

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.	:	
	:	
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**DECLARATION OF LISA H. RUBIN  
IN SUPPORT OF RESPONDENTS' MOTION TO COMPEL MBIA TO PRODUCE  
DOCUMENTS RESPONSIVE TO RESPONDENTS' SUBPOENAS**

I, Lisa H. Rubin, hereby declare 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 MBIA to Produce Documents Responsive to Respondents' Subpoenas, dated September 26, 2016.
2. I submit this declaration based on my personal knowledge and a review of Gibson Dunn's files.
3. Attached hereto as Exhibit 1 is a true and correct copy of the New York Department of Financial Services' Report on Examination of MBIA Insurance Corp., as of December 31, 2011.
4. Attached hereto as Exhibit 2 is a true and correct copy of the Memorandum of Law in Support of Plaintiff's Motion to Remove Confidentiality Restrictions in *MBIA Insurance*

*Corp. v. Countrywide Home Loans*, Case No. 6028252008, 2012 WL 8024565 (N.Y. Sup. Aug. 6, 2012).

5. Attached hereto as Exhibit 3 is a true and correct copy of MBIA's Q2 2016 Results Earnings Call Transcript, dated August 9, 2016.

6. Attached hereto as Exhibit 4 is a true and correct copy of the subpoena Your Honor issued to MBIA at Respondents' request on May 27, 2015.

7. Between June 26, 2015 and July 24, 2015, MBIA produced documents to Respondents Bates numbered MBIA-ALJ-00000001 through MBIA-ALJ-00003979.

8. Attached hereto as Exhibit 5 is a true and correct copy of a letter from Monica Loseman, counsel for Respondents, to Douglas Fischer, counsel for MBIA, dated August 9, 2016.

9. Attached hereto as Exhibit 6 is a true and correct copy of a letter from Jonathan Hoff, counsel for MBIA, to Monica Loseman, dated August 19, 2016.

10. Attached hereto as Exhibit 7 is a true and correct copy of the subpoenas Your Honor issued to MBIA and to Anthony McKiernan on September 16, 2016.

11. I am informed that on September 27, 2016, counsel for Respondents and MBIA conducted a telephonic meet-and-confer during which counsel for MBIA stated that he was not inclined to produce further documents given MBIA's prior document productions, despite several narrowing proposals suggested by counsel for Respondents.

12. Attached hereto as Exhibit 8 is a true and correct copy of emails between Monica Loseman and Jonathan Hoff, dated October 3-4, 2016.

13. Attached hereto as Exhibit 9 is a true and correct copy of handwritten notes written by Division staff on an unknown date, Bates numbered SECNOTES000495-96.

14. Attached hereto as Exhibit 10 is a true and correct copy of an email from Lynn Tilton to Anthony McKiernan, dated March 15, 2013, and the attachment thereto.

15. Attached hereto as Exhibit 11 is a true and correct copy of handwritten interview notes written by Division staff on or around August 22, 2013, Bates numbered SECNOTES000721-25.

16. Attached hereto as Exhibit 12 is a true and correct copy of handwritten interview notes written by Division staff on or around April 9, 2013, Bates numbered SECNOTES000656-70.

17. Attached hereto as Exhibit 13 is a true and correct copy of handwritten interview notes written by Division staff on or around July 30, 2013, Bates numbered SECNOTES000726-28.

18. Attached hereto as Exhibit 14 is a true and correct copy of email messages between Susan DiCicco, then counsel for MBIA, and Amy Sumner and John Smith, lawyers for the Division, dated December 17, 2013 through December 19, 2013.

19. Attached hereto as Exhibit 15 is a true and correct copy of an email message from Amy Sumner to Susan DiCicco, dated January 30, 2014.

20. Attached hereto as Exhibit 16 is a true and correct copy of handwritten interview notes written by Division staff on or around October 2, 2013, Bates numbered SECNOTES000715-18.

21. Attached hereto as Exhibit 17 is a true and correct copy of an email from Anne Tompkins, counsel for MBIA, to Amy Sumner, dated June 1, 2015, Bates numbered Tilton-SEC-A-000000000256.

22. Attached hereto as Exhibit 18 is a true and correct copy of the Zohar I Fifth Supplemental Indenture, dated June 19, 2015.

23. Attached hereto as Exhibit 19 is a true and correct copy of a Wall Street Journal article entitled *SEC Files Fraud Charges Against Lynn Tilton, Patriarch Partners*, dated March 30, 2015, available at [www.wsj.com/articles/sec-files-fraud-charges-against-lynn-tilton-patriarch-partners-1427726853](http://www.wsj.com/articles/sec-files-fraud-charges-against-lynn-tilton-patriarch-partners-1427726853).

24. Attached hereto as Exhibit 20 is a true and correct copy of the Division's Amended Witness List, dated August 22, 2016, which identifies Anthony McKiernan as a "may call" witness for the Division.

25. I am informed that on more than one telephonic meet-and-confer following production of the Division's witness list, the Division informed Respondents' counsel that it may call Anthony McKiernan as a witness at the administrative hearing that begins on October 24, 2016.

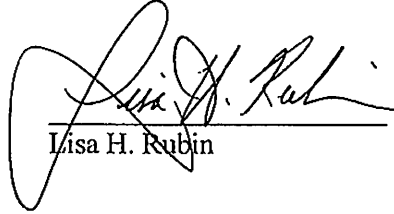
26. Attached as Exhibit 21 is a true and correct copy of an Order to Show Cause entered on September 15, 2016 in the matter captioned *Patriarch Partners XV, LLC v. U.S. Bank N.A.*, Case No. 1:16-cv-07128, Dkt. No. 14 (Sept. 15, 2016).

27. MBIA produced approximately 3,500 pages of discovery over nine days following the September 20, 2016 order of the Hon. Jed S. Rakoff of the United States District Court for the Southern District of New York in *Patriarch Partners XV, LLC v. U.S. Bank N.A.*, Case No. 1:16-cv-07128, Dkt. No. 32 (Sept. 20, 2016). Attached hereto as Exhibit 22 is a true and correct copy of the above-referenced September 20, 2016 order.

28. Attached as Exhibit 23 is a true and correct copy of an Email from Anne Tompkins, to Amy Sumner, dated April 23, 2015, Bates numbered Tilton-SEC-A-000000000002.

29. Attached as Exhibit 24 is a true and correct copy of an Email from Jonathan Hoff to Amy Sumner, dated September 19, 2016, Bates numbered Tilton-SEC-A-000000003047.

Dated: New York, NY  
October 5, 2016



Lisa H. Rubin

REPORT ON EXAMINATION

OF

MBIA INSURANCE CORPORATION

AS OF

DECEMBER 31, 2011

DATE OF REPORT

JUNE 28, 2013

EXAMINER

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

June 28, 2013

Honorable Benjamin M. Lawsky  
Superintendent of Financial Services  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law (NYIL), and in compliance with the instructions contained in Appointment Number 30830 dated February 14, 2012, attached hereto, I have made an examination into the condition and affairs of MBIA Insurance Corporation as of December 31, 2011, and submit the following report thereon.

Wherever the designation “the Company” or “MBIA Corp.” appears herein without qualification, it should be understood to indicate MBIA Insurance Corporation.

Wherever the term “Department” appears herein without qualification, it should be understood to mean the New York State Department of Financial Services.

The examination was conducted at the Company’s home office located at 113 King Street, Armonk, NY 10504.



## 1. SCOPE OF EXAMINATION

The Department has performed an individual examination of MBIA Corp., a multi-state insurer. The previous examination was conducted as of December 31, 2008. This examination covered the three-year period from January 1, 2009 through December 31, 2011. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

This examination was conducted in accordance with the National Association of Insurance Commissioners (“NAIC”) Financial Condition Examiners Handbook (“Handbook”), which provides that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company, including corporate governance, identifying and assessing inherent risks within the Company, and evaluating system controls and procedures used to mitigate those risks. This examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management’s compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations.

All financially significant accounts and activities of the Company were considered in accordance with the risk-focused examination process. This examination also included a review and evaluation of the Company’s own internal control environment assessment and an evaluation based upon the Company’s Sarbanes Oxley documentation and testing. The examiners also relied upon audit work performed by the Company’s independent public accountants when appropriate.

This examination report includes a summary of significant findings and a listing of the following items as called for in the Handbook:

- Company history
- Corporate records
- Management and control
- Loss experience
- Financial statements
- Significant subsequent events
- Summary of comments and recommendations including significant prospective risks

A review was also made to ascertain what action was taken by the Company with regard to comments and recommendations contained in the prior report on examination.

This report on examination is confined to financial statements and comments on those matters that involve departures from laws, regulations or rules, or that are deemed to require explanation or description.

## 2. DESCRIPTION OF COMPANY

MBIA Insurance Corporation was incorporated as the National Bonding and Accident Insurance Company under the laws of the state of New York on March 23, 1967. On December 10, 1982, the MBL Corporation, a wholly-owned subsidiary of the Mutual Benefit Life Insurance Company in Newark, New Jersey, purchased all of the outstanding capital stock of National Bonding and Accident Insurance Company. In December 1986, the Company was sold to MBIA Inc. adopting the name of Municipal Bond Investors Assurance Corporation. In April 1995, the Company changed its name to MBIA Insurance Corporation.

MBIA Corp. is the successor to the business of the Municipal Bond Insurance Association ("Association"), a consortium of five multi-line insurers, which began writing municipal bond insurance in 1974. Four of the five member companies, the Aetna Casualty and Surety Company, Fireman's Fund Insurance Company, Aetna Insurance Company, and the Continental Insurance Company, participated in the formation of the Company. The Travelers Indemnity Company - the fifth member - elected not to join. MBIA Corp. assumed the four predecessor member companies' entire outstanding municipal bond insurance portfolio. In 1993, MBIA Corp. assumed the remaining business from the fifth member of the Association.

In 1990, MBIA Inc., the Company's parent company, formed MBIA Assurance S.A., a wholly-owned French subsidiary, to write financial guaranty insurance in the international community. The stock of MBIA Assurance S.A. was contributed to the Company in 1991.

On January 5, 1990, MBIA Inc. acquired all of the outstanding stock of Bond Investors Group, Inc., the parent company of Bond Investors Guaranty Insurance Company, whose name was subsequently changed to MBIA Insurance Corp. of Illinois. MBIA Inc. then contributed the common stock of Bond Investors Group, Inc. to the Company, making the Company the direct parent of MBIA Insurance Corp. of Illinois.

In early 1998, MBIA Inc. consummated a merger with CapMac Holdings, Inc. After the merger, MBIA Inc. made a capital contribution to MBIA Corp. of Capital Markets Assurance Corporation (“CMAC”), a subsidiary of CapMac Holdings. In September 2010, MBIA Corp.’s investment in CMAC was liquidated, all operations of CMAC were finalized and CMAC was merged into MBIA Corp. The Agreement and Plan of Merger was filed with and approved by the New York State Insurance Department. CMAC has not written any new insurance business since the acquisition and CMAC’s net insured exposure was 100% reinsured by MBIA Corp.

In 2004, MBIA UK Insurance Limited (“MBIA UK”), a wholly-owned subsidiary of MBIA Corp. incorporated in the United Kingdom, was established to write financial guaranty insurance in the international markets.

In February 2007, MBIA Corp. incorporated a new subsidiary, MBIA Mexico, S.A. de C.V. (“MBIA Mexico”), through which it writes financial guaranty insurance in Mexico. MBIA Mexico is licensed to do insurance business in, and is subject to, the insurance regulation and supervision by the Mexican Ministry of Finance and Public Credit (Secretaria de Hacienda y Credito Publico or “SHCP”) and the Mexican Insurance and Bonds Commission (Comision Nacional de Seguros y Fianzas or “CNSF”).

On December 28, 2007, MBIA Assurance S.A., the French subsidiary, was restructured with MBIA UK (by way of dissolution or winding-up without liquidation) and governed by the terms of article 1844-5 of the French Civil Code. The transaction involved (i) the transfer of all of MBIA Assurance S.A.’s assets and liabilities to MBIA UK; (ii) the simultaneous transfer of the portfolio of MBIA Assurance S.A.’s financial guaranties to MBIA UK; and (iii) the dissolution without liquidation of MBIA Assurance S.A. Consequently, all previously insured MBIA Assurance S.A. policies are now insured by MBIA UK.

On February 17, 2009, the New York State Insurance Department approved a restructuring of MBIA Corp. by which a separate U.S. public finance financial guaranty insurance company was established using MBIA Insurance Corp. of Illinois, which was then a subsidiary of the Company, and was later redomesticated to New York and renamed National Public Finance Guarantee Corporation (“National” or “NPFG”). Ownership of National was transferred from the Company to a newly established intermediate holding company, National Public Finance Guarantee Holdings, Inc. a Delaware company, which is a subsidiary of MBIA Inc. National was capitalized with approximately

\$2.1 billion from funds distributed by the Company to MBIA Inc. as a dividend and return of capital, which MBIA Inc. contributed to National through National Public Finance Guarantee Holdings, Inc.

On March 1, 2010, MBIA Corp. sold its interest in real estate to National Real Estate Holdings of Armonk, LLC (“NREHA”), a wholly owned subsidiary of National. The sales price of \$65 million was based on the fair value of the real estate as determined by third parties. The sale by MBIA Corp. and the purchase by NREHA were non-disapproved by the Department.

