies in the past; it also appears intent on eliciting testimony about them at trial, including through Värde. Indeed, it is clear that Värde's knowledge and valuation are central to the Division's trial strategy, as evidenced by the Division's contacts with Värde since the filing of the OIP and Värde's appearance on the Division's potential witness list. *See supra* p. 2.

B. Respondents Are Entitled To Information Necessary To Defend Against The Division's Likely Trial Strategy And Witnesses.

To the extent the Division's allegations and pre-hearing disclosures implicate an investor's subjective perspective, Respondents are entitled to discover the basis for that investor's perspective and any information that might cast doubt on the investor's credibility. Indeed, any such documents are critical to Respondents' defense.

When one party intends to call a witness, fundamental fairness requires a subpoena by the adversary in order to enable effective cross-examination. *See, e.g., United States v. Int'l Bus. Machs. Corp.*, 83 F.R.D. 97, 106 (S.D.N.Y. 1979) ("*IBM*"). In *IBM*, the defendant had named a potential witness and the government then issued a subpoena (both for documents and a deposition) to that witness. *Id.* at 98. The court denied a motion to quash, ruling that the

witness's "anticipated testimony . . . makes it reasonable for the government to be given access to those internal documents . . . from which cross-examination may be fashioned." *Id.* at 106. Moreover, because the defendant had identified the witness's testimony with broad categories, suggesting that the testimony could be "of very broad scope," the court concluded that the broad subpoena was "appropriately comprehensive" and not overbroad. *Id.*

The same logic applies to the Division's broad description of Värde's potential testimony at trial. If the opportunity for cross-examination will have any meaning at all, Respondents must have access to the requested information, all of which relates to how Värde viewed and valued the Zohar Funds. Moreover, the Division has given only the broadest suggestion of Värde's projected testimony, and that opaqueness is exacerbated by the Division's failure to turn over any interview notes from its contacts with Värde. While the Subpoena is tailored to the issues on which the Division focuses, to the extent it is broad, that is necessarily a consequence of the Division's vague description of the intended scope and subject matter of Värde's testimony at trial.

The Subpoena is doubly indispensable in light of the administrative proceeding's lack of other safeguards available in federal court. Respondents were unable to take depositions because the SEC's Rules of Practice do not allow discovery depositions, leaving Respondents with document subpoenas as their primary vehicle for obtaining information with which to prepare for trial and conduct cross-examination of third parties. In addition, the 300-day limit under the Rules of Practice also imposes a truncated discovery schedule, further limiting Respondents' capacity to develop bases for cross-examination and therefore making this Subpoena even more important. Finally, although the OIP alleges fraud, the administrative proceeding does not require a complaint to be pled with particularity, thereby permitting the Division's vague and

conclusory assertions in the OIP, which give Respondents little notice of the facts the Division will attempt to prove at trial. By contrast, a well-pled complaint under Federal Rules of Civil Procedure 8 & 9(b) might have given Respondents the information necessary to permit a narrower subpoena. In these circumstances, the documents described in the Subpoena represent Respondents' only hope to be able to present an adequate defense at trial if the Division calls a Värde witness from its potential witness list.

Even if Värde were not on the Division's potential witness list, the information the Subpoena seeks is directly responsive to the Division's claims about investors' subjective knowledge and valuations, which the Division (not Respondents) has put at issue.

II. The Subpoena Is Neither Unreasonable, Nor Oppressive, Nor Unduly Burdensome.

Värde's purported justifications for its motion to quash are exaggerated and conclusory. Even if the Subpoena were in some respects burdensome—which it is not—a motion to quash is improper where, as here, the information sought is critical to Respondents' defense and there are routine safeguards available, such as a protective order, which would alleviate any purported burden. "If a party objects to discovery requests, that party bears the burden of showing why discovery should be denied." *Fin. Guar. Ins. Co. v. Putnam Advisory Co., LLC*, 314 F.R.D. 85, 87 (S.D.N.Y. 2016). "[B]road-based, non-specific objections" of the type here "fall woefully short of the burden that must be borne by a party making an objection to . . . [a] document request." *Younes v. 7-Eleven, Inc.*, 312 F.R.D. 692, 704 (D.N.J. 2015) (internal quotation marks and citations omitted).

A. Värde's Conclusory Objections Regarding The Cost And Scope Of Document Review Are Not Sufficient Bases For Its Motion To Quash The Subpoena.

