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OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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

**MOTION TO COMPEL THE PRODUCTION OF
WITNESS STATEMENTS UNDER THE JENCKS ACT**

Pursuant to Rule 231 of the U.S. Securities and Exchange Commission Rules of Practice, 17 C.F.R. § 201.231 (“Rule 231”), and the Jencks Act, 18 U.S.C. § 3500, upon the accompanying Memorandum of Law and Declaration of Mary Kay Dunning, both dated August 22, 2016, and the record of the proceedings herein, Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partner XIV, LLC, and Patriarch Partners XV, LLC (collectively, “Respondents”) respectfully move for an order compelling the production of witness statements under Rule 231 and the Jencks Act, 18 U.S.C. § 3500.

Dated: New York, New York
August 22, 2016

GIBSON, DUNN & CRUTCHER LLP

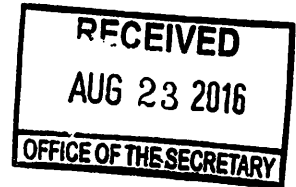
By: Randy M. Mastro (16)
Randy M. Mastro
Reed Brodsky
Barry Goldsmith
Caitlin J. Halligan
Mark A. Kirsch

Monica Loseman
Lawrence J. Zweifach
Lisa H. Rubin

200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Fax: 212.351.4035

Susan E. Brune
BRUNE LAW P.C.
450 Park Avenue
New York, NY 10022

Counsel for Respondents



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**RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION TO COMPEL THE PRODUCTION OF
WITNESS STATEMENTS UNDER THE JENCKS ACT**

GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Telephone: 212.351.4000
Fax: 212.351.4035

BRUNE LAW P.C.
450 Park Avenue
New York, NY 10022

Counsel for Respondents

August 22, 2016

Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, “Respondents”), respectfully submit this brief in support of their motion to compel the Division of Enforcement (“Division”) of the Securities and Enforcement Commission (“SEC”) to produce witness statements under Rule 231 of the SEC Rules of Practice (the “Rules”) and the Jencks Act, 18 U.S.C. § 3500 by August 26, 2016.

INTRODUCTION

Since the Division filed its Order Instituting Proceedings (“OIP”) on March 30, 2015, it has interviewed at least 19 witnesses, including investors in the notes at issue in the OIP¹ whom the Division has listed on its Amended Witness List. *See* Division of Enforcement’s Amended Witness List, dated August 22, 2016, at 2-4 (listing 10 potential investor witnesses). A review of the Division’s investigative file reveals that the Division communicated with witnesses’ counsel more than 50 times during its investigation, whether in person, over the telephone, or by email. *See* Declaration of Mary Kay Dunning, dated August 22, 2016 (“Dunning Decl.”), Ex. 1. The Division nevertheless asserts that its records of pre-OIP communications with witnesses’ counsel and post-OIP communications with witnesses and their counsel contain no Jencks Act material *at all*, other than some audio files of witness testimony that should have been produced to Respondents per Rule 230(d) on April 5, 2015 and which the Division agreed to provide, to the extent available, only after an August 18, 2016 meet-and-confer session during which Respondents requested the audio files.²

¹ The notes at issue are: Zohar CDO 2003-1, Limited; Zohar II 2005-1, Limited; and Zohar III, Limited. *See* OIP ¶¶ 12-14.

² Because the Division was unable to confirm during the meet-and-confer sessions with Respondents which witness interviews were recorded, it appears that the Division may have
(Cont'd on next page)

To be clear, the Division does not deny that it has notes of conversations with counsel for witnesses. As explained below, the Division simply maintains that it has no obligation to produce such material under the Jencks Act. *See infra* Point I. Nor does the Division deny that it has post-OIP notes of conversations with witnesses, but claims that these notes contain no substantially verbatim witness statements that can be produced. *See infra* Point II.³ The Division's cramped reading of its Jencks obligations on both fronts is insupportably narrow. It is also particularly prejudicial here, given that it has forced Respondents to trial under a procedural regime that almost completely denies them the ability to obtain any discovery, in stark contrast to what Respondents would be accorded in federal court.

The first issue can be readily addressed by requiring the Division to produce the relevant notes of counsel. With respect to the second issue, we request that Your Honor require the Division to disclose the portions of its notes (or the notes of its agents) from which the statements of witnesses can be gleaned, even if the Division claims that such portions do not include substantially verbatim witness statements. Otherwise, Respondents will be forced to go to trial facing witnesses whose testimony will be a total mystery to Respondents until the witnesses testify in real time, and neither Respondents nor Your Honor will *ever* learn what other individuals told the Division.