Capital paid in of \$290.9 million is comprised of approximately \$15 million of common stock and approximately \$276 million of preferred stock. MBIA Corp. has 67,936 common shares authorized, issued and outstanding as of December 31, 2011, with a par value of \$220.80 per share. MBIA Corp. has 2,759 shares of Series A preferred stock issued and outstanding as of December 31, 2011, with a par value of \$1,000 and a liquidation preference of \$100,000 per share. Gross paid in and contributed surplus is \$780.3 million. Gross paid in and contributed surplus decreased by \$1.1 billion during the examination period, as follows:

<u>Year</u>	<u>Description</u>	<u>Amount</u>
2009	Beginning gross paid in and contributed surplus	\$ 1,899,851,368
2009	Surplus contribution	(1,122,631,579)
2010	Surplus contribution	1,179,973
2011	Surplus contribution	1,882,635
	Total change in surplus	<u>(1,119,568,971)</u>
2011	Ending gross paid in and contributed surplus	<u>\$ 780,282,397</u>

#### A. Management

Pursuant to the Company’s charter and by-laws, management of the Company is vested in a board of directors consisting of not less than 7 members or more than 25 members. The board meets 4 times during each calendar year. At December 31, 2011, the board of directors was comprised of the following 7 members:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Joseph W. Brown Bedford Corners, NY	Chairman MBIA Insurance Corporation

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Gail D. Makode Pleasantville, NY	Assistance Vice President, Chief Compliance Officer, Deputy General Counsel and Secretary MBIA Insurance Corporation
Joseph Ralph Schachinger Eastchester, NY	Assistant Vice President MBIA Insurance Corporation
Charles E. Chaplin Greenwich, CT	Assistant Vice President and Chief Financial Officer MBIA Insurance Corporation
Alfred C. Pastore Ramsey, NJ	Chief Investment Officer, Treasurer and Assistant Vice President MBIA Insurance Corporation
Anthony M. McKiernan Ridgefield, CT	Chief Risk Officer and Managing Director MBIA Insurance Corporation
John Dare Croton on Hudson, NY	Assistant Vice President and Head of Structured Finance MBIA Insurance Corporation

A review of the minutes of the board of directors' meetings held during the examination period indicated that the meetings were generally well attended and each board member had an acceptable record of attendance.

As of December 31, 2011, the principal officers of the Company were as follows:

<u>Name</u>	<u>Title</u>
Joseph W. Brown	Chairman
Charles E. Chaplin	Assistant Vice President and Chief Financial Officer
Alfred C. Pastore	Chief Investment Officer, Treasurer and Assistant Vice President
Ram D. Wertheim	General Counsel, Assistant Secretary and Assistant Vice President
William C. Fallon	President and Chief Operating Officer
Douglas C. Hamilton	Controller and Assistant Vice President
Anthony M. McKiernan	Chief Risk Officer and Managing Director

## B. Territory and Plan of Operation

As of December 31, 2011, the Company was licensed to write business in all fifty states, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands and Northern Mariana Islands. MBIA Corp.'s two subsidiaries are MBIA UK a financial guaranty insurance company licensed in the United Kingdom, which writes financial guaranty insurance in the member countries of the European Union and other regions outside the United States, and MBIA Mexico, which writes financial guaranty insurance in Mexico.

As of the examination date, the Company was authorized to transact the kinds of insurance as defined in the following numbered paragraphs of Section 1113(a) of the New York Insurance Law:

<u>Paragraph</u>	<u>Line of Business</u>
16	Fidelity and surety
17	Credit
25	Financial guaranty

Based on the lines of business for which the Company is licensed and the Company's current capital structure, and pursuant to the requirements of Articles 13, 41 and 69 of the New York Insurance Law, the Company is required to maintain a minimum surplus to policyholders in the amount of \$66,400,000.

The following schedule shows the premiums written by the Company both in total and in New York for the period under examination:

<u>Calendar Year</u>	<u>New York State</u>	<u>Total Direct Premiums Written</u>	<u>Direct Premiums Written in New York State as a percentage of Total Premium</u>
2009	\$264,240,931*	\$407,062,266	64.91%
2010	\$232,806,080*	\$352,340,484	66.07%
2011	\$183,657,076*	\$275,356,801	66.70%

(\* - approximately 99% of the premiums written consist of installment premiums.)

MBIA Corp. has been unable to write meaningful amounts of new insurance business since 2008 and does not expect to write significant new insurance business prior to an upgrade of its credit ratings. However, the Company receives installment premium for policies issued in prior years. Prior to 2009, MBIA Corp. issued financial guaranties on municipal bonds, asset-backed and mortgage-backed securities, investor-owned utility bonds, bonds backed by publicly or privately funded public-purpose projects, bonds issued by sovereign and sub-sovereign entities, obligations collateralized by diverse pools of corporate loans and pools of corporate and asset-backed bonds and bonds backed by other revenue sources such as corporate franchise revenues. MBIA Corp.'s guaranties extended to both new and secondary market issues. MBIA Corp. has also insured credit default swaps primarily on pools of collateral, which it considered part of its core financial guaranty business. The Company's core platform was in the public and structured finance sectors. The financial guaranties issued by MBIA Corp. provide an unconditional and irrevocable guarantee of the payment of the principal of, and interest or other amounts owing on, insured obligations when due in the event of default or impairment of such obligations.

The financial crisis and economic downturn of 2007 and 2008, and its effect on the commercial and residential real estate sectors, negatively affected the Company's exposure to the structured finance capital markets. MBIA Corp.'s credit ratings were downgraded beginning in mid-year 2008 and substantial insurance losses began to occur during that time. MBIA Corp. believes a substantial part of the incurred insurance losses were due to defaults on ineligible mortgages placed in second-lien mortgage securitizations; however losses were also sustained in collateralized debt obligations comprising asset-backed collateral ("ABS CDOs"), and starting in the fourth quarter of 2010, in commercial mortgage-backed securities ("CMBS") pools.

These losses had a negative impact on MBIA Corp.'s statutory capital (policyholders' surplus and contingency reserves). Citing significant deterioration in MBIA Corp.'s commercial mortgage-backed securities portfolio, Standard & Poor's Financial Services, LLC ("S&P") lowered its financial strength rating on MBIA Corp. to CCC from B with a negative outlook as of February 28, 2013. On November 19, 2012, Moody's Investor Service ("Moody's") downgraded the financial strength of MBIA Corp. to Caa2 from B3. The Company initiated several lawsuits to recover losses arising from the inclusion of allegedly ineligible loans in the Company's insured securitizations ("put-back litigation"). Based on its analysis of the forensic review and the potential success of its put-back litigation, MBIA Corp. recorded estimated recoveries of \$3.1 billion as of December 31, 2011 related to insured second-lien RMBS transactions.

The put-back litigation with Bank of America and Flagstar, and litigation relating to the Company's 2009 restructuring that was originally brought by a group of eighteen domestic and international financial institutions, was settled in May 2013. As a result of settlements with Flagstar, Bank of America and Société Générale, S.A. (discussed in more detail in the Subsequent Events section of this Report), S&P and Moody's have both upgraded their financial strength ratings of MBIA Corp. Subsequent to these settlements, MBIA Corp. also agreed to the terms of a comprehensive plan support agreement with the Residential Capital, LLC estate, its other major creditors and Ally Financial Inc. to support a Chapter 11 plan in ResCap's Chapter 11 cases that, if approved, will resolve MBIA Corp.'s put-back claims against the ResCap estate and Ally.

On May 8, 2013, S&P raised its financial strength rating on the Company to B from CCC with an outlook of stable. The rating upgrade reflects S&P's view that potential stress on the Company's liquidity position was lessened as a result of the settlement with Bank of America and that the company is unlikely to come under regulatory control during the next 12 months. The stable outlook reflects S&P's view that the Company's capital and liquidity is adequate to meet claim payments for the next 12 months. On May 21, 2013, Moody's raised the insurance financial strength of MBIA Corp. to B3 from Caa2 with a positive outlook. This rating action reflects Moody's view of the Company's improved capital and liquidity profile following settlements of its put-back litigation and insured claims with major counterparties.

### C. Reinsurance

Assumed reinsurance accounted for 2% of the Company's gross premium written at December 31, 2011. During the period covered by this examination, the Company's assumed reinsurance business has decreased since the last examination. The Company utilizes reinsurance accounting as defined in Statement of Statutory Accounting Principle ("SSAP") No. 62 for all of its reinsurance business.

The Company maintains a reinsurance agreement with MBIA UK, providing for MBIA Corp.'s reimbursement of the losses incurred by MBIA UK in excess of a specified threshold, and a net worth maintenance agreement in which MBIA Corp. agrees to maintain the net worth of MBIA UK, to remain its sole shareholder and not to pledge its shares. Under the reinsurance agreement, MBIA Corp. has agreed to reimburse MBIA UK on excess-of-loss basis for losses incurred in each calendar year for net retained insurance liability, subject to certain contract limitations.



The Company maintains reinsurance and net worth maintenance agreements with MBIA Mexico effective September 14, 2007. Pursuant to the terms of the reinsurance agreement, the Company agrees to assume from MBIA Mexico 100% of its net liability on financial guaranty business.

The Company has structured its ceded reinsurance program as follows:

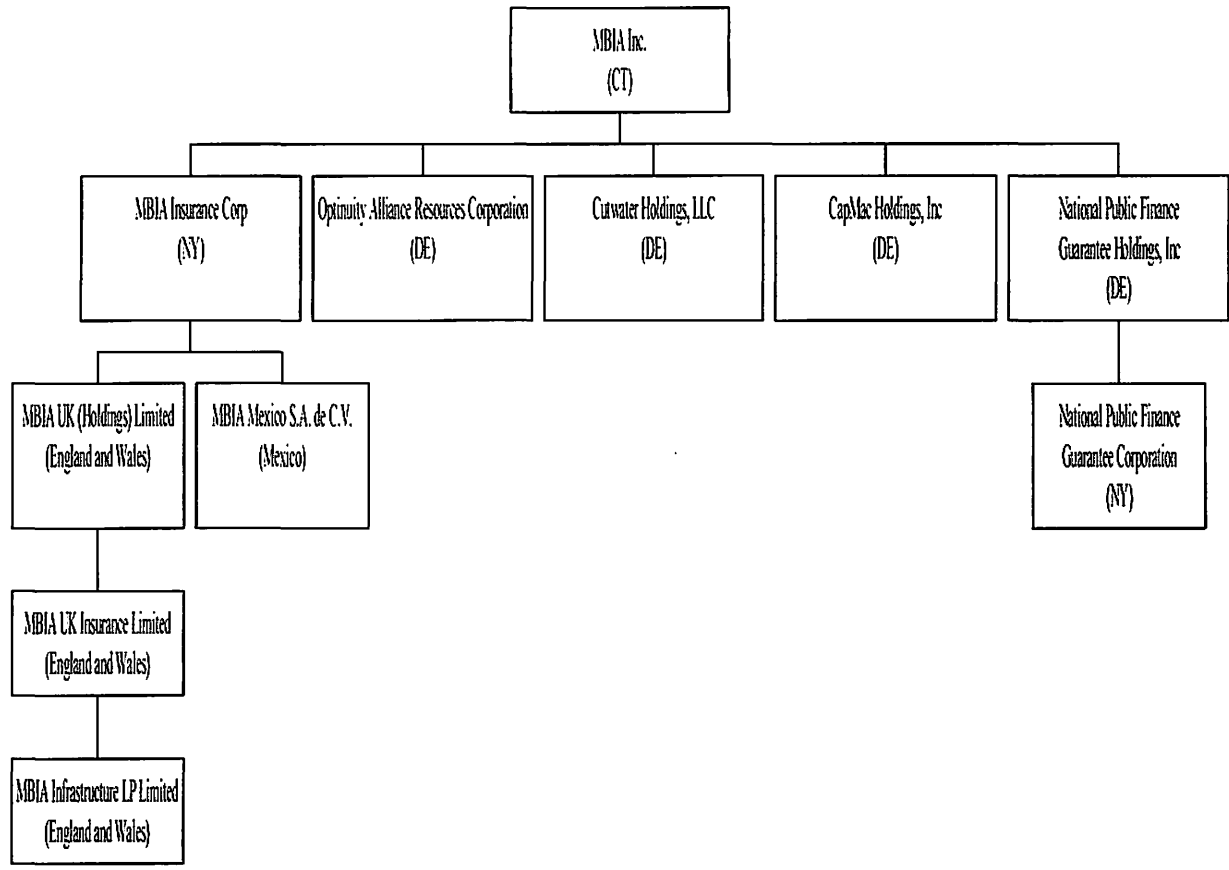
MBIA Corp. entered into a quota share reinsurance agreement effective January 1, 2009, pursuant to which it ceded all of its U.S. public finance exposure to National, including assigning its rights and obligations with respect to the U.S. public finance business that MBIA Corp. assumed from Financial Guaranty Insurance Company. It was noted that all affiliated reinsurance agreements were filed with the Department pursuant to the provisions of Section 1505 of the New York Insurance Law.

On July 19, 2010, MBIA Corp. acquired all of the common stock of Channel Reinsurance Ltd. ("Channel Re") and its parent Channel Re Holdings, Ltd. that it did not previously own for \$40 million in cash. Channel Re is a financial guaranty reinsurance company formed in 2004 to provide committed reinsurance capacity to MBIA Corp. During the third quarter of 2010, MBIA Corp. and MBIA UK commuted all of their reinsurance with Channel Re and MBIA Corp. then liquidated Channel Re and Channel Re Holdings Ltd. In connection with the commutation, MBIA Corp., National and MBIA UK reassumed insured exposure of \$21.6 billion, \$7.8 billion and \$2.1 billion of par outstanding, respectively. This transaction, including the commutation and liquidation, resulted in an increase in MBIA Corp.'s statutory capital of \$132 million.

#### D. Holding Company System

The Company is a wholly-owned subsidiary of MBIA Inc., a Connecticut corporation, with its principal executive offices in Armonk, New York. A review of the Holding Company Registration Statements filed with this Department indicated that such filings were complete and were filed in a timely manner pursuant to Article 15 of the New York Insurance Law and Department Regulation 52.

The following is a chart of certain entities in the holding company system at December 31, 2011:



At December 31, 2011, the Company was party to the following agreements, among others,<sup>1</sup> with other members of its holding company system:

Investment Services Agreement and Assignment Agreement with Cutwater Asset Management Corp. (“Cutwater”)

Effective April 28, 1995, MBIA Corp. entered into an investment services agreement with Cutwater (formerly known as MBIA Capital Management Corp.). Pursuant to the terms of the agreement, Cutwater provides administrative and securities services related to the management of the Company’s investment activities.

