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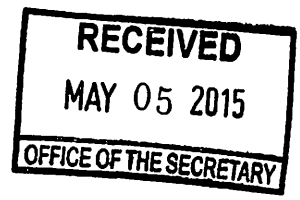

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	
LYNN TILTON;	
PATRIARCH PARTNERS, LLC;	
PATRIARCH PARTNERS VIII, LLC;	**Administrative Proceeding**
PATRIARCH PARTNERS XIV, LLC; AND	File No. 3-16462
PATRIARCH PARTNERS XV, LLC;	
Respondents.	

REPLY MEMORANDUM IN FURTHER SUPPORT OF RESPONDENTS' MOTION FOR A MORE DEFINITE STATEMENT

Respondents Lynn Tilton ("Tilton") and Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC and Patriarch Partners XV (collectively, "Patriarch"), by and through their undersigned counsel, respectfully submit this reply memorandum in further support of their motion for a more definite statement of fact pursuant to Rule 220(d) of the Securities and Exchange Commission's Rules of Practice.

While the Division of Enforcement (the "Division") has, as a result of our motion, finally identified which portfolio companies' assets were allegedly misreported, the Division persists in refusing to provide notice about which investors were allegedly defrauded. Instead, the Division contends in blanket fashion that "each and every investor" who had ever invested in any of the Zohar Funds over the course of twelve years was misled by Respondents' supposed breach of the contracts governing the Funds. We accept that this is the Division's theory, but given the

extremely wide scope of this case, Respondents should be provided notice as to which of the investors the Division will rely upon to make their case.

For the reasons described below and in Respondents' moving papers, the Respondents' motion should be granted and the Division should be ordered to provide a more definite statement concerning investors who were allegedly misled (referenced in paragraphs 45, 49, 51, and 57) of the Order Instituting Proceedings ("OIP").

I. THE DIVISION SHOULD BE ORDERED TO IDENTIFY THE INVESTORS WHO WERE ALLEGEDLY MISLED BECAUSE THE INFORMATION IS NECESSARY TO THE PREPARATION OF RESPONDENTS' DEFENSE

The Division does not dispute that the identity of the investors who were allegedly misled is information necessary to the preparation of the defense of a complex case. It contends only that it need not provide a more definite statement because "each and every investor was misled in the same way." (Div. Br. Opp. at 6.) The Division contends that "despite promising in the indenture to use an objective categorization methodology and GAAP-compliant impairment analysis," Respondents used their subjective judgments instead and each and every investor was thereby deceived. (*Id.* at 5.) The Division makes this accusation even though it concedes that it is not alleging "that Respondents' subjective judgments relating to the portfolio companies were incorrect." (*Id.* at 4.)

Although its theories rely on a supposed breach of the governing contracts, the Division purports to bring fraud claims against Respondents.[1] Accordingly, the question of what the purportedly defrauded investors knew—or did not know—is a central issue that Respondents must prepare to address at the hearing. The Division principally alleges omissions to all

[1] We will leave for another day the legal question whether the Division can even state a fraud claim based on an alleged contractual breach. Suffice it to say that Respondents contend that the Division cannot.

investors in the Zohar Funds about Respondents' approach to categorization under the contracts and the resulting impact on an indenture test. (*See* OIP ¶¶ 45, 49 (investors "did not know," "were not informed," "have not been told").) The Division alleges that those omissions were "important to investors." (OIP ¶¶ 51, 57.) To defend adequately against the claim, Respondents must pursue third-party discovery as to what investors did know, what they were informed about, what they considered important—that is, the total mix of information available to investors in these Funds. (*See* Resp. Br. at 7-8.) Simply because some investors may testify on behalf of the Division "does not make their identities purely evidence, as opposed to allegation." *David F. Bandimere*, SEC Release No. APR-749, Admin. Proc. File No. 3-15124, 2013 SEC LEXIS 452, at *5 (ALJ Feb. 11, 2013) [hereinafter *Bandimere*] (Order). Instead, it is information with which the Respondents should be provided. *Id.*

The Division also does not dispute the extremely wide scope of this case—in parties, transactions, and time—that have led ALJs in similar circumstances to order the Division to provide "reasonably precise" boundaries on the factual allegations. *Donald T. Sheldon*, SEC Release No. APR-270, Admin. Proc. File No. 3-6626, 52 SEC Docket 427, 429 (ALJ June 9, 1986) (Order). But it ignores the unnecessary inefficiency that would attend these proceedings if Respondents were forced to proceed on the possibility that any of the many investors here could be relied upon to supply the factual basis for the Division's claims.

Contrary to the Division's response, this case is similar to the cases in which relief has been granted. For example, in *Bandimere*, like here, "virtually all the misrepresentations alleged [in the OIP] were by omission." 2013 SEC LEXIS 452, at *2 (alteration in original) (internal quotation marks and citation omitted). The OIP in that case—over fifty paragraphs of factual allegations, including subparagraphs—alleged securities fraud violations spanning more than

five years in connection with two Ponzi schemes for which the respondents raised money from numerous investors. *See David F. Bandimere*, Securities Act Release No. 9372, Exchange Act Release No. 30293, Investment Company Act Release No. 68372, 2012 WL 6085373 (Dec. 6, 2012) (OIP). Despite the information provided in the pleading, the law judge still ordered the Division to identify the investors who were allegedly misled and rejected the Division's argument that Respondents were merely trying to obtain an early witness list. *Bandimere*, 2013 SEC LEXIS 452, at *4. The facts require a more definite statement here, too, where the Division's omissions-based case spans many years and involves many investors.