Värde's conclusory objection to the costliness of document review is not a sufficient basis for its motion to quash the Subpoena. By its own admission, Värde has "approximately

$10 billion in regulatory assets under management." Värde Mem. at Ex. A ¶ 3. Nothing in Värde's memorandum of law or accompanying documents supports its claim that the costs associated with review or production would be unduly burdensome for a company of Värde's size and sophistication.[3]

Further, Värde's argument that the Subpoena's date ranges are unreasonable, unduly burdensome, and oppressive is equally unavailing. The Subpoena's date ranges were necessarily broad because Respondents do not know—and could not have known—when Värde first began its internal valuations and analyses of the Zohar Funds, as Värde "takes significant precautions to protect" such information. Värde Mem. at 4. Given the important role of such valuations in the Division's case, Respondents need documents regarding Värde's internal valuations, whenever they began. Värde claims in its motion that it did not begin analyzing the Zohar Funds or Zohar Notes until August 2013 and did not purchase Zohar III notes until September 2013. *See id.* at 2, 20, & Ex. A ¶ 5. If true, there should be no responsive documents before August 2013. Therefore, the review of documents prior to that date should impose little, if any, burden.[4]

Also lacking merit is Värde's claim that the review and redaction of documents and preparation of a privilege log would be unduly burdensome. "[M]ost subpoenas *duces tecum* require the recipient to conduct a privilege review." *U.S. Dep't of Treasury v. Pension Benefit*

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[3] The fact that Värde has already produced some documents "[does] not relieve [Värde] from its obligation to respond to [the Subpoena]." *Managed Care Sols., Inc. v. Essent Healthcare, Inc.*, 2010 WL 3419420, at *3 (S.D. Fla. Aug. 27, 2010) (denying motion to quash where party had already produced "voluminous documents").

[4] Moreover, to the extent Your Honor believes the date range in the Subpoena is too broad, the appropriate remedy would be for Your Honor to modify it, not quash the entire Subpoena. *See* Rule 232(e) (providing that the hearing officer "shall quash *or modify* the subpoena" (emphasis added)); *cf. Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004) ("Generally, modification of a subpoena is preferable to quashing it outright.").

Guar. Corp., 301 F.R.D. 20, 29 (D.D.C. 2014). If that fact alone could serve as the basis for quashing a subpoena, discovery "would quickly grind to a halt." *Id.*

B. Värde's Cursory Invocation Of The Attorney Client Privilege Does Not Satisfy Its Burden Of Proof.

Värde's unsupported, blanket assertion that the Subpoena seeks attorney-client privileged material does not come close to justifying the quashing of the Subpoena because "[a] 'blanket claim,' as to the applicability of a privilege does not satisfy the [movant's] burden of proof." *In re Putnam Inv. Mgmt., LLC*, Administrative Proceedings Rulings Release No. 613, SEC Docket 2062 (ALJ Mar. 26, 2004); *cf. Pension Benefit Guar. Corp.*, 301 F.R.D. at 29 ("There is no basis for the Court to impose the extraordinary measure of quashing a subpoena . . . based on a purely speculative privilege claim." (citations and quotation marks omitted)). Here, Värde's privilege claim is "little more than an abstraction." *Putnam Inv. Mgmt.*, Release No. 613. Värde "has not provided a detailed index of the responsive documents for which it is claiming privilege," nor has it demonstrated that a responsible official "has personally reviewed all of the responsive documents and determined that each one falls within the scope of the claimed privilege." *Id.* In the absence of such information, Värde's motion to quash is "deficient." *Id.*; *see also Bloomingburg Jewish Educ. Ctr. v. Vill. of Bloomingburg, N.Y.*, 2016 WL 1069956, at *7 (S.D.N.Y. Mar. 18, 2016) ("In the absence of any support for the assertion that any particular documents are privileged, the Court cannot rule that there are any documents . . . as to which [the privileged] applies.").[5]

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[5] To the extent that Värde continues to maintain that certain documents are indeed privileged, it should produce all other responsive documents with a detailed privilege log of withheld documents. The parties can then separately resolve or litigate Värde's privilege claims,

[Footnote continued on next page]

C. A Protective Order Would Allow Respondents To Access Information Critical To Their Defense While Protecting From Disclosure Any Confidential Or Proprietary Information.

It is imperative that Respondents obtain the information requested in the Subpoena. Even assuming, for purposes of this motion, that some of the requested information were confidential or proprietary, Respondents' need to access this information outweighs any privacy concerns. Värde has not suggested that such information is otherwise available to Respondents. On the contrary, Värde has made clear that it strictly controls and limits access to the very information that Respondents need to defend themselves at trial.[6]

Moreover, Värde's purported privacy concern is not well supported. Värde claims that Respondents are "direct business competitors because they are investment advisors." Värde Mem. at 1. But Respondents are in fact no longer registered investment advisors. In any event, Värde may request, for appropriate documents, a highly confidential designation of "attorneys' and experts' eyes only." *See, e.g., AFMS*, 2012 WL 3112000, at *7 ("A protective order allowing 'confidential' or 'highly confidential' designations is sufficient to protect a nonparty's

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[Footnote continued from previous page]
without prejudicing Respondents' access to the remaining documents and their ability to adequately prepare for the fast-approaching trial.

[6] In moving to quash the Subpoena, Värde erroneously relies upon Fed. R. Civ. P. 26. Värde Mem. at 21; *see, e.g., In re Carley*, Exchange Act Release No. 50954, 84 SEC Docket 2165 (Jan. 3, 2005) ("[W]e have held repeatedly that our proceedings are not governed by the Federal Rules of Civil Procedure."). But even under Fed. R. Civ. P. 26, Värde has failed to show that the information sought is "unreasonably cumulative or duplicative, or can be obtained from some other source," or that Respondents have had "ample opportunity to obtain the information by discovery in the action." Värde Mem. at 21 (internal quotation marks and citation omitted). And, as detailed above, Respondents' substantial need for this information—which it cannot obtain by other means—far outweighs any purported burden. *See, e.g., AFMS LLC v. United Parcel Serv. Co.*, 2012 WL 3112000, at *6 (S.D. Cal. July 30, 2012)

trade secrets."); *Stewart v. Orion Fed. Credit Union*, 285 F.R.D. 400, 402 (W.D. Tenn. 2012) (granting motion to compel "subject to an attorney's and experts' eyes only protective order").