Effective January 4, 2011, the Company entered into an “Assignment Agreement” with Cutwater and Cutwater Investor Services Corp. (“CISC”) by which the Company consented to the transfer of the investment advisory services to CISC. In connection with the transfer, the Company also agreed to the assignment to CISC of all of Cutwater’s rights, interests, and obligations that it had with the Company under the 1995 investment service agreement. The Assignment Agreement was amended effective March 17, 2011, to state that the agreement may not be assigned, modified or amended without prior non-disapproval of the Department. The Assignment Agreement and amendment were submitted and non-disapproved pursuant to Article 15 of the New York Insurance Law.

Administrative Services Agreement (Investment services) with Cutwater Asset Management Group, formerly known as MBIA Capital Management Corporation (“MBIA CMC”)

An administrative services agreement became effective September 30, 2007 in which MBIA Corp. appointed MBIA CMC to consult with and provide instructions to Bancomer concerning the investment of assets in capital accounts of MBIA Mexico pursuant to an agreement between MBIA Mexico and Bancomer. Amendment 1 to the agreement, which became effective December 24, 2009 states that MBIA Corp. will pay the adjusted rate to MBIA CMC for services under the agreement. Because the agreement allows for the appointment of an affiliate, the Company did not submit the assignment to the Department for approval.

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<sup>1</sup> Also guarantees of GICs and MTNs, advances agreements, intercompany reinsurance agreements and lease.

This agreement was also assigned on January 4, 2011 when the Company entered into an "Assignment Agreement" with Cutwater and CISC by which the Company consented to the transfer of the investment advisory services to CISC. In connection with the transfer, the Company also agreed to the assignment to CISC of all Cutwater's rights, interests, and obligations that it had with the Company under the 2007 administrative agreement.

#### Master Repurchase Agreement with MBIA Inc.

During the fourth quarter of 2008, an intercompany secured loan was established between MBIA Inc. and MBIA Corp. for up to \$2.0 billion to support the projected liquidity needs of the asset/liability products segment of MBIA Inc. Pursuant to the loan, MBIA Inc. may transfer securities in its portfolio to MBIA Corp. in exchange for \$2.0 billion in cash. The amount outstanding under this agreement was \$300 million and \$975 million, as of December 31, 2011 and 2010, respectively. The loan is 19% of admitted assets at December 31, 2011 and has been approved by the Department in accordance with Section 1505 of the New York Insurance Law. It is noted that all outstanding borrowings under the loan were repaid in May 2012 and the facility terminated in May 2013 as described further in the Subsequent Event section of this report.

#### Loan Agreement with National

On December 12, 2011, MBIA Corp. entered into a secured loan agreement with National under which MBIA Corp. borrowed \$1.1 billion at a fixed annual interest rate of 7%, with a maturity date of December 2016. MBIA Corp. has the option to defer payments of interest when due by capitalizing interest amounts to the loan balance, subject to certain thresholds. MBIA Corp.'s obligation to repay the loan is fully secured by a pledge of collateral, primarily representing estimated recoveries related to MBIA Corp.'s put-back litigation. This loan has been approved by the Department in accordance with Section 1505 of the New York Insurance Law. It is noted that during the second quarter of 2013 the Company repaid this loan in its entirety to National. This transaction is described in the Subsequent Event section of this report.

#### Agreement with LaCrosse Financial Products, LLC ("LaCrosse")

MBIA Corp. provides credit support and issues financial guaranty policies on credit derivative instruments entered into by LaCrosse, an entity previously consolidated by MBIA Corp. under the criteria for variable interest entities. LaCrosse became an affiliate of MBIA Corp. during the fourth quarter of 2009. The outstanding notional amount of insured CDS contracts entered into by LaCrosse was \$67.0

billion and \$100.3 billion as of December 31, 2011 and 2010, respectively, and the gross outstanding notional amount of insured CDS contracts entered into by LaCrosse ceded to other reinsurers was zero as of December 31, 2011 and 2010.

#### Master Services Agreement with Optinuity Alliance Resources (“Optinuity”)

Optinuity, created in the first quarter of 2010, provides support services such as management, legal, accounting, treasury, and information technology for all business written or reinsured and all other authorized activities of MBIA Corp., except services delegated to NPPG through a Master Services Agreement. The agreement was submitted to the Department for review and non-disapproval pursuant to Section 1505 of the New York Insurance Law.

#### Tax Allocation Agreement

The Company is party to a tax allocation agreement with members of its holding company system effective January 1, 1987. The agreement was amended and restated effective September 8, 2011 to change the method of calculating each domestic insurer’s tax liability to the method permitted by paragraph 3(a) of Department Circular Letter # 33 (1979). The agreement was submitted to the Department for review and non-disapproval pursuant to Section 1505 of the New York Insurance Law.

#### Net Worth Maintenance Agreement with MBIA UK

Effective May 14, 2004, MBIA Corp. and its subsidiary MBIA UK entered into a net worth maintenance agreement, which was later amended and restated effective October 2, 2004. Under the terms of the agreement MBIA Corp. agrees to maintain the net worth of MBIA UK in an amount equal to the higher of its current capital required by the regulatory authorities of the United Kingdom or \$100,000,000, provided that any contributions by MBIA Corp. shall not be in excess of 35% of its policyholders surplus. This agreement was submitted to and approved by the Department pursuant to Section 1505 of the New York Insurance Law.

#### Net Worth Maintenance Agreement with MBIA Mexico

Effective September 14, 2007, MBIA Corp. and its subsidiary MBIA Mexico entered into a net worth maintenance agreement under which MBIA Corp. agrees to maintain the net worth of MBIA Mexico in an amount equal to the higher of its current capital required by the regulatory authorities of Mexico or \$10,000,000. However, any contributions made by MBIA Corp. for such purpose when added to contributions to other insurance subsidiaries for similar purposes shall in no event exceed 35% of

MBIA Corp.'s policyholders' surplus. This agreement was submitted to and approved by the Department pursuant to Section 1505 of the New York Insurance Law.

E. Significant Operating Ratios

The following ratios have been computed as of December 31, 2011, based upon the results of this examination:

Net premiums written to surplus as regards policyholders	18%
Liabilities to liquid assets (cash and invested assets less investments in affiliates)	2%
Premiums in course of collection to surplus as regards policyholders	0%

All of the above ratios fall within the benchmark ranges set forth in the Insurance Regulatory Information System of the NAIC.

The underwriting ratios presented below are on an earned/incurred basis and encompass the three-year period covered by this examination (2009-2011):

	<u>Amounts</u>	<u>Ratios</u>
Losses and loss adjustment expenses incurred	\$3,827,652,561	328.62%
Other underwriting expenses incurred	(616,150,360)	(52.90)
Net underwriting loss	<u>(2,046,731,669)</u>	<u>(175.72)</u>
Premiums earned	<u>\$1,164,770,532</u>	<u>100.00%</u>

F. Accounts and Records

There are no accounts and records recommendations.

G. Risk Management and Internal Controls

There are no adverse comments regarding risk management and internal controls.

### 3. FINANCIAL STATEMENTS

#### A Balance Sheet

The following shows the assets, liabilities and surplus as regards policyholders as of December 31, 2011 as determined by this examination and as reported by the Company:

<u>Assets</u>	<u>Assets</u>	<u>Assets Not Admitted</u>	<u>Net Admitted Assets</u>
Bonds	\$692,460,193	\$0	\$692,460,193
Common stocks (stocks)	473,816,175	0	473,816,175
Cash, cash equivalents and short-term investments	126,401,091	0	126,401,091
Other invested assets	1,079,861	0	1,079,861
Receivables for securities	721,282	496,912	224,370
Aggregate write-ins for invested assets	300,000,000	0	300,000,000
Subtotals, cash and invested assets	\$1,594,478,602	\$496,912	\$1,593,981,690
Investment income due and accrued	3,803,501	0	3,803,501
Uncollected premiums and agents' balances in the course of collection	2,929,629	0	2,929,629
Amounts recoverable from reinsurers	1,346,354	12,521	1,333,833
Current federal and foreign income tax recoverable and interest thereon	4,628,364	0	4,628,364
Electronic data processing equipment and software	2,332,599	2,274,757	57,842
Furniture and equipment, including health care delivery assets	42,345	42,345	0
Receivables from parent, subsidiaries and affiliates	2,726,761	86,105	2,640,656
Aggregate write-ins for other than invested assets	5,675,951	2,591,289	3,084,662
Totals	<u>\$1,617,964,106</u>	<u>\$5,503,929</u>	<u>\$1,612,460,177</u>

## Liabilities, surplus and other funds

Losses and Loss Adjustment Expenses	(\$2,334,490,517)
Other expenses (excluding taxes, licenses and fees)	25,649,193
Borrowed money and interest thereon	1,134,174,722
Unearned premiums	435,353,874
Ceded reinsurance premiums payable (net of ceding commissions)	3,800,209
Amounts withheld or retained by company for account of others	8,610,755
Payable to parent, subsidiaries and affiliates	36,351,103
Payable for securities	34,305
Aggregate write-ins for liabilities	706,420,516
Total liabilities excluding protected cell liabilities	15,904,160
Total liabilities	<u>\$15,904,160</u>
Common capital stock	\$15,000,269
Preferred capital stock	275,908,000
Surplus notes	952,655,000
Gross paid in and contributed surplus	780,282,397
Unassigned funds (surplus)	(427,289,649)
Surplus as regards policyholders	<u>\$1,596,556,017</u>
Totals	<u>\$1,612,460,177</u>

**Note:** The Internal Revenue Service has completed its audits of the Company's consolidated Federal Income Tax returns through tax year 2009. All material adjustments, if any, made subsequent to the date of examination and arising from said audits, are reflected in the financial statements included in this report. No audits are currently under examination. A survey covering tax year 2010 has been completed and resulted in no changes. The 2010 and 2011 tax years are still open with the Internal Revenue Service. The examiner is unaware of any potential exposure of the Company to any tax assessment and no liability has been established herein relative to such contingency.



B. Statement of Income and Changes in Surplus

Surplus as regards policyholders decreased by \$1,885,866,207 during the three-year examination period January 1, 2009 through December 31, 2011, detailed as follows:

Underwriting Income for three year period

Premiums earned		\$1,164,770,532
Deductions:		
Losses and loss adjustment expenses incurred	\$3,827,652,561	
Other underwriting expenses incurred	(489,427,420)	
Aggregate write-ins for underwriting deductions	<u>(126,722,940)</u>	
Total underwriting deductions		<u>3,211,502,201</u>
Net underwriting gain or (loss)		(\$2,046,731,669)

Investment Income

Net investment income earned	\$23,635,017	
Net realized capital gain	<u>2,866,237</u>	
Net investment gain or (loss)		<u>\$26,501,254</u>

Other Income

Net gain or (loss) from agents or premium balances charged off	\$0	
Finance and service charges not included in premiums	0	
Aggregate write-ins for miscellaneous income	<u>193,572,262</u>	
Total other income		<u>\$193,572,262</u>
Net income before dividends to policyholders and before federal and foreign income taxes		<u>(\$1,826,658,153)</u>
Dividends to policyholders		<u>0</u>
Net income after dividends to policyholders but before federal and foreign income taxes		(\$1,826,658,153)
Federal and foreign income taxes incurred		<u>(231,297,712)</u>
Net Income (Loss)		<u>(\$1,595,360,441)</u>

Surplus as regards policyholders per report on examination as of December 31, 2008			<u>\$3,482,422,224</u>
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net loss		\$1,595,360,441	
Net transfers (to) from protected cell accounts			
Net unrealized capital gains or (losses)	17,150,447		
Change in net unrealized foreign exchange capital gain (loss)		2,684,004	
Change in net deferred income tax		201,045,955	
Change in nonadmitted assets	184,582,928		
Change in provision for reinsurance			
Change in surplus notes			
Surplus (contributed to) withdrawn from protected cells			
Cumulative effect of changes in accounting principles	20,000,000		
Capital changes paid in	269		
Capital changes transferred from surplus (stock dividend)			
Capital changes transferred to surplus			
Surplus adjustments paid in		1,119,568,971 <sup>1</sup>	
Surplus adjustments transferred to capital (stock dividend)			
Surplus adjustments transferred from capital			
Net remittances from or (to) home office			
Dividends to stockholders		1,160,711,098	
Change in treasury stock			
Aggregate write-ins for gains and losses in surplus	1,971,770,618 <sup>2</sup>		
Net increase (decrease) in surplus	<u>\$2,193,504,262</u>	<u>\$4,079,370,469</u>	<u>(\$1,885,866,207)</u>
Surplus as regards policyholders per report on examination as of December 31, 2011			<u>\$1,596,556,017</u>

<sup>1</sup> Surplus adjustments paid in primarily consisted of \$1,122,631,579 return of capital paid to MBIA Inc. as part of the restructuring of the Company in 2009.

<sup>2</sup> \$1.9 B Aggregate write-ins for gains and losses in surplus included:

- a) 2009 – Reallocation of \$1.14 B of contingency reserve to surplus;
- b) 2010 – \$367.6 M is the combination of an increase in contingency reserve and the admissibility of deferred tax asset;
- c) 2011 - \$1 B decrease in contingency reserves and correction of error.

#### 4. LOSSES AND LOSS ADJUSTMENT EXPENSES

The examination contra liability for the captioned items of (\$2,334,490,517) is the same as reported by the Company as of December 31, 2011. The case and salvage reserves were determined to be adequate.

The Capital Markets Division utilized the assistance of an independent financial advisory firm that specializes in complex assets to review the adequacy of MBIA's modeling, assumptions and surveillance policies and procedures as of December 31, 2011, to determine MBIA's adequacy of loss reserves. For structured products, about two-thirds of policies were independently evaluated for losses, constituting about 95% of the exposure. For international public finance, upon reviewing the entire portfolio, an independent credit concern list was created, losses were evaluated based on that list and results were compared to those reported by the Company.

Among the key liabilities with potential for future adverse loss and claims development are the structured products for commercial real estate and residential mortgages, and European infrastructure obligations.