(Cont'd from previous page)

failed to log the audio files in violation of Policy 3.2.9.3 of the Enforcement Manual, which requires the Enforcement staff to “[c]reate and maintain a log for each original file.” *See* Enforcement Manual, dated June 4, 2015, Policy 3.2.9.3. If interviews were recorded and the associated audio files were not maintained, Respondents contend that failure to make the audio files available is not harmless error. *See* Rule 230(h).

³ The Division has produced the interview notes of its pre-OIP witness interviews. The Division has informed Respondents that it is not willing to do the same thing for post-OIP interviews.

While the information at issue may fall short of Brady material, it is undeniably essential so that Respondents can prepare a meaningful defense – which, of course, is the very purpose of the Jencks Act and Rule 231 of the Rules of Practice. What the Division wants—and absent intervention by your Honor, will get—is a trial by ambush, pursuant to rules that bear no resemblance to the Federal Rules of Civil Procedure. Indeed, that result would undermine even Rule 300’s guarantee that “[a]ll hearings shall be conducted in a fair, impartial, expeditious and orderly manner.”

If for any reason Your Honor does not order the immediate production of the notes of the Division and its agents from which witness statements can be gleaned, we ask Your Honor to conduct an *in camera* review of such notes by September 2, 2016. It is well-established that a trial court “may not rely upon the representations of Government counsel as to what the [witness] statements contain or do not contain.” *United States v. O’Brien*, 444 F.2d 1082, 1086-87 (7th Cir. 1971). Accordingly, it is the trial court’s “affirmative duty” to “determine whether any [Jencks Act] statement exists and is in the possession of the Government and, if so, to order the production of the statement.” *Williams v. United States*, 328 F.2d 178, 180 (D.C. Cir. 1963). Particularly because the Division’s insistence that it has *no* post-OIP Jencks material is odd at best, such review is essential here. *See infra* Point II.

Finally, we ask that the Division be required to produce audio recordings of witness interviews in its possession, which the Division concedes are legitimate Jencks Act materials, by August 26, 2016. *See infra* Point III.

LEGAL STANDARDS

Rule 231 and the Jencks Act, 18 U.S.C. § 3500, impose a continuing obligation on the Division to produce “*any statement*” of any witness or potential witness “that pertains, or is

expected to pertain” to the witness’s direct testimony. *In re Orlando Joseph Jett, and Melvin Mullin*, Release No. 504, 1996 WL 271642, at *2 n.2 (ALJ May 14, 1996) (emphasis added).

“[T]his obligation encompasses statements made during the investigation stage prior to the institution of the proceeding, as well as after institution of the proceeding and prior to the witness’ testimony at the hearing.” *Id.*

Witness “statements” that must be produced under the Jencks Act include both “stenographic, mechanical, electrical, or other recording[s],” and “substantially verbatim recital[s]” of a witness’s oral statements. 18 U.S.C. § 3500(e)(2). Consistent with the purposes of the Jencks Act, “substantially verbatim recital[s]” include statements “that could be fairly used to impeach the testimony of a witness.” *Goldberg v. United States*, 425 U.S. 94, 112 (1976); *Palermo v. United States*, 360 U.S. 343, 365 (1959) (Brennan, J., concurring). Thus, a written statement need not be irreproachably verbatim to be subject to disclosure. To the contrary, a writing that “fairly follow[s] a witness’[s] words, subject to minor, inconsequential errors’ is discoverable.” *United States v. Gonzalez-Melendez*, 570 F.3d 1, 4 (1st Cir. 2009) (alterations in original) (quoting *United States v. Neal*, 36 F.3d 1190, 1198 (1st Cir. 1994)).

ARGUMENT

I. The Division Should Be Ordered To Produce Any Notes Memorializing Witness Proffers Made Directly Or Through Counsel.

During the parties’ meet-and confer-discussion on August 18, 2016, the Division represented that, under its understanding of its Jencks Act obligations, communications between the Division and *counsel* for witnesses—as opposed to conversations with witnesses directly—categorically cannot generate Jencks Act materials. As a result, in reviewing its files for Jencks Act materials, the Division explained to Respondents that it did not look for—and certainly did not produce—any Division attorney notes memorializing witness proffers transmitted by counsel

for witnesses to the Division. Moreover, during the meet-and-confer session on August 18, 2016, the Division stated that it has never had to produce notes taken while preparing for trial, and therefore it has no obligation to do so in this case. But the law is clear that “there is ‘nothing in the Jencks Act or its legislative history that excepts from production otherwise producible statements on the ground that they constitute ‘work product’ of [g]overnment lawyers.’” *United States v. Clemens*, 793 F. Supp. 2d 236, 251 (D.D.C. 2011) (quoting *Goldberg*, 425 U.S. at 101-02). Likewise, if a “written proffer is proposed by the witness’s attorney,” any record of that proffer must be produced under the Jencks Act, because “[i]t is reasonable to conclude that the attorney would only submit such material if it was approved by his client, the witness.” *United States v. Sudikoff*, 36 F. Supp. 2d 1196, 1197 (C.D. Cal. 1999). Denying Respondents this critical material would “do violence” to Congress’s goal of “assuring the defendant a fair opportunity to make his defense.” *Palermo*, 360 U.S. at 365 (Brennan, J., concurring).