Courts routinely compel production of confidential, proprietary information where, as here, a party needs the information to litigate claims or defenses and there are appropriate mechanisms for protecting that information. *See, e.g., In re Morgan Asset Mgmt., Inc.* et al, Administrative Proceedings Rulings Release No. 658, SEC Docket 3382 (ALJ July 20, 2010) (denying motion to quash where respondents were willing to enter into a protective order); *see also, e.g., W. Convenience Stores, Inc. v. Suncor Energy (U.S.A.) Inc.*, 2014 WL 1257762, at *22 (D. Colo. Mar. 27, 2014) ("[Movant's] legitimate interest in protecting its trade secrets and confidential information did not justify quashing [the] subpoena."); *Official Unsecured Creditors Comm. of Media Vision Tech. v. Jain*, 215 F.R.D. 587, 589 (N.D. Cal. 2003) (denying motion to quash because where "Plaintiffs' need for the manuals outweigh[ed] any claim of injury"). Protective orders enable courts to strike "a proper balance between the philosophy of full and fair disclosure of relevant information and the need for reasonable protection against harmful side effects." *Nutratech, Inc. v. Syntech (SSPF) Int'l, Inc.*, 242 F.R.D. 552, 555 (C.D. Cal. 2007); *see also In re Putnam Inv. Mgmt., LLC*, Administrative Proceedings Rulings Release No. 614, 82 SEC Docket 2263 (ALJ Apr. 7, 2004) (using redactions and a protective order to "satisfy [the movant's] legitimate concerns"); *Gutierrez v. Benavides*, 292 F.R.D. 401, 404 (S.D. Tex. 2013) (collecting cases).

For example, in *Morgan Asset Management*, the ALJ denied a motion to quash, despite the movant's assertion that responsive documents would contain confidential business information. *See* Release No. 658. The ALJ noted that the respondents were "willing to enter into a protective order restricting their use of confidential business information," and that "[n]o

more [was] required." *Id.* Thus, the ALJ "impose[d] a protective order" and compelled the production of documents pursuant to that order. *Id.*

Likewise, Your Honor approved such an order in this proceeding. When similar concerns were expressed by Rabobank in response to a subpoena by Respondents, Your Honor entered a protective order and extended it to "categories of documents that have been identified as responsive to the subpoena that contain and reflect trade secrets or other proprietary, confidential, or commercially sensitive information (Highly Confidential Material)." *In re Lynn Tilton* et al., Administrative Proceedings Rulings Release No. 2931 (July 15, 2015), at 1.

Here, "the evidentiary value of the information outweighs the potential damage" to Värde's business. *Datacard Sys., Inc. v. PacsGear, Inc.*, 2011 WL 2491366, at *2 (D. Minn. June 23, 2011). In any event, Värde's "confidentiality concern[s]" may be "readily addressed by a protective order." *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 2016 WL 270486, at *2 (W.D. Tex. Jan. 21, 2016); *see also Am. Broad. Cos. v. Aereo, Inc.*, 2013 WL 1508894, at *3 (N.D. Cal. Apr. 10, 2013) ("Because the Protective Order addresses any privacy concerns . . . , the court finds [movant's] argument does not require quashing the subpoena.").

In fact, Rule 322 specifically provides that "any person who is the owner, subject or creator of a document subject to subpoena or which may be introduced as evidence . . . may file a motion requesting a protective order to limit disclosure to other parties or to the public documents or testimony that contain confidential information." Because Värde has failed to avail itself of the narrower protections of Rule 322—and because this motion can, to the extent necessary, be treated as a motion under Rule 322—Värde's motion to quash should be denied. This result is particularly critical when, as here, the information at issue is essential to Respondents' defense.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that Your Honor deny Värde's motion to quash in full.

Dated: New York, New York
August 11, 2016

GIBSON, DUNN & CRUTCHER LLP

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I served true and correct copies of 1) Memorandum of Law in Opposition to the Motion of Non-Party Värde Partners, Inc. to Quash the Subpoena Served by Respondents, and 2) Declaration of Lisa H. Rubin in Support of Respondents' Opposition to the Motion of Non-Party Värde Partners, Inc. to Quash the Subpoena Served by Respondents, on this 11th day of August, 2016, in the manner indicated below:

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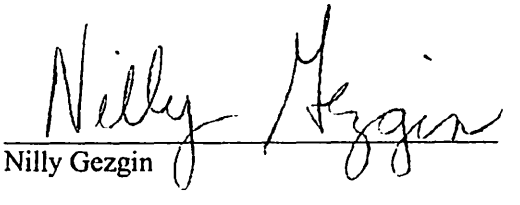