The Company's estimate of reserves for losses on its exposures is based on certain assumptions. Changes in such assumptions could materially adversely affect such reserve estimates, including but not limited to the result of more adverse macroeconomic conditions, the outcome of litigation, and the amount and timing of any claims. Under certain conditions, many of which are event-driven and outside the control of the Company, these exposures may result in significant increases in claims beyond those assumed in the Company's reserve estimate (which may or may not result in an increase in such loss reserves) in the near to medium term. In addition, the value of its investment portfolio could change and have a materially adverse effect.

## 5. SUBSEQUENT EVENTS

### Intercompany Loans

In May 2012, MBIA Inc. repaid in full the outstanding amount of \$300 million under the MBIA Corp. secured loan. Additionally in May 2012, the Department approved an extension of the maturity of the MBIA Corp. Secured Loan facility to May 2013, with a maximum outstanding amount of \$450 million, subject to MBIA Corp. obtaining prior approval from the Department for any draws under the facility. There were no draws on this facility subsequent to its repayment in May 2012 and it expired in May 2013.

During 2012, MBIA Corp. borrowed an additional \$443 million under the National secured loan with the approval of the Department on the same terms as the original loan in order to fund additional commutations. The outstanding balance including capitalized interest as of December 31, 2012 was approximately \$1.7 billion, although as noted below, the Company fully repaid this loan in May 2013 and the loan agreement was terminated.

### Change in Capital and Surplus

During 2012 the Company experienced a significant decrease in capital and surplus as follows:

<i>(Amounts in thousands)</i>	December 31, 2012	December 31, 2011	Change in Surplus
<b>Capital and Surplus:</b>			
Common stock	\$ 15,000	\$ 15,000	\$ 0
Preferred stock	275,908	275,908	0
Surplus notes	952,655	952,655	0
Additional paid-in capital	781,784	780,283	1,501
Unassigned surplus (deficit)	<u>(1,060,261)</u>	<u>(427,290)</u>	<u>(632,971)</u>
<b>Total capital and surplus</b>	<u>\$ 965,086</u>	<u>\$ 1,596,556</u>	<u>\$ (631,470)</u>

The decrease in capital and surplus was primarily due to a net statutory operating loss of \$843 million during 2012. Based on a review of the 2012 Annual Statement filing, the net operating loss was primarily the result of continued incurred losses and loss adjustment expenses in commercial mortgage backed securities (CMBS).

**Litigation**

In June 2009, a group of financial institutions commenced a legal proceeding challenging the actions of the Department (an Article 78 proceeding) in approving the restructuring of MBIA Corp., the related capitalization of NPFPG and the reinsurance agreement pursuant to which MBIA Corp. ceded all of its U.S. public finance exposure to NPFPG. In March 2013 the Supreme Court of the State of New York dismissed the Article 78 proceeding, thereby upholding the Department's decision to approve the restructuring of MBIA Corp. and NPFPG. The two remaining financial institution petitioners, Bank of America and Société Générale, filed a notice of appeal of the judge's decision. The same group of financial institutions also sued MBIA Corp., National and MBIA Inc. under New York debtor creditor law alleging that certain of the terms of the transactions constituted fraudulent conveyances and a breach of the implied covenant of good faith and fair dealing under New York law ("plenary action").

On May 2, 2013, MBIA Corp. and Flagstar entered into a settlement agreement settling the put-back litigation filed by MBIA Corp. against Flagstar. Under the terms of the settlement agreement, MBIA Corp. terminated the lawsuit against Flagstar and in exchange received \$110 million in cash and other consideration.

On May 6, 2013, MBIA Inc. and Bank of America agreed to the terms of a comprehensive settlement agreement pursuant to which MBIA agreed to dismiss its put-back litigation against Countrywide, and Bank of America (and its subsidiary, Merrill Lynch) agreed to withdraw from the lawsuits against MBIA Inc., MBIA Corp. and National (including the Article 78 proceeding and the plenary action). As part of the settlement, MBIA Corp. received a net payment of approximately \$1.7 billion consisting of approximately \$1.6 billion in cash and \$136 million principal amount of MBIA Inc.'s 5.70% Senior Notes due 2034. MBIA Inc. and Bank of America also agreed to the commutation of all of the MBIA Corp. policies held by Bank of America or its subsidiaries, which have a notional insured amount of approximately \$7.4 billion, of which \$6.1 billion are policies insuring credit default swaps held by Bank of America referencing commercial real estate exposures. MBIA Corp. will have no further payment obligations under the commuted policies and Bank of America's obligations to repurchase ineligible mortgages in securitizations insured by MBIA Corp. were extinguished. As part of the settlement, Bank of America entered into a \$500 million three-year secured revolving credit agreement (the Bank of America Secured Loan) with MBIA Corp., which can be used for general corporate purposes. Lastly, Bank of America received a five-year warrant to purchase 9.94 million shares of MBIA Inc. common stock at a price of \$9.59 per share.

As a result of the settlements with Bank of America and Flagstar, the Secured Loan from National was repaid in full, the agreement was terminated, and Bank of America withdrew from the lawsuits challenging the Company's restructuring.

On May 8, 2013, MBIA Corp. entered into a settlement agreement with Société Générale under which certain insured exposures were commuted and Société Générale withdrew from the Article 78 proceeding and the plenary action.

As a result of the settlement agreements with Société Générale and Bank of America, all litigation brought originally by the group of 18 domestic and international financial institutions related to the restructuring of MBIA Corp. and NCFG have been resolved.

On May 14, 2013, MBIA Corp. agreed to the terms of a comprehensive plan support agreement with the Residential Capital, LLC estate, its other major creditors and Ally Financial Inc. to support a Chapter 11 plan in ResCap's Chapter 11 cases that, if approved, will resolve MBIA Corp.'s put-back claims against the ResCap estate and Ally. The financial terms of the settlement are consistent with the MBIA Corp.'s financial statements for the period ended March 31, 2013. The plan support agreement and ResCap Plan are subject to approval by ResCap's Bankruptcy Court.

### **Liquidity**

A request for the approval of the January 15 and April 15, 2013 scheduled interest payments on the Company's Fixed-to-Floating Rate Surplus Notes due 2033 was denied by the Department. The deferred interest payment will be due on the first business day on or after which MBIA Corp. obtains approval to make such payment.

The Company disclosed in its 2012 Annual Statement<sup>1</sup> that its expected liquidity and capital forecast for 2013 reflects adequate resources to pay expected claims. Following the settlements with Flagstar, Bank of America and Société Générale, the Company reaffirmed in its March 31, 2013 Quarterly Statutory Statement that expected liquidity and capital forecasts for 2013 reflect adequate resources to pay expected claims.<sup>2</sup> Additionally, the Company has access to the Bank of America Secured Loan in order to pay claims. In addition MBIA Corp. expects to collect put-back recoveries as a result of the ResCap

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<sup>1</sup> 2012 Annual Statement Note 21, pages 14.21 to 14.22.

<sup>2</sup> March 31, 2013 Quarterly Statutory Statement, Note 21 to the financial statements, page 6.9.

settlement as described above, and to ultimately collect put-back recoveries from Credit Suisse either as a result of the ongoing recovery litigation or a settlement thereof. However, the Company disclosed that there is risk to the liquidity forecast as second-lien RMBS and remaining insured CMBS pools are potentially volatile.

6. **COMPLIANCE WITH PRIOR REPORT ON EXAMINATION**

The prior report on examination contained 9 recommendations as follows (page numbers refer to the prior report):

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Accounts and Records</u>	16
<u>Discounting:</u>	
It is recommended that the Company submit to the Department, on an annual basis, a justification for the discount rate it uses if such rate differs from the investment yield reported by the Insurance Regulatory Information System of the NAIC and indicate how such rate complies with Section 6903(b) of the New York Insurance Law.	
The Company has complied with this recommendation.	16
It is recommended that the Company present its loss and loss adjustment expense reserves gross of discount in its ledgers and trial balance.	
The Company has complied with this recommendation.	
<u>Annual Statement Disclosures:</u>	16
It is recommended that the Company disclose its paid dividends regardless of the materiality of such dividends.	
The Company has complied with this recommendation.	
<u>Loss Adjustment Expense classification:</u>	16
It is recommended that the Company improve its expense classification process to ensure that all expenses and costs associated with its claim obligations are properly classified and allocated as loss adjustment expenses.	
The Company has complied with this recommendation.	
<u>Adjusting &amp; Other Expenses (ULAE)</u>	17
It is recommended that the Company establish a reserve provision for	



Adjusting & Other Expenses to cover future expense costs associated with the adjustment and settlement of its claims liabilities as prescribed by the New York Insurance Law and SSAP No. 55.

The Company has complied with this recommendation.

### Investments

17

It is recommended that the Company assign proper ratings to its assets listed in its investment schedules. It is further recommended that the Company obtain guidance from the NAIC Security Valuation Office regarding the valuation of loan backed/structured finance financial instruments to make certain that the assets it reports are properly rated and reasonably valued.

The Company has complied with this recommendation.

### Receivable from parent and subsidiaries

- B. The Company's balance for the captioned account was reduced by an examination adjustment, which represents a \$20,000,000 write off on a receivable balance that was due from its UK subsidiary made subsequent to the examination year. 22

The Company has recorded this write off in its 2009 financial statements.

- C. Loss and loss adjustment expenses 22

During 2009, the Company reported additional incurred losses and loss adjustment expenses for years 2008 and prior totaling \$990,013,000. Through March 31, 2010, the additional development had increased to \$1,013,222,000. During 2009, the Company recognized estimated recoveries, net of reinsurance of \$1.4 billion related to a review of mortgage loan files underlying the Company's insured transactions. The actual collection of these estimated recoveries is subject to the outcome of litigation.

The Company has responded to the comment as follows:  
The Company will continue to analyze and monitor its loss and loss adjustment expense reserves and estimated recoveries related to seller/servicers' obligations to replace or repurchase ineligible loans from insured securitizations.

D. Subsequent Events

25

Lane Cove:

If the Company is not able to purchase the remaining 25% of the Lane Cove bonds at a discounted price, it will be liable for 100% of the principal amount of those bonds.

The Company has acquired 100% of the bonds at discounted prices.

## 7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

The examiner reviewed and evaluated certain risks that existed as of the examination date, and also assessed certain prospective risks that are anticipated to arise or extend past the examination completion date. The company monitors on an ongoing basis the following prospective risks.

### **Put-Back Litigation and Recoveries**

In the December 31, 2011 statutory financial statements, the Company recorded an estimated put-back recovery amount of \$3.1 billion related to its insured second-lien RMBS securitizations. This \$3.1 billion was offset against the loss reserve balance. The recovery estimate is related to the Company's efforts to have the sellers/servicers repurchase ineligible loans, which the sellers/servicers have rejected. The prospective risk to the Company results from the inherent uncertainty in calculating such accounting estimates. The Company calculates its put-back recovery estimate utilizing probability-weighted scenarios primarily based on the percentage of incurred losses it estimates it will collect subject to varying assumptions of litigation-related recovery delays, the financial distress of the loan sellers/servicers and other factors.

As a result of the settlements with Bank of America and Flagstar discussed above in the Subsequent Events section, MBIA Corp.'s put-back claims against those two entities have been resolved. However, there are other put-back recovery actions still ongoing. In the March 31, 2013 Quarterly Statutory Statement, the Company notes it has other put-back recoveries totaling \$1.1 billion through March 31, 2013, excluding incurred losses related to claims against Bank of America and Flagstar that were settled in May 2013.<sup>1</sup> MBIA Corp. has also entered into a plan support agreement with the ResCap estate, its other major creditors and Ally that, if approved, will resolve MBIA Corp.'s put-back claims against the ResCap estate and Ally.

### **Liquidity**

As of December 31, 2011, the Company stated that it believed its liquidity resources were adequate to provide for anticipated cash outflows.<sup>2</sup> The Company stated that its liquidity position has been stressed primarily due to the failure of sellers/servicers of RMBS transactions insured by MBIA to

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<sup>1</sup> March 31, 2013 Quarterly Statutory Statement, Note 25 to the financial statements, page 6.13.

<sup>2</sup> Management's Discussion and Analysis, Annual Statement for the Year 2011, pages 17 to 18.

repurchase ineligible mortgage loans in certain insured transactions. In the event of unexpected liquidity needs, the Company may have insufficient resources to meet its obligations or insufficient qualifying assets to support its surplus and reserves and may seek to increase its cash holdings position by selling or financing assets or raising external capital. There is the prospective risk that the Company's liquidity requirements may exceed its ability to draw on these liquidity sources.

MBIA Corp.'s expected liquidity and capital forecasts for 2013 reflect adequate resources to pay expected claims. Additionally, the Company can borrow under the Bank of America Secured Loan to pay claims. However, there is risk to the liquidity forecast as second-lien RMBS and remaining insured CMBS pools are potentially volatile.

### **Litigation**

At the time of the examination, the Company was involved in litigation related to the restructuring of MBIA Corp. and NPFPG and its put-back recoveries.

As noted above in the Subsequent Events section, as a result of settlements with Société Générale and Bank of America, all litigation brought originally by the group of 18 domestic and international financial institutions related to the restructuring of MBIA Corp. and the capitalization of National has been resolved. Furthermore, MBIA Corp., Bank of America and Flagstar reached agreements to resolve MBIA Corp.'s put-back litigation against those entities.