Precedent makes clear that the Division has failed to fulfill both the letter and spirit of the Jencks Act by not reviewing its files for notes memorializing attorney proffers made for witnesses and potential witnesses. Such material surely exists, since there is overwhelming, uncontested evidence that the Division has spoken on numerous occasions with counsel for witnesses and potential witnesses. *See* Dunning Decl., Ex. 1. The Division should be ordered to conduct this review and to produce any responsive materials by August 26, 2016.

II. The Court Should Conduct An *In Camera* Review To Evaluate The Division’s Position That None Of Its Post-OIP Witness Interviews Generated Notes Containing Jencks Act Materials.

The Division has a continuing obligation under Rule 231 and the Jencks Act to produce any “substantially verbatim recital[s]” of a witness’s or potential witness’s oral statements. 18 U.S.C. § 3500(e)(2). Such disclosure ensures that a defendant will have access to “statements

helpful in the cross-examination of government witnesses who testify against him.” *Palermo*, 360 U.S. at 365 (Brennan, J., concurring). As the U.S. Supreme Court has stressed, the “clearly legitimate and congressionally recognized purpose” of this requirement is “to further the fair and just administration” of proceedings brought by the government—an objective that is all the more critical in this highly complex case. *Goldberg*, 425 U.S. at 107 (citing *Campbell v. United States*, 365 U.S. 85, 92 (1961)).

The basic legal principles in this area are unassailable. First, witness statements must be disclosed even where they are contained in attorney notes or memoranda created during witness interviews. *See Goldberg*, 425 U.S. at 101-02. Second, “otherwise producible statements” are not “except[ed] from production on the ground that they constitute ‘work product’ of [g]overnment lawyers.” *Id.*; *see also In re Donald T. Sheldon*, Release No. 273, 1986 WL 175660, at *1 (ALJ Sep. 10, 1986) (“[P]rivilege does not preclude the production of notes of government attorneys if they constitute witness ‘statements’ under the Act.”). Third, witness statements should be “excise[d]” from the attorney notes and produced to the defendant in order to ensure the defendant a fair opportunity to impeach the witness at trial. *See Clemens*, 793 F. Supp. 2d at 252 (quoting *Saunders v. United States*, 316 F.2d 346, 350 (D.C. Cir. 1963)).

The Division admits that it has interviewed numerous witnesses and potential witnesses in the post-OIP period (the Division was unable or unwilling to say how many), and that Division attorneys took and have in their possession notes of some number of those interviews. But the Division claims that there is not a single substantially verbatim witness statement in any of the notes it has taken from these interviews it has conducted since the filing of the OIP, and it has turned over no statements—and in many cases no documents or information whatsoever—regarding these witnesses.

It would be astonishing if there are no post-OIP substantially verbatim witness statements, given that the Division contacted 19 witnesses during the week of May 25, 2015 and likely contacted several other witnesses in the 15 months that have elapsed since then. If the Division's assertion is correct, then there is no doubt that the Division was conducting its trial preparation in a manner that was directly calculated to avoid its obligations under the Jencks Act.

The extreme informational asymmetry created by such a strategy, and the trial by ambush that will result, is contrary to the letter and the spirit of the Jencks Act, and indeed of the trial process itself. The very point of its disclosure requirement is to ensure that witnesses do not have free reign to depart from prior statements to the agency when they are called to testify in an administrative proceeding. It functions as the corollary in an administrative proceeding to Federal Rule of Procedure 26, which is widely recognized as protecting against trial by ambush by requiring broad pre-trial disclosures between the parties. *See, e.g., Hickman v. Taylor*, 329 U.S. 495, 500-01 (1947) (“The pre-trial deposition-discovery mechanism established by Rules 26 to 37 . . . invest[s] the deposition-discovery process with a vital role in the preparation for trial. . . . Thus civil trials in the federal courts no longer need be carried on in the dark. The way is now clear, consistent with recognized privileges, for the parties to obtain the fullest possible knowledge of the issues and facts before trial.”). The same principles apply here.

An investigative strategy that excluded all substantially verbatim witness statements from interview notes would also undermine Rule 300's guarantee of a “fair [and] impartial” proceeding. Especially given that Your Honor has already rejected a joint request of the Division and Respondents for a trial date in December 2016—a ruling that imposes severe constraints on Respondents' ability to adequately prepare for trial, as we have detailed in other filings—it is particularly critical that Your Honor exercise her authority under Rule 300 to ensure

that Respondents are not surprised at trial with witness testimony that is completely unknown to them.