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of,	:	
LYNN TILTON PATRIARCH PARTNERS, LLC, PATRIARCH PARTNERS VIII, LLC, PATRIARCH PARTNERS XIV, LLC and PATRIARCH PARTNERS XV, LLC	:	Administrative Proceeding File No. 3-16462 Judge Carol Fox Foelak
Respondents.	:	

DECLARATION OF LISA H. RUBIN IN SUPPORT OF RESPONDENTS' OPPOSITION TO THE MOTION OF NON-PARTY VÄRDE PARTNERS, INC. TO QUASH THE SUBPOENA SERVED BY RESPONDENTS

I, Lisa H. Rubin, under penalty of perjury, affirm as follows:

1. I am Of Counsel in the law firm of Gibson, Dunn & Crutcher LLP, attorneys for the above-referenced Respondents. I submit this declaration in support of Respondents' Opposition to the Motion of Non-Party Värde Partners, Inc. to Quash the Subpoena Served by Respondents.

2. Attached hereto as Exhibit 1 is a true and correct copy of a letter from Dugan Bliss, Senior Trial Counsel for the Division of Enforcement, to Respondents' former counsel, Christopher J. Gunther, of Skadden, Arps, Slate, Meagher & Flom LLP, dated May 29, 2015.

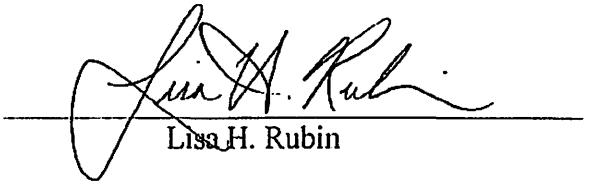
3. Attached hereto as Exhibit 2 is a true and correct copy of the Division of Enforcement's Witness List, dated August 7, 2015.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the Expert Report of Michael G. Mayer, expert for the Division of Enforcement, dated July 10, 2015.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the Expert Report of Ira Wagner, expert for the Division of Enforcement, dated July 10, 2015.

6. I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Dated: New York, New York
August 11, 2016



Lisa H. Rubin

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May 29, 2015

Via E-mail and Overnight Delivery

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Re: *In the Matter of Lynn Tilton, et al (File No. 3-16462)*

Dear Mr. Gunther:

I write in response to your May 21, 2015 letter concerning the discovery provided by the Division of Enforcement (the "Division"). In that letter you identified certain documents that you do not believe have been produced. I will address each set of documents in turn, as italicized below:

- Any documents produced to the SEC by Bank of America in response to the SEC's May 24, 2011 informal request for documents.
    - *No documents were produced in response to that informal request.*
- The November 2, 2012 subpoena for documents served by the SEC on Bank of America.
    - *That subpoena does not exist in the Division's files.*
- Documents produced by Bank of America with the following Bates numbers: BAC00002317 - BAC0002321, BAC00008674 - BAC00008675, and BAC00008912.
    - *The gaps in those Bates ranges exist in Bank of America's production.*
- The October 27, 2011 letter from Goldman Sachs to the SEC enclosing a production of documents.
    - *That letter does not exist in the Division's files.*

- Documentation of the SEC request(s) that initiated the October 27, 2011 Goldman Sachs production.
    - *That documentation does not exist in the Division's files.*
- The documents provided to MBIA by the SEC on December 18, 2013 and January 30, 2014.
    - *These documents were present in the Division's prior production to Respondents, and were originally produced to the Division by Respondents. Attached to this letter please find a disc containing another copy of those documents. The password for that disc is* Patriarch-2015.
- Production letters or emails accompanying S&P's August 24, 2011 and December 5, 2011 productions to the SEC.
    - *Those letters or e-mails do not exist in the Division's files.*
- Documents produced by the JFSA regarding Tokio Marine with the following Bates numbers: JFSA-0000001 - JFSA-0000004 and JFSA-E-000001 - JFSA-E-000002.
    - *Those documents are being withheld. Two of those pages include an internal memorandum that constitutes attorney work product, while the remaining pages are privileged pursuant to Exchange Act Section 24(f).*
- Documents produced by US Bank with the following Bates numbers: USB0029355 - USB0030000.
    - *The gaps in those Bates ranges exist in US Bank's production.*

As to the remaining points in your letter, the Division will provide a withheld document log. Additionally, this week the Division contacted the following investors:

Natixis
Apollo
Nord/LB
RBS
Radian
Assured Guaranty
Goldman Sachs
Tokio Marine
King Street
Panning Capital Management
Petra Capital Management
Manulife Asset Management
Lloyd's Bank

SEI Structured Credit Fund
The Seaport Group
Wells Fargo
Varde Partners
Deer Park Road
Guggenheim Partners

Please let me know if you have any questions.

Sincerely,

Dugan Bliss
Senior Trial Counsel

Enclosure
Cc: Nicholas Heinke
Amy Sumner

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16462

In the Matter of **LYNN TILTON;** **PATRIARCH PARTNERS, LLC;** **PATRIARCH PARTNERS VIII, LLC;** **PATRIARCH PARTNERS XIV, LLC;** **AND** **PATRIARCH PARTNERS XV, LLC,** **Respondents.**	**DIVISION OF ENFORCEMENT'S WITNESS LIST**

The Division of Enforcement ("Division") hereby submits its witness list as attached.