Respectfully submitted,

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Junjie Pan, CPA, CFE, CPCU, FLMI  
Examiner-in-Charge

STATE OF NEW YORK )

)ss:

COUNTY OF NEW YORK )

Junjie Pan, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

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Junjie Pan

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**APPOINTMENT NO. 30830**

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

I, **BENJAMIN M. LAWSKY**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**Junji Pan**

as a proper person to examine the affairs of the

**MBIA INSURANCE CORPORATION**

and to make a report to me in writing of the condition of said

**CORPORATION**

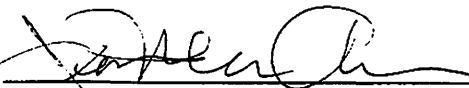
with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name and affixed the official Seal of the Department at the City of New York

this 14<sup>th</sup> day of February, 2012

**BENJAMIN M. LAWSKY**  
Superintendent of Financial Services

By:

  
\_\_\_\_\_  
Jean Marie Cho  
Deputy Superintendent



2012 WL 8024565 (N.Y.Sup.) (Trial Motion, Memorandum and Affidavit)  
Supreme Court of New York.  
New York County

MBIA INSURANCE CORPORATION, Plaintiff,  
v.  
COUNTRYWIDE HOME LOANS, INC., Countrywide Securities Corp., Countrywide Financial Corp., Countrywide Home Loans Servicing, LP and Bank of America Corp., Defendants.

No. 6028252008.  
August 6, 2012.

IAS Part 3

**Memorandum of Law in Support of Plaintiff's Motion to Remove Confidentiality Restrictions**

Quinn Emanuel Urquhart & Sullivan, LLP, Peter E. Calamari, Philippe Z. Selendy, Jonathan B. Oblak, Manisha M. Sheth, 51 Madison Avenue, 22nd Floor, New York, New York 10010-1601, (212) 849-7000, Attorneys for Plaintiff MBIA Insurance Corporation.

(Bransten, J.).

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Plaintiff MBIA Insurance Corporation ("MBIA" or "Plaintiff") respectfully submits this memorandum of law in support of its application for an order removing confidentiality restrictions from the following categories of documents

produced by Defendants Countrywide Home Loans, Inc., Countrywide Securities Corp., Countrywide Financial Corp., Countrywide Home Loans Servicing, LP (together, "Countrywide") and Bank of America Corp. ("BAC") (together with Countrywide, "Defendants") in this action: (1) party deposition transcripts; (2) documents used as exhibits in party depositions; (3) expert reports; (4) documents used as exhibits to expert reports, and (5) materials relied on by expert witnesses. MBIA does not seek removal of confidentiality restrictions from documents produced by third parties, transcripts of third party witness depositions, or portions of documents that reveal personal information about witnesses or third parties (including borrowers).

### PRELIMINARY STATEMENT

Throughout this litigation, the parties have over-designated documents as "Confidential" or "Highly Confidential" under the Stipulation and Order for the Production and Exchange of Confidential Information (the "Protective Order"), which was "so ordered" on April 22, 2009. Now, given the impending deadlines for summary judgment briefing, it is necessary to determine which documents actually meet the Protective Order's strict criteria for designation as Confidential or Highly Confidential. If the confidentiality designations are not removed from the categories of documents described above, the parties, the Court, and the public will be unduly burdened by the need to comply with the Protective Order's restrictions—including filing documents under seal, redacting briefs that refer to purportedly confidential documents, and restricting public access to documents and court proceedings. Under well-settled New York law, court filings are presumptively public, and Countrywide and BAC must affirmatively demonstrate that any specific documents that they claim are Confidential or Highly Confidential warrant that designation. MBIA, for its own part, is prepared to remove such designations that it has affixed to documents except those for which MBIA shows a basis for keeping the designation.

To the extent BAC resists removing designations from documents that do not warrant them, it will be acting inconsistently with its position in another case pending before this Court, *ABN Amro Bank N.V. v. Dinallo*, Index No. 601846/2009 (Kapnick, J.), where BAC's wholly-owned subsidiaries Bank of America, N.A. ("BANA") and Merrill Lynch, Inc. ("Merrill") are in the role of petitioners and MBIA is in the role of respondent. There, BANA and Merrill requested that MBIA remove confidentiality designations that MBIA had affixed to documents, and MBIA agreed to do so except as to certain highly sensitive documents for which MBIA could demonstrate that a confidentiality designation was truly warranted. BAC and Countrywide should not be heard here to take a different position as to their own documents.

### BACKGROUND

#### A. The Parties' Protective Order Narrowly Defines "Confidential" and "Highly Confidential" Information

The Protective Order contains explicit thresholds that must be met for material to be designated as Confidential or Highly Confidential. "Confidential Information" is defined as:

[A]ll Discovery Material, and all information contained therein, and other information designated as confidential, if such Discovery Material contains trade secrets, proprietary business information, competitively sensitive information, or other information the disclosure of which would, in the good faith judgment of the party designating the material as confidential, be detrimental to the conduct of that party's business or the business of any of that party's customers or clients. The parties agree that Discovery Material identifying individual borrowers, their addresses, and other personal information concerning such borrowers, constitutes Confidential Information. The parties further agree to abide by all federal, state, and local statutes and regulations concerning the use and dissemination of such Confidential Information.



Affirmation of Jonathan B. Oblak, dated July 30, 2012 (“Oblak Aff.”), Ex. 22 (Protective Order) at ¶ 3(a).<sup>1</sup> The designation of a document as “Confidential” imposes strict restrictions on the use of that document. Confidential Information may be furnished, shown, or disclosed only to a narrowly defined group of persons. *Id.*, ¶ 5. Parties must take steps to preserve the confidentiality of the information prior to disclosing it during any hearing or trial. *Id.*, ¶ 9. And a party may file Confidential Information with the Court only after (i) giving notice to the other parties so they can move to seal the information, or (ii) filing the information in a sealed envelope indicating its contents. *Id.*, ¶ 12.

Under the terms of the Protective Order, material may be defined as “Highly Confidential” only if:

- (1) at the time of the designation the Discovery Material contains or constitutes trade secrets or confidential business or financial information, (2) there is a substantial and imminent risk that, absent such designation, its receipt by the Receiving party could cause competitive and/or economic harm to the Producing party, and (3) such Discovery Material would not otherwise be adequately protected under the procedures set forth herein for “Confidential Information.”

*Id.*, ¶ 17. The designation of a document as “Highly Confidential” imposes all of the restrictions applied to Confidential Information, plus a requirement that Highly Confidential material not be disclosed to any party, including its officers, directors, employees, or agents; instead, it may be disclosed only to a party's counsel (including certain in-house counsel). *Id.*

#### **B. Defendants Declined MBIA's Request To De-Designate Documents**

Throughout this litigation, all parties have broadly designated information as Confidential or Highly Confidential as they have produced it to the other side. Much of the material Defendants have designated as Confidential or Highly Confidential concerns events that are now more than four years old. This material contains no trade secrets, proprietary business information, or other competitively sensitive information, and its disclosure would not present any competitive or economic harm to Countrywide or BAC.

During the upcoming summary judgment briefing and trial, treating this material as Confidential or Highly Confidential in accordance with the Protective Order will be burdensome for both the parties and the Court and will contravene New York's presumption that court records are public, absent a specific showing that they should remain confidential.

Accordingly, almost a year ago, on September 16, 2011, MBIA asked Countrywide and BAC to agree to de-designate “all documents and transcripts, other than those containing non-public personal information... Oblak Aff., Ex. 1 (9/16/2011 Letter from M. Sheth to S. Concannon). MBIA raised the issue well in advance of the submission of expert reports and summary judgment papers to give the parties time to reach an agreement on the de-designation of documents. *Id.* at 4.

Defendants did not consent to MBIA's request. Countrywide initially rejected MBIA's “global request,” and asked MBIA to identify specific documents it sought to de-designate. Oblak Aff., Ex. 2 (10/4/11 Email from S. Concannon to M. Sheth). By letter dated October 21, 2011, Countrywide objected that MBIA's requests were premature and unduly burdensome. Oblak Aff., Ex. 3 (10/21/11 Letter from S. Concannon to M. Sheth). Specifically, Countrywide declined to “review anew over 10 million pages of documents previously designated by Countrywide as Confidential or Highly Confidential, regardless of whether MBIA has any intention of ever introducing a particular document in this action.” *Id.* at 2-3 (emphasis in original). BAC did not separately respond to MBIA's September 16 letter.

In an October 21, 2011 response letter, MBIA pointed out that the vast majority of documents produced in this action do not qualify as either Confidential or Highly Confidential information. Oblak Aff., Ex. 4 (10/21/11 Letter from C.

Statfeld to S. Concannon). In accord with New York's well-settled presumption that litigation materials are public, MBIA requested that Countrywide identify the documents it believed should nevertheless receive special treatment under the Protective Order. *Id.* at 2. Countrywide did not respond to MBIA's proposal.

On July 18, 2012, MBIA again wrote to Countrywide and BAC and asked them to de-designate the following limited categories of documents: (1) party deposition transcripts; (2) documents used as exhibits in party depositions; (3) expert reports; (4) documents used as exhibits to expert reports, and (5) materials relied on by expert witnesses. Oblak Aff., Ex. 5 (7/18/12 Letter from J. Oblak to S. Concannon and D. Cantor). MBIA offered to meet and confer with Defendants with regard to any specific documents within those categories that Defendants genuinely felt merited confidential protection. MBIA asked for Countrywide and BAC to reply no later than Friday, July 20, 2012.

On July 20, 2012, BAC replied by e-mail that it was considering the issue and would "get back to you [MBIA] next week." Oblak Aff., Ex. 6 (7/20/12 Email from D. Cantor to J. Oblak). Later, counsel for BAC responded with a letter that rejected MBIA's request for relief, asserting, *inter alia*, that MBIA bears the burden of identifying specific BAC documents that should be de-designated, rather than that BAC bears the burden of identifying specific documents that warrant a confidentiality designation. Oblak Aff., Ex. 7 (7/24/12 Letter from D. Cantor to J. Oblak). Countrywide joined in BAC's position. Oblak Aff., Ex. 8 (7/24/12 Letter from S. Concannon to J. Oblak).

The Court then granted permission for MBIA to file a motion on this subject. Oblak Aff., Ex. 9 (7/26/12 Email from R. Hardman to S. Trombley). Because the deadlines for summary-judgment briefing are on the near horizon, MBIA is proceeding to file.

## ARGUMENT

### I. COURT RECORDS ARE PRESUMPTIVELY PUBLIC, AND A PARTY SEEKING TO KEEP DOCUMENTS CONFIDENTIAL MUST AFFIRMATIVELY SHOW THAT THEY WARRANT SUCH DESIGNATION

"Under New York law, there is a broad presumption that the public is entitled to access to judicial proceedings and court records." *Mosallem v. Berenson*, 76 A.D.3d 345, 348 (1st Dep't 2010). New York courts have "long recognized that civil actions and proceedings should be open to the public in order to ensure that they are conducted efficiently, honestly, and fairly." *Id.* (quoting *Matter of Brownstone*, 191 A.D.2d 167, 167 (1st Dep't 1993)). The presumptive openness of court proceedings and court records is a matter of constitutional, statutory, and common law. *See, e.g., Danco Labs. v. Chem. Works of Gedeon Richter, Ltd.*, 274 A.D.2d 1, 6 (1st Dep't 2000) (citing the "broad constitutional proposition, arising from the First and Sixth Amendments, as applied to the States by the Fourteenth Amendment, that the public as well as the press are generally entitled to have access to court proceedings"); *see also Mosallem*, 76 A.D.3d at 348 (citing Judiciary Law §§ 255 and 255-b and *Gryphon Dom. VI, LLC v. APP Fin. Co.*, 28 A.D.3d 322 (1st Dep't 2006)).

Given this presumption, the applicable New York rule, 22 NYCRR 216.1(a), sets a high bar for a party that seeks to file a document under seal:

Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.

22 NYCRR 216.1(a). As interpreted by the First Department, § 216.1 dictates that "[c]onfidentiality is clearly the exception, not the rule, and the court is always required to make an independent determination of good cause." *Matter of Hofmann*, 284 A.D.2d 92, 93-94 (1st Dep't 2001).

Thus, the party seeking confidential treatment of a document bears the “substantial burden” of demonstrating that the information it seeks to file under seal merits such protection. *Mosallem*, 76 A.D.3d at 349; *see also Visentin v. DiNatale*, 2004 WL 1900407, at \*2 (N.Y. Sup. Ct. Feb 13, 2004). The mere stamping of documents “is not controlling on the court’s determination whether there is good cause to seal the record.” *See Mosallem*, 76 A.D.3d at 350 (quoting *Eusini v. Pioneer Elecs. (USA), Inc.*, 29 A.D.3d 623 (2006)). In *Mosallem*, the First Department reversed the IAS court’s order sealing documents, finding that the defendants had failed to meet their burden to justify sealing. 76 A.D.3d at 350; *see also Hofmann*, 284 A.D.2d at 93 (movants seeking sealing failed to make showing of good cause required by § 216.1).

This Court has recognized the foregoing principles in this case, instructing the parties on multiple occasions to limit the number of documents they seek to file under seal. On January 22, 2009, the Court instructed the parties that it expected “rather detailed papers” on a sealing motion, “because I’m not one to grant that willy-nilly.” 1/22/09 Tr. 48:22-49:5. After the parties filed pleadings on a motion to dismiss under seal, the Court admonished the parties that, “[y]ou know, there is going to be some new sealing issues coming up which are going to tighten up the ship a great deal. What both sides believe is absolutely a sealable event is not going to be found sealable by this Court very much longer.... *So, sealing really means something that is of utmost importance to the inner core of the existence of the various corporations.*” 12/9/09 Tr. 6:9-22 (emphasis added). During a subsequent hearing, the Court reminded the parties that, “[t]his is an open court, this is an open courthouse,” and that confidentiality should be restricted to documents that “go[] to the fundamental being of the individuals involved, the corporations involved.” 9/27/10 Tr. 46:13-17.

## **II. THE DOCUMENTS AT ISSUE ARE NOT PROPERLY DESIGNATED CONFIDENTIAL OR HIGHLY CONFIDENTIAL, AND COUNTRYWIDE AND BAC BEAR THE BURDEN OF MAKING AN AFFIRMATIVE SHOWING TO THE CONTRARY**

Applying these well-settled principles here, it is clear that the Confidential and Highly Confidential designations should be removed from the following categories of Countrywide- and BAC-produced documents absent a specific showing as to specific documents that such documents should remain so designated: (1) party deposition transcripts; (2) documents used as exhibits in party depositions; (3) expert reports; (4) documents used as exhibits to expert reports, and (5) materials relied on by expert witnesses.