It would be fundamentally unfair, and creates a significant appearance of a conflict of interest, to allow the Division to determine for itself, without judicial oversight, that its interview notes and other materials do not contain witness statements subject to production under the Jencks Act. Indeed, the circuit courts have made clear that a trial judge “may not rely upon the representations of Government counsel as to what the statements contain or do not contain.” *O’Brien*, 444 F.2d at 1086-87. Thus, it is the “function of the trial court . . . to decide whether the notes in question constitute a ‘statement’ within the meaning of the Act.” *United States v. Johnson*, 521 F.2d 1318, 1319 (9th Cir. 1975).

The trial court’s “affirmative duty” is triggered by the defendant’s request for the “production of a statement,” and encompasses the “duty to determine whether any [Jencks Act] statement exists and is in the possession of the Government and, if so, to order the production of the statement.” *Saunders*, 316 F.2d at 349; *see also Johnson*, 521 F.2d at 1320 (“That the notes may have constituted a Jencks Act statement was sufficient to trigger further investigation.”). Respondents have made an appropriate request for Jencks Act materials in interview notes that the Division admits it possesses, but the Division nonetheless insists that none of the notes contain any Jencks material. It is imperative that the Division should not—and under the law cannot—be permitted to make that determination on its own, without judicial oversight.

Accordingly, Your Honor should order the Division to produce its post-OIP witness interview notes on or before August 26, 2016. At minimum, Your Honor should order that the notes be submitted for *in camera* inspection, consistent with the guidance of the U.S. Supreme Court. *See Palermo*, 360 U.S. at 354 (“[W]e approve the practice of having the Government

submit the statement to the trial judge for an *in camera* determination.”). Further, if the notes contain any Jencks Act witness statements, Your Honor should “order the production of the statement[s].” *Williams*, 328 F.2d at 180. In the event that Your Honor orders production of Jencks Act material as a result of an *in camera* review of witness statements, Respondents may move *in limine* to exclude certain Division witnesses, depending upon what the supplemental Jencks Act material reveals about those witnesses. Because the parties’ motions *in limine* are due September 12, 2016, we respectfully request that Your Honor conduct the *in camera* review on or before September 2, 2016.

III. The Division Should Be Ordered To Promptly Produce The Audio Recordings Of Witness Interviews In Its Possession, Which The Division Concedes Constitute Jencks Act Materials.

In the parties’ meet-and-confer conversations, the Division conceded that any audio recordings of its interviews or discussions with witnesses would constitute Jencks Act witness statements. The Division also admits that many of its interviews were audio-recorded. However, it maintains that it is currently unable to identify which audio recordings it possesses because they are stored in an off-site facility, and it is not able to provide Respondents with a concrete estimate as to when it will produce any recordings in its possession. (The Division has advised Respondents that it is seeking to retrieve tapes from the storage facility.) These are critical trial preparation materials as Respondents gauge the demeanor and credibility of potential trial witnesses.

The Division’s inability to identify the number and location of audio recordings is contrary to the procedures established by the Division’s Enforcement Manual Policy 3.2.9.3, pursuant to which the Division is required to log, label, and mark for preservation all audio recordings before sending them to storage. If the Division correctly logged and tracked the audio files—as required—they “should be able to trace the receipt and custody of the audio recording

data from the time they are received . . . and demonstrate that the audio recordings were securely stored once they came into the staff's possession" by examining the relevant log. See Enforcement Manual, Policy 3.2.9.8. The Division should be ordered to produce by August 26, 2016 any audio recordings of witness interviews it possesses. Where audio recordings of witness interviews do not exist, the Division should be ordered to explain whether the recordings were never made in the first instance, or whether they have been destroyed in contravention of Enforcement Manual Policy 3.2.9.4, which obligates the Division to preserve evidence relevant to an investigation or litigation and notes that failure to preserve "ESI [Electronically Stored Information] and paper records can result in Court sanctions."

CONCLUSION

For the foregoing reasons, Respondents respectfully request that Your Honor order the Division to produce to Respondents by August 26, 2016 all witness statements contained in the Division's notes and/or memoranda, including witness statements transmitted to the Division through counsel, as well as any audio recordings of on-the-record witness interviews. Should the Division continue to assert that it has already fulfilled its obligations under the Jencks Act, Respondents respectfully request that Your Honor order the Division to produce for *in camera* inspection by August 26, 2016 its notes and/or memoranda of pre-OIP meetings with witnesses' counsel and post-OIP meetings with witnesses and/or their counsel. We respectfully request that Your Honor conduct the *in camera* review on or before September 2, 2016.