Dated: August 7, 2015

Respectfully Submitted,

Dugan Bliss/sak

Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Ste. 1700
Denver, CO 80294

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on this 7th day of August, 2015, in the manner indicated below:

Securities and Exchange Commission
Brent Fields, Secretary
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
(By Facsimile and original and three copies by UPS)

Hon. Judge Carol Fox Foelak
100 F Street, N.E.
Mail Stop 2557
Washington, D.C. 20549
(By Email)

Christopher J. Gunther
David M. Zornow
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036
(By email pursuant to the parties' agreement)

Susan E. Brune
MaryAnn Sung
BRUNE & RICHARD LLP
One Battery Park Plaza
New York, NY 10004
(By email pursuant to the parties' agreement)

Martin J. Auerbach
Law Firm of Martin J. Auerbach, Esq.
1330 Avenue of the Americas
Ste. 1100
New York, NY 10019
(By email pursuant to the parties' agreement)

Nicole L. Nesvig

Division of Enforcement's Witness List
In the Matter of Lynn Tilton et al.
Administrative Proceeding No. 3-16462

1. Will Call List	
Name and Contact Information	**Area of Testimony**
Lynn Tilton c/o David Zornow Skadden Arps 4 Times Square New York, NY 10036	Respondent Tilton will be called to testify regarding the management and operation of the three Zohar Funds that are the subject of this proceeding, including the categorization of assets within those funds, the preparation of the fund financial statements, Patriarch's responsibilities as a collateral manager, and her role in the conduct described in the Division's Order Instituting Proceedings.
Ira Wagner c/o Dugan Bliss Division of Enforcement 1961 Stout Street, Suite 1700 Denver, CO 80294	Mr. Wagner will testify (either live or through his expert reports) regarding the subjects in his expert reports.
Michael Mayer Charles River Associates c/o Dugan Bliss Division of Enforcement 1961 Stout Street, Suite 1700 Denver, CO 80294	Mr. Mayer will testify (either live or through his expert reports) regarding the subjects in his expert reports.
Steven Henning Marks Paneth LLP c/o Dugan Bliss Division of Enforcement 1961 Stout Street, Suite 1700 Denver, CO 80294	Mr. Henning will testify (either live or through his expert reports) regarding the subjects in his expert reports.

2. May Call List	
Name and Contact Information	**Area of Testimony**
Carlos Mercado c/o Marc A. Weinstein Hughes Hubbard & Reed LLP One Battery Park Plaza New York, NY 10004-1482	Mr. Mercado may be called to testify regarding accounting policies and procedures at Patriarch, interaction with outside accountants, interaction with others at Patriarch, and the preparation of the financial statements for the Zohar Funds.
Peter Berlant Anchin, Block and Anchin c/o Eric Reider Bryan Cave LLP 1290 Avenue of the Americas New York, NY 10104-3300	Mr. Berlant may be called to testify regarding the work he and/or his firm performed for the Zohar Funds and any interaction with Tilton or other Patriarch employees.
Steve Panagos Moelis & Co. c/o Jeff Sinek Kirkland & Ellis LLP 333 South Hope Street Los Angeles, CA 90071	Mr. Panagos may be called to testify regarding restructuring proposals for the Zohar Funds.
Karen Wu c/o Marc A. Weinstein Hughes Hubbard & Reed LLP One Battery Park Plaza New York, NY 10004-1482	Ms. Wu may be called to testify regarding the roles and responsibilities of the structured finance and loan administration departments at Patriarch, interactions with Tilton, and interactions with outside parties relating to the Zohar Funds. She may also be called to testify about interest payments or lack of interest payments by portfolio companies.
Jaime Aldama Rohit Chaku Barclays c/o Andrew Michaelson Boies, Schiller & Flexner LLP 575 Lexington Avenue, 7th Floor New York, NY 10022	Mr. Aldama and/or Mr. Chaku may be called to testify regarding Barclays' investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Barclays' investment.

Anthony McKiernan David Crowle MBIA, Inc. c/o Anne Tompkins Cadwalader, Wickersham & Taft LLP 227 West Trade Street Charlotte, NC 28202	Mr. McKiernan and/or Mr. Crowle may be called to testify regarding MBIA's investmentin the Zohar Fund(s), MBIA's insurance of Zohar I and II, communication regarding the investment or insurance, MBIA's relationship with Patriarch, their understanding of the insurance contract and/or investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of MBIA's investment and/or insurance contract.
Wendy Ruttle Althernative Representative from Rabobank c/o Jantra Van Roy Zeichner, Ellman & Krause LLP 1211 Avenue of the Americas, 40th Floor New York, NY 10036	Ms. Ruttle and/or an alternative representative may be called to testify regarding Rabobank's investment, communication regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Rabobank's investment.
Ramki Muthukrishnan Tim Walsh Alternative Resprsentative from Standard and Poors c/o Penny Windle Cahill Gordon & Reindel LLP Eighty Pine Street New York, NY 10005-1702	Mr. Muthukrishnan, Mr. Walsh, and/or an alternative representative from Standard and Poors may be called to testify regarding the rating and/or monitoring of the Zohar Funds, communications regarding the rating and/or monitoring of the Zohar Funds, and any interactions with Tilton or other Patriarch employees.
Jeremy Hedberg Matt Mach Varde Partners c/o Matthew Rossi Mayer Brown LLP 1999 K Street N.W. Washington DC 20006-1101	Mr. Hedberg and/or Mr. Mach may be called to testify regarding Varde Partners' investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Varde Partners' investment.