### **A. Defendants Have Over-Designated Documents As Confidential Or Highly Confidential**

The parties have generally over-designated their productions, stamping virtually every document “Confidential” or “Highly Confidential.” In most cases, these documents do not meet the criteria for Confidential, let alone Highly Confidential, designation. For example, BAC stamped the “Red Oak Merger Corporation First Supplemental Indenture,” dated July 1, 2008, as “Highly Confidential,” *Oblak Aff.*, Ex. 10 (BACMBIA-0000160291, et seq.), even though this document was publicly filed with the SEC and is freely available online. *Oblak Aff.*, ¶ 11. Defendants have similarly insisted on confidential treatment for deposition transcripts and expert witness materials, seemingly without regard to whether those materials actually contain confidential information. [Text redacted in copy.]

Countrywide’s and Bank of America’s over-designation of documents and information is not only contrary to the Court’s instructions and the well-settled case law discussed above, it threatens to make the impending briefing and argument of summary judgment unmanageable. The parties have deposed over 150 witnesses to date, and marked over 4,000 exhibits in the process. *Oblak Aff.*, ¶ 13. The parties have exchanged reports from more than thirty expert witnesses, each of whom has attached exhibits and relied on voluminous materials. *Id.* A substantial portion of this material is likely to be attached to summary judgment briefs or marked as evidence at trial. The administrative burden of preserving the purported confidentiality of this material is potentially enormous, for both the parties, the Court, and the public. The parties will have to prepare confidential material for filing in sealed envelopes, and will have to redact any mention of

this material from public versions of their briefs. The public in turn will be harmed because the publicly-filed, redacted versions will be incomprehensible. There is no sound reason to incur these costs for documents that were over-designated and do not qualify for Confidential or Highly Confidential treatment under the Protective Order.

On the other hand, it is not unmanageable (and in any event is required by New York law) for Countrywide and BAC to review this finite set of materials to determine whether there are any specific documents that continue to warrant a Confidential or Highly Confidential designation. Contrary to Countrywide's earlier objection that MBIA was asking for review of 10 million documents, the universe of materials now at issue is fewer than 10,000 documents. Specifically, MBIA seeks to remove the confidentiality restrictions from five narrow categories of documents: (1) party deposition transcripts; (2) documents used as exhibits in party depositions; (3) expert reports; (4) documents used as exhibits to expert reports, and (5) materials relied on by expert witnesses.<sup>2</sup>

These materials almost uniformly do not meet the criteria set forth in the Protective Order to qualify as Confidential or Highly Confidential, and accordingly do not merit such designations. To highlight a few examples:

● *Party deposition transcripts:* The parties have generally designated entire deposition transcripts as Confidential, without regard to the content of the witnesses' testimony, and have designated portions of testimony "Highly Confidential." See, e.g., Oblak Aff., Ex. 12 (6/5/12 Letter from J. Roeder to P. Calamari) (designating entire Amy Brinkley transcript as Confidential, with portions designated Highly Confidential); Oblak Aff., Ex. 13 (7/11/11 Letter from L. Morton to M. Sheth) (designating deposition of Isabel Backley and exhibits confidential).

● *Documents used as exhibits in party depositions:* Countrywide has designated its own Form 10-K dated March 1, 2006 as "Confidential." Oblak Aff., Ex. 14 (Kurland Depo. Ex. 1224). Countrywide previously filed this document with the SEC, and it is freely available online. Oblak Aff., ¶13.

● *Expert reports:*[Text redacted in copy.]

● *Documents used as exhibits to expert reports:* Countrywide has stamped the CVs of its expert witnesses as "Confidential." See, e.g., Oblak Aff., Ex. 16 ("Godfrey Ex. A"). These materials are clearly marketing tools used as such outside this litigation; they have no legitimate claim to confidential treatment.

● *Material relied on by expert witnesses:* [Text redacted in copy.]

These few examples only hint at the scope of the parties' over-designation of documents. Virtually none of the material designated by the parties qualifies as Confidential or Highly Confidential as those terms are defined in the Protective Order. Now, on the eve of summary judgment briefing, is the time for the over-designation problem to be corrected so that the parties, the Court, and the public are not burdened by the unnecessary filing of documents under seal.

### **B. Defendants Bear the Burden of Demonstrating the Need For Sealing**

To the extent Defendants wish to keep a Confidential or Highly Confidential designation on the materials addressed by this motion, they bear the "substantial burden" of demonstrating that the information they seek to file under seal merits such protection. Mosallem, 76 A.D.3d at 349; see also Visentin, 2004 WL 1900407, at \*2. They cannot simply stamp documents "Confidential" and "Highly Confidential" without regard to the documents' content. Rather, they must come forward with evidence supporting their contention as to each specific document that they seek to keep designated. The Court can then make specific findings with regard to those documents in accordance with § 216.1 of the Uniform Rules for Trial Courts. The current situation, however—in which Defendants assert confidentiality restrictions over their entire productions—is contrary to New York law and this Court's prior instructions.

BAC's positions in another matter pending in this Court, *ABN Amro Bank N.A. v. Dinallo*, Index No. 601846/2009 (Kapnick, J.), in which BAC's BANA and Merrill are petitioners, are instructive with regard to how the parties should proceed here. That case concerns the New York State Insurance Department's ("NYSID") approval of a restructuring of MBIA's business, which the petitioners seek to have annulled. Prior to the hearing in the matter, BANA and Merrill (the "BAC Petitioners") sought to lift confidentiality restrictions from documents that MBIA and the NYSID had stamped "Confidential" or "Highly Confidential." The BAC Petitioners complained that MBIA had designated 98% of the documents at issue as "Confidential" or "Highly Confidential," and argued that "the matters at issue here are of significant concern to the public and likely will be of substantial interest to the financial press, both of which would be denied access to the documents and evidence that must form the basis for this Court's decision on the merits." Oblak Aff., Ex. 19 (9/28/10 Affirmation of Robert Giuffra in Support of Petitioners' Motion by Order to Show Cause) ¶¶ 2-3. The BAC Petitioners argued that MBIA should not be allowed to "in effect conduct 'a secret trial on a matter of significant public importance.'" *Id.* ¶15 (quoting *Danco Labs.*, 274 A.D.2d at 8). And the BAC Petitioners asserted that "MBIA cannot establish that this two-year-old information of an insurance subsidiary in run-off still has any legitimate competitive significance." Oblak Aff., Ex. 20 (11/15/10 Petitioners' Reply Memorandum of Law in Support of Motion to Lift Confidentiality Restrictions) at 1.

In response to the BAC Petitioners' motion, MBIA *agreed* to file publicly the documents the BAC Petitioners sought to have unsealed, except for a small number of documents that MBIA sought to file with limited redactions or under seal. Oblak Aff., Ex. 21(11/3/10 Affidavit of Anthony McKiernan), ¶ 6. As to that small number of documents, MBIA explained in a sworn affidavit from its Chief Risk Officer how the disclosure of those specific documents could harm MBIA. *Id.* MBIA's Chief Risk Officer explained that the subset of documents for which MBIA sought confidentiality protection contained proprietary, non-public, commercially and competitively sensitive information, and trade secrets, the public disclosure of which would commercially and competitively injure MBIA. *Id.* at 7. The information MBIA sought to protect included, *inter alia*, loss reserve models that it has developed over time, at significant cost, which it treats as trade secrets that are highly valuable, confidential, and proprietary to MBIA. *Id.*, ¶ 11.

Countrywide and BAC must be held to their burden, as MBIA was held to its burden in *Dinallo*. If Defendants seek to preserve the "Confidentiality" designations for specific documents within the categories identified by MBIA, they should come forward with evidence that the public disclosure of such documents would be detrimental to their business or the business of their customers. If Defendants seek to preserve the "Highly Confidential" designations for specific documents, they should provide evidence that the documents contain trade secrets or confidential business or financial information, the disclosure of which could cause competitive and/or economic harm. If Defendants cannot make such a showing, the Court should lift the confidentiality designations for the categories of documents sought by MBIA.

## CONCLUSION

This Court should remove the "Confidential" and "Highly Confidential" designations from the following documents produced and so designated by Countrywide and BAC, except to the extent that Countrywide and BAC bear their burden of affirmatively demonstrating that the material qualifies for such treatment: (1) party deposition transcripts; (2) documents used as exhibits in party depositions; (3) expert reports; (4) documents used as exhibits to expert reports, and (5) materials relied on by expert witnesses.

Dated: New York, New York July 30, 2012

Respectfully submitted,

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Footnotes

- 1 Paragraph 1 of the Stipulated Protective Order defines Discovery Material to include: "documents, depositions, deposition exhibits, interrogatory responses, admissions, and any other information or material produced, given or exchanged by and among the parties and any non-parties...in connection with discovery in the Litigation." Protective Order ¶ 1.
- 2 MBIA does not seek removal of confidentiality restrictions from documents produced by third parties, transcripts of third party witness depositions, or portions of documents that reveal personal information about witnesses or third parties (including borrowers).

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# Attachment 11

# NewsRx™

## MBIA Inc. MBIA Announces Comprehensive Settlement with Bank of America

830 words

25 May 2013

Investment Weekly News

INVWK

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English

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2013 MAY 25 (VerticalNews) -- By a News Reporter-Staff News Editor at Investment Weekly News -- MBIA Inc. (NYSE: MBI) (the Company) announced that it has, together with its subsidiaries MBIA Insurance Corporation (MBIA Corp.) and National Public Finance Guarantee Corporation (National), agreed to the terms of a comprehensive settlement agreement and related agreements (the Settlement Agreement) with Bank of America Corporation and certain of its subsidiaries (Bank of America). Under the terms of the Settlement Agreement, MBIA Corp. will receive a net payment of approximately \$1.7 billion, consisting of approximately \$1.6 billion in cash and \$137 million principal amount of MBIA Inc.'s 5.70% Senior Notes due 2034. In exchange for the \$1.7 billion net payment, MBIA Corp. will dismiss the litigation commenced in September 2008 against Countrywide Home Loans, Inc.

(Countrywide), among other parties, and later amended to include claims against Bank of America, relating to breaches of representations and warranties on certain MBIA-insured securitizations sponsored by Countrywide. Bank of America and MBIA have also agreed to the commutation of all of the MBIA Corp. policies held by Bank of America, which have a notional insured amount of approximately \$7.4 billion, and of which \$6.1 billion are policies insuring credit default swaps held by Bank of America referencing commercial real estate exposures. MBIA Corp. will have no further payment obligations under the commuted policies. The Settlement Agreement requires certain approvals of the New York State Department of Financial Services, which are expected to be received shortly, at which point the parties will execute the agreements and promptly close all contemplated transactions described herein.

"We are very pleased to have reached a comprehensive settlement agreement with Bank of America that improves the outlook for MBIA Insurance Corp. and sets the stage for National to reclaim its leadership position in the U.S. public finance insurance market," said Jay Brown, MBIA CEO. "I appreciate Bank of America's efforts to arrive at a fair agreement that resolves a number of legacy issues for both institutions as well as the assistance provided by Superintendent Lawsby and the New York State Department of Financial Services. While work remains to be done, the announcement represents a significant milestone in MBIA's Transformation for the future and toward our goal of resuming growth in shareholder value."

Under the terms of the Settlement Agreement, Bank of America will receive five-year warrants to purchase 9.94 million shares of MBIA common stock at a price of \$9.59 per share. Bank of America also agreed to dismiss its claims in the pending litigation concerning the restructuring transactions announced by MBIA on February 18, 2009 (the Transformation) and the pending litigation between the parties concerning the senior debt Consent Solicitation completed by MBIA in the fourth quarter of 2012. In addition, Bank of America agreed to withdraw the purported "notice of default" it sent in connection with the Consent Solicitation.

MBIA Corp.'s policies insuring the residential mortgage-backed securities (RMBS) transactions originated by Countrywide will continue to be in full force and effect, and MBIA Corp. will continue to make timely payment of principal and interest when due under these policies. Bank of America will have no further put-back liability to MBIA with respect to the insured Countrywide transactions.

In addition, MBIA Corp. has entered into a \$500 million three-year secured revolving credit agreement with Bank of



America, which MBIA Corp. may use for general corporate purposes. Borrowings under the agreement will be secured by a pledge of the collateral that secured the National loan to MBIA Corp. and by MBIA Corp.'s equity interest in its wholly-owned subsidiary, MBIA UK (Holdings) Limited.

The payment from Bank of America, including the MBIA Inc. bonds, will be used to repay the remaining outstanding balance and accrued interest on MBIA Corp.'s secured loan from National in accordance with its terms. The secured loan balance of approximately \$1.7 billion as of April 1, 2013 had been reduced to approximately \$1.6 billion as a result of the receipt of \$110 million on May 2, 2013 in settlement of representation and warranty related litigation with Flagstar Bank.

The value of the settlement is consistent with amounts recorded to MBIA Corp.'s statutory balance sheet at year-end 2012. However, the settlement substantially improved its liquidity and capital risk profile by eliminating potentially substantial near-term payment obligations and \$7.4 billion of insured exposure, providing funds for the repayment of the secured loan from National and making a \$500 million secured loan facility available for general corporate purposes.

The Blackstone Group served as financial advisor to the Company in connection with the settlement.

Keywords for this news article include: MBIA Inc, Banking and Finance, Finance and Investment, Investment and Finance.

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# **DOWJONES** | Newswires

## **MBIA Inc. Finalizes Settlement With Bank Of America**

8 words

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## International New York Times

finance

### Bank of America settles long dispute with MBIA; Agreement cancels out the two sides' claims over mortgage securities

By FLOYD NORRIS

845 words

8 May 2013

International Herald Tribune

INHT

18

English

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Bank of America and MBIA, the troubled bond insurer, have reached a \$1.7 billion agreement to settle a long-running legal dispute over mortgage-backed securities that became troubled when the financial crisis hit.

The deal, announced on Monday, provides a lifeline to MBIA, which stood in danger of being unable to meet its obligations in a few weeks' time. And the agreement will turn Bank of America from bitter foe to equity investor in, and major lender to, the insurer.