Dated: New York, New York
August 22, 2016

GIBSON, DUNN & CRUTCHER LLP

By: Randy M. Mastro (16)
Randy M. Mastro
Reed Brodsky
Barry Goldsmith
Caitlin J. Halligan

Mark A. Kirsch
Monica Loseman
Lawrence J. Zweifach
Lisa H. Rubin

200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Fax: 212.351.4035

Susan E. Brune
BRUNE LAW P.C.
450 Park Avenue
New York, NY 10022

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Administrative Proceeding
File No. 3-16462

Judge Carol Fox Foelak

**DECLARATION OF MARY KAY DUNNING IN SUPPORT OF
RESPONDENTS' MOTION TO COMPEL THE PRODUCTION OF
WITNESS STATEMENTS UNDER THE JENCKS ACT**

I, Mary Kay Dunning, 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' Memorandum of Law in Support of Respondents' Motion to Compel the Production of Witness Statements under the Jencks Act.

2. Attached hereto as Exhibit 1 is a true and correct copy of a letter from Randy Mastro to Dugan Bliss dated August 17, 2016, and accompanying appendices.

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

Dated: New York, New York
August 22, 2016

Mary Kay Dunning
Mary Kay Dunning

Exhibit 1

August 17, 2016

VIA E-MAIL (BLISSD@SEC.GOV)

Dugan Bliss, Esq.
Senior Trial Counsel
United States Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Suite 1700
Denver, Colorado 80294-1961

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

Dear Mr. Bliss:

I write on behalf of Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Respondents") in the above-referenced matter.

On July 27, 2016, following Respondents' request, Judge Foelak ordered the Division to produce to Respondents by August 15, 2016 any additional material required to be disclosed pursuant to the Jencks Act, 18 U.S.C. § 3500 ("3500 Material"). In an August 15, 2016 email, you wrote in response: "The Division has no further *Jencks* material beyond what was already produced." We believe that statement is erroneous, and that there is a substantial volume of 3500 material the Division possesses and must produce. *See* SEC Rule of Practice 231 (requiring that the Division "produce for inspection and copying *any* statement of any person called or to be called as a witness by the Division of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500") (emphasis supplied); *cf. Donald J. Anthony, Jr., et al.*, Release No. 1171 (Jan. 15, 2014) ("The Division's obligation to produce *Brady* materials is ongoing."). Below we detail that 3500 Material.

First, we assume the Division will produce the 3500 Material promptly. The continued withholding of 3500 Material violates Respondents' due process rights and impairs Respondents' right to fair trial. Given the truncated schedule imposed by Judge Foelak and the extremely limited procedural protections available to Respondents in this administrative proceeding as compared to a federal district court, the prejudice to Respondents from the Division's withholding of Rule 3500 Material is magnified many times. Accordingly, we

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Dugan Bliss, Esq.

August 17, 2016

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ask for a meet and confer tomorrow – August 18 – at any time. Please confirm to us at your earliest opportunity that you agree to meet and confer on August 18, and suggest a time.

With respect to the 3500 Material the Division must disclose, based on Respondents' investigation of the witnesses on the Division's August 8, 2015 witness list (the "Witness List"), Respondents believe the Division is improperly withholding 3500 Material containing witness statements and/or statements of witnesses transmitted to the Division through counsel for the witnesses. For example, based on a conversation with counsel for a witness on the Witness List, we understand the Division has been in contact with the witness and the witness's counsel about the witness's anticipated testimony at the administrative proceeding, and issued a subpoena for that testimony. Yet the Division has produced no documents reflecting these communications, and did not even provide Respondents with a copy of the subpoena. To the extent the Division's notes of conversations with witnesses' counsel reference the witnesses' statements or anticipated testimony, those notes constitute 3500 Material and must be produced.

Moreover, in addition to its recent subpoenas to MBIA and the Zohar-I fund for testimony and expert reports from the recent bankruptcy proceedings involving that fund, on Tuesday, August 16, the Division sent us the transcripts from the August 9 and 10, 2016 trial in the matter captioned *Zohar CDO 2003-1 v. Patriarch Partners, LLC*. The Division's focus on these post-OIP matters – neither of which is relevant to these proceedings – suggests that it continues to actively communicate with counsel for prospective witnesses, from whom it may have received statements.

If the Division has withheld documents based on a purported privilege, we ask that in our meet and confer you advise us of what privilege(s) the Division is invoking, and describe the relevant documents with sufficient specificity that Respondents can challenge the privilege invocations if necessary. We note, of course, that a witness statement cannot be cloaked as attorney work product by filtering the communication through the witness's counsel rather than by obtaining it from the witness directly, particularly where the forum – by design – precludes Respondents any opportunity to discover information known to a witness prior to the hearing.

Additionally, our review of the Division's investigative file has revealed numerous Division communications that qualify as 3500 Materials. Though not an exhaustive list, Appendix A, attached hereto, describes more than 50 statements that have not been disclosed by the Division and must certainly contain some 3500 Material. Such Material must be produced.