John McDermott Kevin O'Hagen Alternative Representative from Nord/LB c/o Michael M. Fay Berg & Androphy 120 W. 45th Street, 38th Floor New York, NY 10036	Mr. McDermott, Mr. O'Hagen and/or an alternative representative may be called to testify regarding Nord/LB's investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the
David Aniloff SEI c/o Merri Jo Gilette Morgan Lewis 77 West Wacker Dr. Chicago, IL 60601-5094	Mr. Aniloff may be called to testify regarding SEI's investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, his understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of SEI's investment.
Michael Craig-Schekman **REDACTED**	Mr. Craig-Scheckman may be called to testify regarding Deer Park's investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, his understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Deer Park's investment.
Any witness identified by Respondent	
Any witness necessary for rebuttal (including but not limited to rebuttal to affirmative defenses)	
Any witness necesssary to authenticate a document or the source of certain materials	

CRA Charles River Associates

In the Matter of Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC, Respondents

United States of America before the Securities and Exchange Commission

Administrative Proceeding, File No. 3-16462

Expert Report of Michael G. Mayer

Prepared By:

Charles River Associates

One South Wacker Drive, 34th Floor

Chicago, Illinois 60606

Date: July 10, 2015

CRA Project No. D20381.00

6.2.1 An Investor Cannot Replicate the Zohar I, II, and III OC Ratio Tests Solely Using the Data Available in the Respective Trustee Reports

As discussed in section 6.1, a Zohar I, II, or III investor would need more data than was available in the respective trustee reports to determine on their own whether the CLOs were passing the OC Ratio tests. The following summarizes the data that is required but not available in the trustee reports.

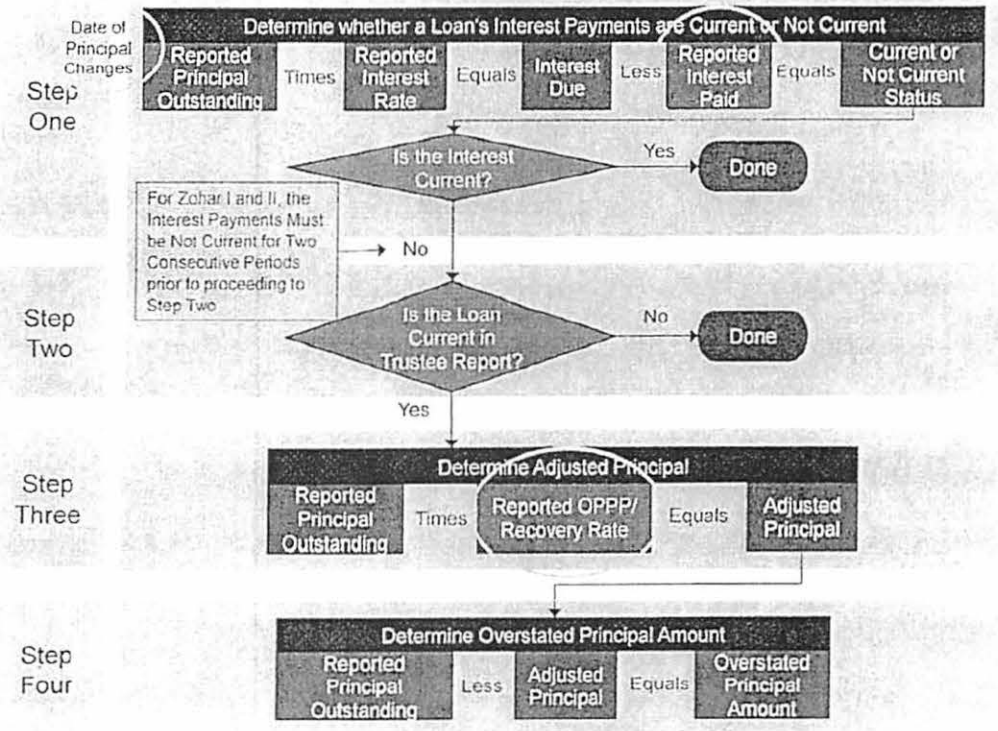
6.2.1.1 Zohar I

As shown in the figure below (yellow circled items), interest paid and the date of principal changes (Step One) and Reported OPPP (Step Three) data is not available in the Zohar I trustee reports. Based on this, an investor cannot replicate the OC Ratio test using only data provided in the Zohar I trustee report.