The battle between the two financial giants had its beginnings in transactions before the financial crisis between MBIA and two companies — Merrill Lynch and Countrywide Financial — that Bank of America acquired during the crisis.

Merrill Lynch was in a position to collect billions from the insurer — if it had enough cash to meet its obligations.

But it seemed unlikely that MBIA could come up with the cash unless Countrywide agreed to pay billions to settle claims that it had misled the insurer regarding the quality of mortgages in securitizations insured by MBIA, and had failed to honor its obligations to repurchase those mortgages.

Now the multibillion-dollar claims the institutions had against each other will be canceled out. Under the agreement, Bank of America will pay \$1.6 billion in cash to MBIA and will lend the firm \$500 million. It also acquired warrants that, if exercised, would give the bank a 4.9 percent stake in the insurer. In addition, the bank will surrender to MBIA about \$130 million in MBIA bonds.

Bank of America said the agreement would reduce its previously announced first-quarter after-tax profits by \$1.1 billion, or 10 cents a share, but would improve its capital position. MBIA indicated that the settlement would have little impact on its profits, but said its first-quarter results, scheduled to be released on Thursday, would be delayed.

The agreement also appears to remove any practical chance that MBIA's split into two companies will be reversed. One company, National, is taking over the municipal bond insurance policies. The other, MBIA Corp., backs the insurance the company issued on securitized products and on credit-default swaps. Both remain subsidiaries of the parent, MBIA Inc.

Before the settlement, it appeared that within weeks the insurer would owe as much as \$3 billion to Merrill Lynch stemming from credit-default swaps issued by MBIA concerning commercial real estate transactions.

MBIA Corp. had met earlier obligations by borrowing money from National, the municipal bond part of the company.

But Benjamin Lawsky, the New York state financial services superintendent, refused to allow further loans, and it seemed that MBIA Corp. might be put into receivership before it had to pay Merrill Lynch.

Mr. Lawsky said negotiations accelerated in the last couple of weeks.

"There was a way to get to yes because everyone had claims on everyone else," he said. The agreement, he said "resolves significant exposure and expensive litigation for Bank of America, while also giving MBIA a path forward."

MBIA originally insured municipal bonds, a profitable business because few such bonds ever defaulted and municipalities buying the insurance would get AAA ratings on their bonds, saving them more in interest payments than the insurance cost because many muni bond investors were very risk-averse.

It later expanded into insuring securitizations and writing credit-default swaps. When the financial crisis struck, it became clear that the company had taken some very bad risks.

In 2009, the New York State Insurance Department, which later was folded into the Department of Financial Services, approved a decision by MBIA to split into the two companies. Banks and hedge funds that owned securities insured by MBIA went to court to try to reverse the split. In March, MBIA prevailed in one of those suits, as Justice Barbara R. Kapnick of the New York State Supreme Court ruled that the insurance department had wide latitude to approve the split with or without much investigation.

She cited a deposition by Michael Moriarty, the then-deputy superintendent of the department, who said "the department did not, nor do they usually, verify the financial condition of a company." Since that was the policy, the judge concluded she had no authority to question it, even if some information provided by the company was false.

Bank of America had vowed to appeal that decision, raising the possibility that an appellate court would order a trial that could be embarrassing to the state regulator. Under the settlement, the bank will drop that appeal.

Some MBIA legal disputes remain. Société Générale, the French bank, remains a plaintiff in the suit over the split, and that dispute seems likely to cost MBIA perhaps \$200 million to settle. MBIA is also pursuing complaints against ResCap, a mortgage company previously owned by General Motors' finance arm, and against Credit Suisse. Settlement of those disputes potentially could bring in more than \$500 million to MBIA.

International Herald Tribune

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# NEWSWIRES

## DOW JONES

Top Stories

### MBIA, Bank of America Settle Dispute

By LIZ RAPPAPORT and SHAYNDI RAICE

1041 words

7 May 2013

06:36

Dow Jones Top North American Financial Services Stories

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Bank of America Corp. (BAC) agreed to pay MBIA Inc. (MBI) \$1.7 billion to settle a dispute over faulty mortgage securities issued during the U.S. housing boom, eliminating major legal uncertainties for both companies.

The pact comes as MBIA faced a rise in mortgage-related claims and will keep the Armonk, N.Y., company's insurance unit from being taken over by the New York state financial regulator, amid questions about the unit's finances, said people familiar with the deal.

Shares of both companies rose on the news, with MBIA rocketing 43% higher and Bank of America advancing 5% in afternoon trading.

A Bank of America spokesman declined to comment. MBIA didn't immediately comment.

Bank of America will pay MBIA \$1.6 billion in cash, along with some other compensation, and provide MBIA with a credit line of \$500 million. BofA will also get stock-purchase warrants in MBIA's holding company that could give it a stake of around 5%.

Isaac Gradman, an attorney specializing in mortgage-backed securities litigation at the firm Perry Johnson Anderson Miller & Moskowitz LLP in Santa Rosa, Calif., said he has never come across a settlement in this area where one party takes a stake in the other. "It ties the state of these two companies together and gives MBIA an anchor in one of the big four banks," he said.

The agreement follows on-again/off-again settlement talks over the past six months, said people familiar with the matter. The two parties worked through the weekend, as did New York Department of Financial Services Superintendent Benjamin Lawsky, to bring about the deal.

The pact comes just more than a week after the MBIA unit, known as MBIA Insurance Corp., hired law firm Weil Gotshal & Manges LLP. MBIA had faced running out of money as early as this month, when cash payments on billions of dollars of insurance claims tied to commercial mortgage-backed securities start coming due.

The agreement eliminates one of the last overhangs for MBIA, which was sued by more than a dozen banks over its split during the financial crisis into one healthier bond insurer that focuses on guaranteeing municipal-bond payments and another, MBIA Insurance Corp., that insured complex financial instruments and mortgage securities that soured during the crisis.

Mr. Lawsky inherited the matter when he took over as New York's superintendent of financial regulation in October 2011, and he has pushed for more than a dozen deals with banks and MBIA to try to keep the state from taking the insurance unit over in a process known as receivership.

One such pact was a \$1.1 billion deal in December 2011 with Morgan Stanley (MS). In December 2011, Morgan Stanley's settlement with MBIA was facilitated by an intercompany loan of more than a billion dollars from MBIA's healthier municipal-bond insurer. Societe Generale still has outstanding claims against MBIA.

Both boards of BofA and MBIA have given approval for the deal in principle to move forward, said people familiar with the deal.

Hedge funds have staked out aggressive positions on the MBIA litigation. Manal Mehta, a partner at the hedge fund Sunesis Capital, said his firm bet on MBIA, wagering that the big banks would end up having to pay for their questionable pre-financial-crisis underwriting practices.

"The question came up who is going to be the beneficiary of recoveries by suing the banks," he said.

Bank of America is working to put its legal troubles behind it, but continues to spend heavily on resolving legal disputes. It took an \$881 million charge in the first quarter, to cover matters that included a \$500 million settlement of three class-action lawsuits that arose from mortgage-backed securities sold to investors by Countrywide.

The company faces a highly anticipated May 30 hearing where a New York state judge could decide whether to approve an \$8.5 billion settlement with mortgage-backed securities investors. Some analysts say the bank's legal costs could skyrocket if the settlement, which was struck almost two years ago, is not approved.

Paul Miller, an analyst with FBR Capital Markets, called the MBIA settlement a "mild positive" for Bank of America since the settlement shows the bank is making progress putting its legal troubles in the past.

"BofA did a great job convincing people that a lot of this legacy stuff is behind them," he said. "So far, they've been more right than wrong and they're getting these things slowly behind them."

But Mr. Miller said questions over whether a judge will approve the \$8.5 billion settlement with investors is far more worrisome for the firm.

"That's an overhang that's still very real," he said, adding that the judge could take months to rule. Mr. Miller also noted that the bank continues to struggle to increase earnings. Because of that, he said he still doesn't think "there's a lot of upside to the company at this point."

Indeed, other developments Monday show the bank remains vulnerable to legal action.

New York State Attorney General Eric Schneiderman said Monday that he plans to sue Bank of America and Wells Fargo & Co. (WFC) over violations of a landmark \$25 billion settlement aimed at providing relief to homeowners struggling to pay their mortgages.

Mr. Schneiderman said the banks violated standards they promised to adhere to when they settled with 49 states attorneys general last year. Part of the settlement included rules on how to conduct fair and timely service to homeowners. Mr. Schneiderman said his office found 339 violations of those rules by the two banks.

"Through March we have provided relief for more than 10,000 New York homeowners through the National Mortgage Settlement, totaling more than \$1 billion," Bank of America said in a statement. "Attorney General Schneiderman has referenced 129 customer servicing problems which we take seriously and will work quickly to address."

Wells Fargo didn't immediately respond to a request for comment.

Write to Liz Rappaport at [liz.rappaport@dowjones.com](mailto:liz.rappaport@dowjones.com) and Shayndi Raice at [shayndi.raice@dowjones.com](mailto:shayndi.raice@dowjones.com)

Dow Jones & Company, Inc.

Document DJTNAF1120130507e95700005

## Bank of America, MBIA reach \$1.7B settlement

Lance Murray

166 words

7 May 2013

Dallas Business Journal Online

DALBJO

English

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Bank of America Corp. (NYSE: BAC), ended one of the bank's longest-standing disputes by reaching a \$1.7 billion settlement with insurer MBIA.

The Charlotte Business Journal reported the dispute was over claims that stemmed from mortgage securities BofA backed for Countrywide Financial, which Bank of America bought in 2008. The Journal reported that during the years-long dispute, [[http://www.bizjournals.com/charlotte/blog/bank\\_notes/2013/05/reports-bank-of-america-settles-mbia.html](http://www.bizjournals.com/charlotte/blog/bank_notes/2013/05/reports-bank-of-america-settles-mbia.html)] MBIA took a hard stance against BofA while at the same time Bank of America put MBIA on the edge of bankruptcy.

Charlotte, N.C.-based Bank of America is the largest banking operation in the Dallas-Fort Worth area based on local deposits, according to the latest Dallas Business Journal research. It has \$53.59 billion in local deposits and 156 branches, according to DBJ researc

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American City Business Journals

Document DALBJO0020130507e95700001

## AFTER YEARS OF BATTLING, BANK OF AMERICA AND MBIA SETTLE MORTGAGE DISPUTE

Floyd Norris

286 words

7 May 2013

Insurance Information Institute Database

IIID

Page B3

English

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On May 6 Bank of America and MBIA, the troubled bond insurer, announced the \$1.7 billion settlement of a lengthy legal battle related to securities backed by mortgages. The insurer was having difficulty meeting its obligations and could have collapsed within a few weeks. The deal will transform Bank of America from MBIA's adversary into one of the insurer's equity investors and major lenders. The dispute involved transactions before the financial crisis between MBIA and Merrill Lynch and Countrywide Financial, both of which were acquired by Bank of America during the crisis. MBIA owed Merrill Lynch billions of dollars but lacked the cash to meet the obligations unless Countrywide would agree to pay billions to settle claims that it had misled MBIA about the strength of mortgages underlying the securities insured by MBIA. Under the agreement, the bank will pay \$1.6 billion in cash to the insurer.

Bank of America also agreed to lend MBIA another \$500 million and acquired warrants that, if exercised, would give the bank a 4.9 percent stake in MBIA. In addition, Bank of America will surrender approximately \$130 million in MBIA bonds to the insurer. Bank of America said the settlement would lower its previously announced profits for the first quarter by \$1.1 billion but would strengthen its capital position. MBIA said that the accord would not significantly affect its profits, which were scheduled to be released on May 9 but now will be delayed. The deal makes it highly unlikely that MBIA's separation into two subsidiary companies will be reversed.

Source: The New York Times

Article ID Number: 2013050701

Insurance Information Institute, Inc.

Document IIID000020130513e9570000a



# The New York Times

B

## AFTER YEARS OF BATTLING, BANK OF AMERICA AND MBIA SETTLE MORTGAGE DISPUTE

By FLOYD NORRIS

67 words

7 May 2013

The New York Times Abstracts

NYTA

3

English

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Bank of America and troubled bond insurer MBIA reach \$1.7 billion agreement to settle long-running legal dispute over mortgage-backed securities that became troubled when financial crisis blossomed; deal provides lifeline to MBIA, and turns Bank of America from foe to investor and lender to insurer. Photo (M)

Photograph

The New York Times Company (Abstracts)

Document NYTA000020130508e9570008t

News; News

## **MBIA settles with Bank of America over allegedly defective mortgages**

By Julie Beck

253 words

7 May 2013

Inside Counsel

INCOUNS

English

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Financial services company MBIA Inc. is settling with Bank of America Corp. and its Countrywide unit after five years of litigation over Bank of America's allegedly defective securitized mortgage loans, Bloomberg reports [<http://www.bloomberg.com/news/2013-05-06/mbia-said-to-get-about-1-6-billion-in-cash-in-bofa-deal.html>].

The deal stipulates that MBIA will get about \$1.6 billion, and Bank of America will receive warrants for a 5 percent stake in MBIA.

MBIA sued Countrywide in 2008, claiming fraud and breach of contract with regard to securitized home equity loans—MBIA had promised payments to investors in those securities and alleged that Countrywide had not adequately represented the risks inherent in the loans. Bank of America acquired Countrywide that same year.

"We are very pleased to have reached a comprehensive settlement agreement with Bank of America that improves the outlook for MBIA Insurance Corp.," MBIA CEO Jay Brown said in a statement [<http://investor.mbia.com/releasedetail.cfm?ReleaseID=762330>] on Monday. "While work remains to be done, today's announcement represents a significant milestone in MBIA's Transformation for the future and toward our goal of resuming growth in shareholder value."

Before trading halted at midday, MBIA stock rose by 42 percent, according to CNN Money [<http://money.cnn.com/2013/05/06/investing/mbia-bofa-settlement/>].