In *J.W. Barclay & Co.*, Admin. Proc. File No. 3-10765 (ALJ June 13, 2002) [hereinafter *J.W. Barclay & Co.*] (Order), *available at* http://www.sec.gov/alj/aljorders/2002/3-10765-4.pdf, which the Division similarly tries to distinguish, the charges at issue stemmed from an eighteen-month-long "pattern of sales practice abuses" by a number of registered representatives. *Id.* at 1. The challenges the respondents faced in defending that case were much like those Respondents face here. There, thirty boxes of investigatory files—far less than the 2.4 million pages in the file in this matter—persuaded the law judge to narrow the matter. Similarly, the law judge was concerned about the scope of the case as the Division intended to present evidence dating back more than five years. *Id.* at 1. Here, the scope is larger. The Division's investigation began five years ago, and it alleges that the fraud dates back all the way to 2003. (OIP ¶ 1.) Rather than being inapposite, *J.W. Barclay & Co.* provides a useful benchmark: even in that case, the law judge ordered the Division to disclose the investors' identities.

At a minimum, an exercise of the law judge's discretion to grant this request will expedite the proceedings and is appropriate where, as here, the Division has not claimed that

providing the information will improperly prejudice its case.[2] (*See* Resp. Br. at 9.) Indeed, the Division reports that it has produced transcripts of testimony of five investor representatives (although the Division does not disclose that these five representatives were affiliated with only three investors of the scores potentially at issue). (Div. Br. Opp. at 7.) The Division also now represents that in "short order" it will produce "handwritten notes of any additional interviews with investors the Division conducted during the investigation." (*Id.*)

If the Division is representing that these are the investors whose knowledge the Division is placing at issue, then this may provide the Respondents with sufficient notice to moot their motion. But if there are other investors that provide the factual basis for the OIP, then Respondents need to know who those investors are so that they may adequately prepare a defense.

II. IF THE DIVISION DECIDES TO PUT THE ASSETS OF ANY ADDITIONAL PORTFOLIO COMPANIES AT ISSUE, IT SHOULD BE REQUIRED TO IDENTIFY THEM

The Division, in what it describes as a "compromise," has now provided the Respondents with the names of the fourteen Portfolio Companies that allegedly had misreported assets. (Div. Br. Opp. at 4 and Appendix A.) This information is the bare minimum to satisfy Rule 200(b). For that reason, Respondents withdraw that portion of their motion seeking a more definite statement concerning paragraphs 2, 4, 43, and 68 of the OIP.

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[2] Even the cases relied upon by the Division were all resolved pragmatically. In *Dempsey-Tegeler*, after finding that the OIP provided sufficient notice, the ALJ still ordered the requested relief simply to "expedite the proceedings" since there was no "undue prejudice" to the Division. Admin. Proc. File No. 3-2393, at 1 (June 16, 1970) (Order); *cf. Hous. Am. Energy Corp.*, SEC Release No. APR-1867, Admin. Proc. File No. 3-16000, at 2 (Sept. 30, 2014) (Order) (rejecting motion where Division had already provided, during briefing, the names of the people receiving the alleged misstatements); *Miguel Ferrer*, SEC Release No. APR-706, Admin. Proc. File No. 3-14682, 103 SEC Docket 3179, 3181 (June 13, 2012) (Order) (contrasting that case to the logistically "unmanageable" *J.W. Barclay & Co.* case with voluminous discovery).

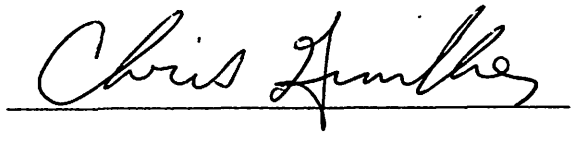
The Division leaves us, though, with a footnote in which it purports to reserve its right "to present evidence at trial relating to additional portfolio companies." (*Id.* at 4 n.1.) This proviso has the potential to swallow the Division's "compromise" list whole. Respondents respectfully request, therefore, that the law judge order the Division to provide prompt notice should the Division decide to grow this list beyond what it has now provided and, in any event, should not be able to add to the list after an early date to be fixed by the Court.

CONCLUSION

As set forth above, Respondents respectfully request an order for a more definite statement pursuant to Rule 220(d) of the SEC Rules of Practice concerning paragraphs 45, 49, 51, and 57.

Dated: May 4, 2015
New York, New York

Respectfully Submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following on this 4th day of May, 2015, in the manner indicated below:

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(By email pursuant to the parties' agreement)

Matthew T. Warren

FACSIMILE CERTIFICATION

I hereby certify that the enclosed filing was transmitted via facsimile on May 4, 2015 to the Office of the Secretary at the number (202) 772-9324.

Matthew T. Warren