Figure 53

Zohar I – OC Ratio Calculation Data not Available in the Zohar I Trustee Reports

(Yellow Circled Items)



Reported Principal Outstanding: As discussed in Figure 24, the exact date of a principal balance change of a loan was not available in the trustee reports. Thus, when the principal amount changed for a loan from one trustee report to the next, an investor would not be able to determine the interest due.

Interest Paid: As discussed in section 6.1.2.1 (Zohar I), the Zohar I trustee reports do not contain interest paid by loan. Thus, an investor would not be able to determine whether a loan was current or not current on its interest payments.

Reported OPPP: Even if an investor could determine if a loan was not current, the investor may not have an OPPP by which to adjust the outstanding principal amount of the loan that is to be included in the OC Ratio. As discussed in section 6.1.2.3 (Zohar I), the OPPP for Zohar I loans is not provided in the Zohar I trustee reports after March 2007.

6.2.1.2 Zohar II and Zohar III

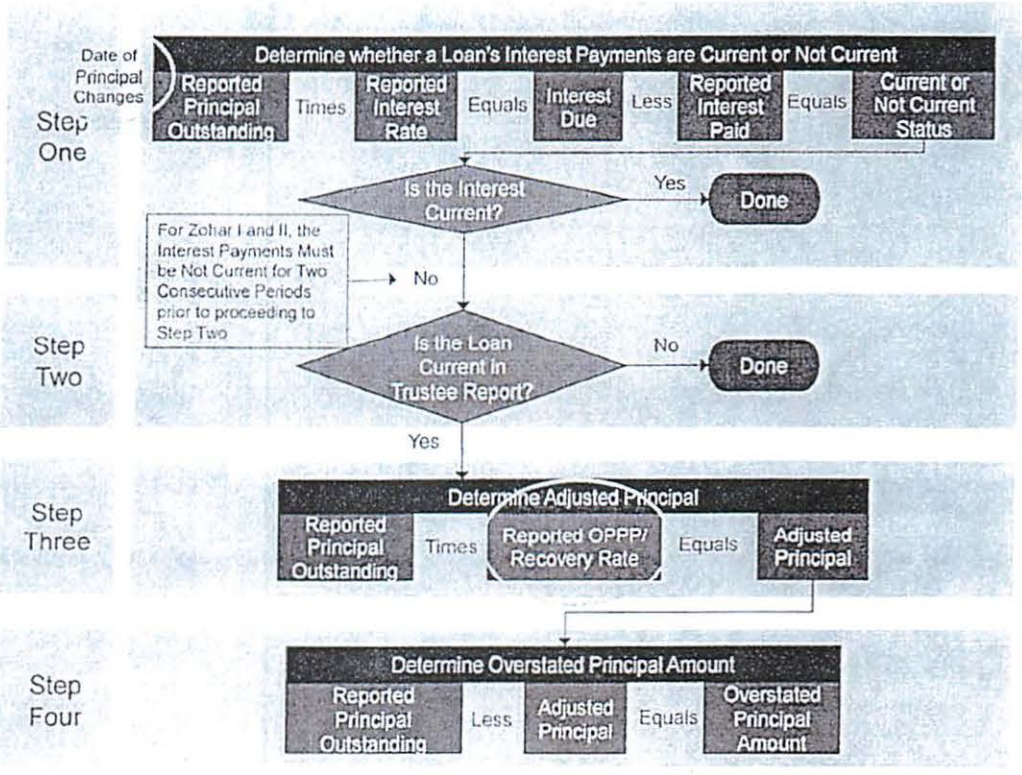
As shown in the figure below (yellow circled item), date of principal changes (Step One) and recovery rate (Step Three) data is not available in the Zohar II and Zohar III trustee reports. Based on this, an investor cannot replicate the OC Ratio test using only data provided in the Zohar II and Zohar III trustee report.

Figure 54

Zohar II and Zohar III – OC Ratio Calculation Data

not Available in the Zohar II and Zohar III Trustee Reports

(Yellow Circled Item)



Reported Principal Outstanding: As discussed in Figure 24, the exact date of a principal balance change of a loan was not available in the trustee reports. Thus, when the principal amounts changed for a loan from one trustee report to the next, an investor would not be able to determine the interest due. For part of 2008 to mid-2014, I used a produced Patriarch spreadsheet which conveyed the interest due (including the date of the principal change). Prior to 2008 and for the second half of 2014, I conservatively used the lower principal balance of the two consecutive trustee reports.

Recovery Rate: As discussed in section 6.1.2.3 (Zohar II and Zohar III), the recovery rate for Zohar II and Zohar III loans is not provided in the Zohar II and Zohar III trustee reports. I obtained this data from produced Patriarch "Daily Extract" spreadsheets which contained recovery rates for part of 2008 through part of 2015.[187]

6.2.2 An Investor Would have to Access Data Beyond the Trustee Reports and Maintain, Update, and Analyze over a Thousand Pieces of Data Each Month in order to Replicate the OC Ratio Tests

Assuming the investor could access all of the data needed to replicate the OC Ratio test, much of which was not contained in the trustee reports as detailed in Figure 24 above, the investor would then need to extract and analyze over a thousand pieces of data each month upon receiving a monthly trustee report.