Moreover, in its letter of May 29, 2015 to Respondents, the Division identified 19 investors that it had contacted during the week of May 25, 2015. (See Appendix B at 2-3). There were

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Dugan Bliss, Esq.
August 17, 2016
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no materials in the investigative file relating to 15 of those investors, representatives of four of which are listed on the Division's Witness List. It is simply unreasonable to expect that the Division has no 3500 Material relating to any of these 15 investors, and particularly those actually identified on the Division's Witness List. Material relating to the 15 investors must be produced.

Finally, the Division has not provided Respondents with the audio recordings of any of the witnesses from whom it took investigative testimony. (*See* Appendix C for a complete list of witness testimony). Once again, the Division is required to produced such 3500 Material.

We look forward to hearing from you promptly with a proposed time for our August 18 meet and confer.

Sincerely,

A handwritten signature in cursive script that reads "Randy M. Mastro".

Randy M. Mastro

RMM/pd

APPENDIX A

Appendix A

	Date	Description of 3500 Materials Withheld from Respondents
1.	On or about 11/9/2009	Notes of telephone conversation between William R. Terpening, Esq. (Anderson Terpening PLLC) and Christopher S. Nee (SEC) regarding Mr. Terpening's client, Greg Murphy
2.	On or about 5/20/2011	Notes of telephone conversation between Matthew Boshner, Esq. (Hunton & Williams) and Brent S. Mitchell (SEC) regarding Mr. Boshner's client, La Salle Bank N.A.
3.	On or about 6/13/2011	Notes of discussion between Brian Marcinek (JPMorgan Chase & Co.) and N. Creola Kelly (SEC) and/or Brent S. Mitchell (SEC)
4.	On or about 6/22/2011	Notes of conversation between Mr. Hassan (videoproductioncompany@yahoo.com) and N. Creola Kelly (SEC) and/or Christopher S. Nee (SEC)
5.	On or about 7/2/2011	Notes of conversation between Suzanne Williams, Esq. (U.S. Bank) and N. Creola Kelly (SEC) and/or Brent S. Mitchell (SEC)
6.	On or about 7/21/2011	Notes of telephone conversation between Adam True, Esq. (Natixis) and N. Creola Kelly (SEC) and/or Brent S. Mitchell (SEC)
7.	On or about 8/10/2011	Notes of telephone conversation between Stephen Ehrenberg, Esq. (Sullivan & Cromwell LLP) and Benjamin Walker, Esq. (Sullivan & Cromwell LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC) and/or Reid Muoio (SEC)
8.	On or about 8/11/2011	Notes of discussion between Suzanne Williams, Esq. (U.S. Bank) and N. Creola Kelly (SEC) and/or Brent S. Mitchell (SEC)
9.	On or about 8/11/2011	Notes of telephone conversation between Adam Zurofsky, Esq. (Cahill Gordon & Reindel) and N. Creola Kelly (SEC) and/or Brent S. Mitchell (SEC)
10.	On or about 10/7/2011	Notes of discussion between Richard Pepperman, Esq. (Sullivan & Cromwell LLP) and Allison Passer, Esq. (Sullivan & Cromwell LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
11.	On or about 10/26/2011	Notes of telephone conversation between Anand Sankaranarayanan (Barclays) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
12.	On or about 12/22/2011	Notes of telephone conversation between Jeffrey Q. Smith, Esq. (Bingham McCutchen) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC) and/or Reid Muoio (SEC)
13.	On or about 1/3/2012	Notes of telephone conversation between Janet A. Broeckel, Esq. (Goldman, Sachs & Co.) and/or Richard Lomuscio, Esq. (Goldman, Sachs & Co.) and Brent S. Mitchell (SEC) and/or any other representative from the SEC
14.	On or about 1/11/2012	Notes of telephone conversation between Michael Fruchter, Esq. (Commerzbank) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
15.	On or about 1/11/2012	Notes of telephone conversation between Edward Sayago, Esq. (TMNA Services LLC) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
16.	On or about 1/12/2012	Notes of telephone conversation between Keba T. Vaughn, Esq. (Bank of America) and/or Richard Rauzi, Esq. (Bank of America) and/or Daniel Goldfried, Esq. (Bank of America) and Brent S. Mitchell (SEC)

Appendix A (cont'd)

	Date	Description of 3500 Materials Withheld from Respondents
		and/or N. Creola Kelly (SEC)
17.	On or about 1/12/2012	Notes of telephone conversation between Jonathan Gross, Esq. (Depfa Bank plc) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
18.	On or about 1/12/2012	Notes of telephone conversation between Richard Pepperman, Esq. (Sullivan & Cromwell LLP) and/or Allison Passer, Esq. (Sullivan & Cromwell LLP) and/or Janet Broeckel, Esq. (Goldman, Sachs & Co.) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
19.	On or about 1/19/2012	Notes of telephone conversation between representative from Goldman, Sachs & Co. and/or Richard Pepperman, Esq. (Sullivan & Cromwell LLP) and/or Allison Passer, Esq. (Sullivan & Cromwell LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
20.	On or about 2/28/2012	Notes of telephone conversation between Michael Johnson, Esq. (Alston & Bird LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
21.	On or about 3/30/2012	Notes of telephone conversation between Dan Goldfine, Esq. (Snell & Wilmer LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
22.	On or about 6/22/2012	Notes of discussion between Chris Shearer, Esq. (Grant Thornton LLP) and/or Kenneth Cunningham, Esq. (Grant Thornton LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC) and/or Amanda de Roo (SEC)
23.	On or about 6/22/2012	Notes of telephone conversation between Michael Johnson, Esq. (Alston & Bird LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
24.	On or about 6/25/2012	Notes of telephone conversation between Pamela Bing and Brent S. Mitchell (SEC)
25.	On or about 7/5/2012	Notes of telephone conversation between Chris Shearer, Esq. (Grant Thornton LLP) and/or Kenneth Cunningham, Esq. (Grant Thornton LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC) and/or Amanda de Roo (SEC)
26.	On or about 7/11/2012	Notes of discussion between Kenneth Cunningham, Esq. (Grant Thornton LLP) and Brent S. Mitchell (SEC) and/or Amanda de Roo (SEC)
27.	On or about 7/12/2012	Notes of telephone conversation between Pamela Bing and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
28.	On or about 7/16/2012	Notes of discussion between Chris Shearer, Esq. (Grant Thornton LLP) and/or Kenneth Cunningham, Esq. (Grant Thornton LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC) and/or Amanda de Roo (SEC)
29.	On or about 7/27/2012	Notes of telephone conversation between Anthony Italiano, Esq. (Bank of America) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
30.	On or about 8/9/2012	Notes of meeting between Mark Ballew (Grant Thornton LLP) and/or Chris Shearer, Esq. (Grant Thornton LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC) and/or Amanda de Roo (SEC)
31.	On or about 8/9/2012	Notes of telephone conversation between Anthony Italiano, Esq. (Bank of America) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
32.	On or about	Notes of telephone conversation between Dan Goldfine, Esq. (Snell &

Appendix A (cont'd)

	Date	Description of 3500 Materials Withheld from Respondents
	9/28/2012	Wilmer LLP) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
33.	On or about 10/29/2012	Notes of telephone conversation between Susan DiCicco (Bingham McCutchen) and Brent S. Mitchell (SEC)
34.	On or about 2/22/2013	Notes of telephone conversation between Donald Maj, Esq. (DTCC) and Brent S. Mitchell (SEC) and/or N. Creola Kelly (SEC)
35.	On or about 9/28/2013	Notes of telephone conversation between Adam Zurofsky, Esq. (Cahill Gordon & Reindel) and/or John B. Smith, Esq. (Cahill Gordon & Reindel) and/or Mihir Kshirsagar, Esq. (Cahill Gordon & Reindel) and Allison H. Lee (SEC)
36.	On or about 10/29/2013	Notes of telephone conversation between John Panagopoulos, Esq. (Barclays) and Allison H. Lee (SEC)
37.	On or about 11/1/2013	Notes of telephone conversation between Lance E. Stamper (Defense Criminal Investigative Service) and Brent S. Mitchell (SEC)
38.	On or about 12/4/2013	Notes of meeting between John Panagopoulos, Esq. (Barclays) and Amy A. Sumner (SEC) and/or Allison H. Lee (SEC) and/or John B. Smith (SEC) and Brent S. Mitchell (SEC) by telephone
39.	On or about 12/6/2013	Notes of telephone conversation between Cheryl Plambeck, Esq. (Natixis), David Gelfand, Esq. (Milbank, Tweed, Hadley & McCloy), and Adam True, Esq. (Natixis) and Amy A. Sumner (SEC)
40.	On or about 1/3/2014	Notes of telephone conversation between Susan DiCicco, Esq. (Bingham McCutchen) and Amy A. Sumner (SEC) and/or Allison H. Lee (SEC)
41.	On or about 1/10/2014	Notes of telephone conversation between Nicole Fidler, Esq. (Milbank, Tweed, Hadley & McCloy) and/or David R. Gelfand, Esq. (Milbank, Tweed, Hadley & McCloy) and Amy A. Sumner (SEC)
42.	On or about 1/21/2014	Telephone conversation between Ken Rudd, Esq. (Zeichner Ellman & Krause LLP) and Amy A. Sumner (SEC)
43.	On or about 1/24/2014	Telephone conversation between Susan DiCicco, Esq. (Bingham McCutchen) and John B. Smith (SEC)
44.	On or about 2/4/2014	Telephone conversation between Susan DiCicco, Esq. (Bingham McCutchen) and Amy A. Sumner (SEC)
45.	On or about 3/6/2014	Notes of telephone conversation between Adam Zurofsky, Esq. (Cahill Gordon & Reindel) and Amy A. Sumner (SEC)
46.	On or about 3/14/2014	Notes of telephone conversation between Susan DiCicco, Esq. (Bingham McCutchen) and Amy A. Sumner (SEC)
47.	On or about 4/1/2014	Notes of telephone conversation between Allan Borkow, Esq. (Barclays) and Amy A. Sumner (SEC)
48.	On or about 4/30/2014	Notes of telephone conversation between Andrew Michaelson, Esq. (Boies Schiller & Flexner LLP) and Amy A. Sumner (SEC)
49.	On or about 5/5/2014	Notes of telephone conversation between Adam Zurofsky, Esq. (Cahill Gordon & Reindel) and Amanda de Roo (SEC) and/or Amy A. Sumner (SEC)
50.	On or about 5/8/2014	Voicemail message from Susan DiCicco, Esq. (Bingham McCutchen) to Amy A. Sumner (SEC)