As an example, I use an April 2010 Zohar II trustee report to illustrate the amount of data an investor would need to input and process to replicate the OC Ratio test each month. As shown below, during the month of April 2010 Zohar II had 179 loans. Given this, an investor would need to input 1,255 pieces of data. In addition, this data would need to be hand entered or copy and pasted and electronically reorganized within a calculation template, such as a spreadsheet.

[187] According to the Zohar II indenture, the amount of principal outstanding to be included for a Category 1 loan in the OC Numerator is the Market Value of the loan and if that has not been obtained then the lowest of the (1) Original Purchase Price Percentage times the outstanding principal balance; (2) Moody's Recovery Rate times the outstanding principal balance; and (3) S&P Average Recovery Rate times the outstanding principal balance. According to the Zohar III indenture, the amount of principal outstanding to be included for a Defaulted Investment loan in the OC Numerator is the lesser of the (1) Market Value of the loan; (2) Moody's Recovery Rate times the outstanding principal balance; and (3) Standard & Poor's Average Recovery Rate times the outstanding principal balance. If the Market Value has not been obtained then the lowest of the (1) Original Purchase Price Percentage times the outstanding principal balance; (2) Moody's Recovery Rate times the outstanding principal balance; and (3) S&P Average Recovery Rate times the outstanding principal balance. For current loans, the Zohar II and Zohar III trustee reports did not contain Market Values, the Original Purchase Price Percentages, or the Moody's or S&P recovery rates. In addition, I am not aware of investors having access to sources that would provide this information in the normal course of business. See Indenture among Zohar II 2005-1, Limited, Zohar II 2005-1, Corp., Zohar II 2005-1, LLC, MBIA Insurance Corporation, Ixis Financial Products Inc., and LaSalle Bank National Association dated January 12, 2005, p. 43. See Indenture among Zohar III, Limited, Zohar III, Corp., Zohar III, LLC, Natixis Financial Products Inc., and LaSalle Bank National Association dated April 6, 2007, pp. 40- 41.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16462

In the Matter of LYNN TILTON; PATRIARCH PARTNERS, LLC; PATRIARCH PARTNERS VIII, LLC; PATRIARCH PARTNERS XIV, LLC; AND PATRIARCH PARTNERS XV, LLC, Respondents.

Expert Report of Ira Wagner
July 10, 2015

they have not actually defaulted as defined under the related loan or transaction agreement or the event of default on the asset has been waived.

25. When an asset is haircut, the haircut will generally be calculated by reference to one or more benchmarks, including the current market value of the asset, the price originally paid for the asset, or the level of recovery on the asset assumed by the rating agencies. Typically, the lowest calculated value for the asset is used in calculating the Overcollateralization Ratio when a haircut is required.

26. CDO transactions test the level of the OC Ratio against specified OC Test levels in the Indenture. These levels are negotiated and set at the issuance of the CDO. When there are both senior and subordinate classes included in the CDO structure, there may be OC Tests for one or more of the classes of the CDO as well. These tests are calculated over the life of the CDO, generally on the CDO payment dates.

27. The OC Ratios and the OC Test levels are important considerations for CDO investors. The level of the OC Ratio is a benchmark utilized by investors to evaluate the performance of their investments. The OC Test is designed to protect the CDO debt investors from adverse performance of the CDO's assets. At the start of the CDO there will be a cushion between the actual level of the OC Ratio and the OC Test levels. If the OC Ratio declines to breach the test level there will be a number of consequences, as defined in the related CDO Indenture. At first, in the Priority of Payments, cash flow that would be allocated to payments on subordinate classes of CDO Notes, equity payments, and payments of subordinate expenses (including a subordinate management fee payable to the Collateral Manager) may be shut off and re-directed to make early payments of principal on more senior Notes. By making additional

would have occurred. Based on the Mayer Report, the OC Ratio as adjusted would have been below 102% as of July 2010 and for all payment dates thereafter.[34]

103. The failure to properly categorize the assets is more important in the Zohar transactions than in CLOs that acquire interests in large loan syndications because the loan facilities in the Zohar CLOs themselves are not widely traded (for many of them, the Zohar CLOs and related parties are the only holders) and information on the underlying borrowers is virtually impossible to obtain elsewhere. Therefore the categorization of assets is essentially the only information available to investors on the status of the underlying borrowers in the Zohar CLOs.

104. Without the correct information, investors cannot accurately assess the risk in their investments in the Zohar CLOs. This has numerous consequences. With accurate information, the investors may have made different decisions in terms of keeping or selling their investments in Zohar. Typically, investors in CLOs monitor the OC Ratios to assess the performance of transactions they own or would consider buying. A declining OC Ratio is a signal to a portfolio manager that the transaction needs to be looked at more closely to evaluate the risk in the deal.

105. Even if an investor could determine that payments were being missed or not being made in full by reviewing the detail in the Trustee Report, it would be unreasonable to expect investors to undertake that level of analysis on a regular basis in a large CDO or structured finance investment portfolio, particularly if the reporting on loan categorization and the OC Ratios did not indicate a problem in the transaction. If Patriarch were following the Indenture in categorizing assets and calculating the OC Ratio, which behavior is required and expected by

[34] Mayer Report p. 56.