Appendix A (cont'd)

	Date	Description of 3500 Materials Withheld from Respondents
51.	On or about 5/9/2014	Notes of telephone conversation between Susan DiCicco, Esq. (Bingham McCutchen) and Amy A. Sumner (SEC)
52.	On or about 5/12/2014	Notes of telephone conversation between Michael Johnson, Esq. (Alston & Bird LLP) and Amy A. Sumner (SEC)
53.	On or about 7/1/2014	Notes of telephone conversation between Adam Zurofsky, Esq. (Cahill Gordon & Reindel) and Amy A. Sumner (SEC)
54.	On or about 12/09/2014	Notes of telephone conversation between Andrew Michaelson, Esq. (Boies Schiller & Flexner LLP) and Amy A. Sumner (SEC)

APPENDIX B

Appendix B



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
1961 STOUT STREET
SUITE 1700
DENVER, COLORADO 80294-1961

Direct Number: (303) 844.1041
Facsimile Number: (303) 297.3529

May 29, 2015

Via E-mail and Overnight Delivery

Christopher J. Gunther
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522

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.*

Appendix B

- 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

Appendix B

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,

A handwritten signature in black ink, appearing to read 'Dugan Bliss', written over a horizontal line.

Dugan Bliss
Senior Trial Counsel

Enclosure

Cc: Nicholas Heinke
Amy Sumner

APPENDIX C

Appendix C

	Date of Testimony	Name of Witness
1.	May 1, 2014	Aldama, Jaime
2.	August 8, 2012	Autry, Elvin
3.	June 18, 2014	Berlant, Peter
4.	July 20, 2012	Bing, Pamela
5.	May 1, 2014	Chaku, Robit
6.	March 17, 2014	Crowle, David
7.	July 10, 2012	Ferguson, John
8.	October 21, 2011	Hosford, Christopher
9.	August 21, 2012	McIlvaine, Douglas
10.	May 16, 2014	McKiernan, Anthony
11.	July 9, 2014	Mercado, Carlos
12.	October 21, 2011 April 16, 2012	Mottley, Patrick
13.	September 27, 2011	Patel, Raina
14.	April 9, 2014	Ruttle, Wendy
15.	February 12, 2013 June 24, 2014	Tilton, Lynn
16.	August 3, 2011	Topbas, Meric
17.	September 24, 2012	Von Staden, Torben
18.	January 17, 2013	Whalen, Scott
19.	April 10, 2014	Wu, Karen

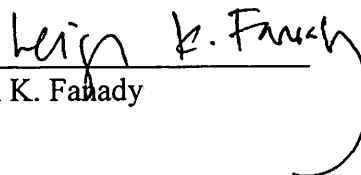
CERTIFICATE OF SERVICE

I hereby certify that I served true and correct copies of 1) Respondents' Motion to Compel the Production of Witness Statements Under the Jenks Act and a memorandum of law in support thereof, 2) the Declaration of Mary Kay Dunning in Support of Respondents' Motion to Compel the Production of Witness Statements Under the Jenks Act, on this 22nd day of August, 2016, in the manner indicated below:

United States Securities and Exchange Commission
Office of the Secretary
Attn: Secretary of the Commission Brent J. Fields
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
Fax: (202) 772-9324
(By Facsimile and original and three copies by Federal Express)

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

Dugan Bliss, Esq.
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Ste. 1700
Denver, CO 80294
(By Email pursuant to parties' agreement)



Leigh K. Farady