Read more about the housing crisis on InsideCounsel:

NY AG plans to sue Bank of America, Wells Fargo [<http://www.insidecounsel.com/2013/05/06/ny-ag-plans-to-sue-bank-of-america-wells-fargo?ref=hp>]

Fraud allegations cannot reopen voluntarily dismissed foreclosure cases [<http://www.insidecounsel.com/2013/02/11/fraud-allegations-cannot-reopen-voluntarily-dismis>]

AIG will not sue U.S. over bailout terms [<http://www.insidecounsel.com/2013/01/10/aig-will-not-sue-us-over-bailout-terms>]

BofA enters multibillion dollar settlements with Fannie Mae [<http://www.insidecounsel.com/2013/01/07/bofa-enters-multibillion-dollar-settlements-with-f>]

JPMorgan, Credit Suisse settle mortgage bond charges for \$417 million [<http://www.insidecounsel.com/2012/11/19/jpmorgan-credit-suisse-settle-mortgage-bond-charge>]

Summit Business Media

Document INCOUNS020130507e9570002u



LEX COLUMN

**Bank of America/MBIA**

323 words

7 May 2013

Financial Times

FTFTA

USA Ed2

12

English

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Bank of America and MBIA, the bond insurer, have finally buried the hatchet. The two had been locked in a complex legal battle, each with their own crisis-era grievances against the other. Yesterday, it was all resolved with BofA agreeing to pay MBIA \$1.7bn. Both will benefit.

MBIA shares rose 45 per cent to \$14. The deal saves its structured finance unit from a takeover by its regulator. MBIA had sold credit default protection to BofA on mortgage debt and losses on those bonds could have overwhelmed the MBIA unit. But it's a net settlement, reflecting those payments.

And, the deal unlocks value at MBIA's municipal bond insurer - its former core business and best shot at a future. The cash portion (\$1.6bn) will enable the repayment of an intercompany loan made by the muni business to MBIA's structured finance business, which houses mortgage exposure. After that, the muni insurer has a standalone book value of \$25 a share.

BofA, in turn, was being sued by MBIA for reimbursement on soured home loans arranged by Countrywide that were bundled into bonds that MBIA also insured.

Speculation was rife that the outcome of this dispute might threaten a separate \$8.5bn settlement BofA has with investors. Yesterday's deal alleviates this risk. Questions about whether that settlement would stick have been fodder for BofA bears. If it were to fall apart, the bank could be forced into loan repurchases in excess of its reserves. BofA shares rallied 5 per cent. But a state judge still has to approve the \$8.5bn settlement in a hearing set to begin in late May.

While the MBIA deal is an important step, BofA bears are unlikely to quit until the bigger settlement is definitively resolved. MBIA, for its part, is a step closer to selling muni insurance again - if there are any buyers left out there.

The Financial Times Limited (AAIW/EIW)

Document FTFTA00020130507e9570003i

## Bank of America settles MBIA dispute for \$1.7B

110 words

7 May 2013

Baltimore Business Journal Online

BALBJO

English

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While New York is posturing to sue Bank of America over an old settlement, the Charlotte, N.C.-based bank's investors can find some relief knowing one of the bank's longest-simmering disputes has finally been resolved, the Charlotte Business Journal reported.

BofA says it has reached a \$1.7 billion agreement with insurer MBIA over claims stemming from mortgage securities it backed for Countrywide Financial, which BofA bought in 2008.

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American City Business Journals

Document BALBJO0020130507e9570002w

## Bank of America settles MBIA dispute for \$1.7B

Adam O'Daniel

353 words

6 May 2013

San Francisco Business Times Online

SFBJO

English

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While New York is posturing to sue Bank of America over an old settlement, the bank's investors can find some relief knowing one of the bank's longest-simmering disputes has finally been resolved.

Charlotte, N.C.-based BofA reached a \$1.7 billion agreement with insurer MBIA Inc. over claims stemming from mortgage securities it backed for Countrywide Financial, which BofA (NYSE: BAC) bought in 2008.

The Wall Street Journal first reported the news.

The dispute has been bubbling up for years with MBIA taking a hard stance on the issues while BofA simultaneously took steps to force MBIA to the edge of bankruptcy. The settlement saves both parties, and shares in each company have gained ground following news of the accord.

The complex case stems from MBIA insuring Countrywide mortgage securities at the height of the subprime bubble. Those instruments ultimately flopped, costing MBIA billions. It blamed Countrywide. Meanwhile, credit default swaps on the deals put MBIA in deep debt to Merrill Lynch, which is now also owned by BofA.

BofA will record the charge for the settlement in its first-quarter results because it has not yet filed its form 10-Q. That means its \$2.6 billion in net income for the quarter will be reduced to about \$1.5 billion, or \$0.10 per diluted common share.

MBIA's lawsuit was one of the most-discussed unresolved complaints against BofA. The bank still faces billions in other claims. But settling with MBIA will likely give investors some hope for ongoing improvement.

Meanwhile, BofA finds itself back under fire for its mortgage servicing operations [[http://www.bizjournals.com/charlotte/blog/bank\\_notes/2013/05/new-york-ag-bofa-wells-show.html](http://www.bizjournals.com/charlotte/blog/bank_notes/2013/05/new-york-ag-bofa-wells-show.html)]. The bank had settled most complaints in the sweeping \$26 billion National Mortgage Settlement last year. But on Monday New York Attorney General Eric Schneiderman said he intends to sue BofA and Wells Fargo (NYSE: WFC) for allegedly violating terms of that deal.

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## PRESS RELEASE: MBIA Announces Comprehensive Settlement with Bank of America

1520 words

6 May 2013

15:41

Dow Jones Newswires

DJDN

English

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### MBIA Announces Comprehensive Settlement with Bank of America

ARMONK, N.Y.--(BUSINESS WIRE)--May 06, 2013--

MBIA Inc. (NYSE: MBI) (the Company) today announced that it has, together with its subsidiaries MBIA Insurance Corporation (MBIA Corp.) and National Public Finance Guarantee Corporation (National), agreed to the terms of a comprehensive settlement agreement and related agreements (the Settlement Agreement) with Bank of America Corporation and certain of its subsidiaries (Bank of America). Under the terms of the Settlement Agreement, MBIA Corp. will receive a net payment of approximately \$1.7 billion, consisting of approximately \$1.6 billion in cash and \$137 million principal amount of MBIA Inc.'s 5.70% Senior Notes due 2034. In exchange for the \$1.7 billion net payment, MBIA Corp. will dismiss the litigation commenced in September 2008 against Countrywide Home Loans, Inc. (Countrywide), among other parties, and later amended to include claims against Bank of America, relating to breaches of representations and warranties on certain MBIA-insured securitizations sponsored by Countrywide. Bank of America and MBIA have also agreed to the commutation of all of the MBIA Corp. policies held by Bank of America, which have a notional insured amount of approximately \$7.4 billion, and of which \$6.1 billion are policies insuring credit default swaps held by Bank of America referencing commercial real estate exposures. MBIA Corp. will have no further payment obligations under the commuted policies. The Settlement Agreement requires certain approvals of the New York State Department of Financial Services, which are expected to be received shortly, at which point the parties will execute the agreements and promptly close all contemplated transactions described herein.

"We are very pleased to have reached a comprehensive settlement agreement with Bank of America that improves the outlook for MBIA Insurance Corp. and sets the stage for National to reclaim its leadership position in the U.S. public finance insurance market," said Jay Brown, MBIA CEO. "I appreciate Bank of America's efforts to arrive at a fair agreement that resolves a number of legacy issues for both institutions as well as the assistance provided by Superintendent Lawsky and the New York State Department of Financial Services. While work remains to be done, today's announcement represents a significant milestone in MBIA's Transformation for the future and toward our goal of resuming growth in shareholder value."

Under the terms of the Settlement Agreement, Bank of America will receive five-year warrants to purchase 9.94 million shares of MBIA common stock at a price of \$9.59 per share. Bank of America also agreed to dismiss its claims in the pending litigation concerning the restructuring transactions announced by MBIA on February 18, 2009 (the Transformation) and the pending litigation between the parties concerning the senior debt Consent Solicitation completed by MBIA in the fourth quarter of 2012. In addition, Bank of America agreed to withdraw the purported "notice of default" it sent in connection with the Consent Solicitation.

MBIA Corp.'s policies insuring the residential mortgage-backed securities (RMBS) transactions originated by Countrywide will continue to be in full force and effect, and MBIA Corp. will continue to make timely payment of principal and interest when due under these policies. Bank of America will have no further put-back liability to MBIA with respect to the insured Countrywide transactions.

In addition, MBIA Corp. has entered into a \$500 million three-year secured revolving credit agreement with Bank of America, which MBIA Corp. may use for general corporate purposes. Borrowings under the agreement will be secured

by a pledge of the collateral that secured the National loan to MBIA Corp. and by MBIA Corp.'s equity interest in its wholly-owned subsidiary, MBIA UK (Holdings) Limited.

The payment from Bank of America, including the MBIA Inc. bonds, will be used to repay the remaining outstanding balance and accrued interest on MBIA Corp.'s secured loan from National in accordance with its terms. The secured loan balance of approximately \$1.7 billion as of April 1, 2013 had been reduced to approximately \$1.6 billion as a result of the receipt of \$110 million on May 2, 2013 in settlement of representation and warranty related litigation with Flagstar Bank.

The value of the settlement is consistent with amounts recorded to MBIA Corp.'s statutory balance sheet at year-end 2012. However, the settlement substantially improved its liquidity and capital risk profile by eliminating potentially substantial near-term payment obligations and \$7.4 billion of insured exposure, providing funds for the repayment of the secured loan from National and making a \$500 million secured loan facility available for general corporate purposes.

The Blackstone Group served as financial advisor to the Company in connection with the settlement.

The Company expects that it will announce the date and time of its first quarter 2013 financial results conference call shortly. The call had been tentatively scheduled for Thursday, May 9 at 8:00 AM, but will not take place at that time.

#### Forward-Looking Statements

The information contained in this press release should be read in conjunction with our filings made with the Securities and Exchange Commission. This release includes statements that are not historical or current facts and are "forward-looking statements" made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. The words "believe," "anticipate," "project," "plan," "expect," "intend," "will likely result," "looking forward" or "will continue," and similar expressions identify forward-looking statements. These statements are subject to certain risks and uncertainties that could cause actual results to differ materially from historical earnings and those presently anticipated or projected, including, among other risks and uncertainties, whether the Company will realize, or will be delayed in realizing, insurance loss recoveries expected in disputes with sellers/servicers of RMBS transactions at the levels recorded in its financial statements, the possibility that the Company will experience severe losses or liquidity needs due to increased deterioration in its insurance portfolios and in particular, due to the performance of CDOs including multi-sector, CMBS and CRE CDOs and RMBS, the failure to obtain regulatory approval to implement our risk reduction and liquidity strategies, the possibility that loss reserve estimates are not adequate to cover potential claims, the risk that MBIA Insurance Corporation will be placed in a rehabilitation or liquidation proceeding by the NYSDDFS, the Company's ability to access capital and the Company's exposure to significant fluctuations in liquidity and asset values within the global credit markets, in particular in the ALM business, the Company's ability to fully implement its strategic plan, including its ability to achieve high stable ratings for National or any other insurance subsidiaries, and the Company's ability to commute certain of its insured exposures, including as a result of limited available liquidity, the Company's ability to favorably resolve litigation claims against the Company, and changes in general economic and competitive conditions. These and other factors that could affect financial performance or could cause actual results to differ materially from estimates contained in or underlying the Company's forward-looking statements are discussed under the "Risk Factors" section in MBIA Inc.'s most recent Annual Report on Form 10-K and Quarterly Report on Form 10-Q, which may be updated or amended in the Company's subsequent filings with the Securities and Exchange Commission. The Company cautions readers not to place undue reliance on any such forward-looking statements, which speak only to their respective dates. The Company undertakes no obligation to publicly correct or update any forward-looking statement if it later becomes aware that such result is not likely to be achieved.

MBIA Inc., headquartered in Armonk, New York is a holding company whose subsidiaries provide financial guarantee insurance, as well as related reinsurance, advisory and portfolio services, for the public and structured finance markets, and asset management advisory services. The Company services its clients around the globe with offices in New York, Denver, San Francisco, Paris, London, Madrid and Mexico City. Please visit MBIA's website at [www.mbia.com](http://www.mbia.com) [<http://www.mbia.com>].

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6 May 2013 15:41 EDT \*DJ MBIA Announces Comprehensive Settlement With Bank Of America

6 May 2013 15:42 EDT \*DJ MBIA to Get Net Payment of About \$1.7 Billion From Bank of America

6 May 2013 15:43 EDT \*DJ MBIA to Dismiss Litigation Against Countrywide Home Loans, Other Parties

6 May 2013 15:43 EDT \*DJ MBIA: Bank of America to Get 5-Year Warrants to Buy 9.94 Million MBIA Shares at \$9.59 per Share

6 May 2013 15:44 EDT \*DJ MBIA Enters Into \$500 Million, 3-Year Secured Revolver With Bank of America

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May 06, 2013 15:44 ET (19:44 GMT)

Dow Jones & Company, Inc.

Document DJDN000020130506e956003zh



Seeking Alpha<sup>α</sup>

## MBIA's (MBI) CEO Jay Brown on Q2 2016 Results - Earnings Call Transcript

Aug. 9, 2016 12:38 PM ET

by: SA Transcripts

### Q2 2016 Earnings Summary

 Press Release  10-Q  News

EPS of \$0.12 beats by \$0.02 | Revenue of \$73M (- 19.8% Y/Y) misses by \$-2.25M

MBIA Inc. (NYSE:MBI)

Q2 2016 Earnings Conference Call

August 9, 2016 08:00 ET

#### Executives

Greg Diamond - Managing Director, Investor and Media Relations

Jay Brown - Chief Executive Officer

Bill Fallon - President and Chief Operating Officer

Anthony McKiernan - Executive Vice President and Chief Financial Officer

#### Analysts

Chas Tyson - KBW

Andrew Gadlin - Odeon Capital Group

Brett Gibson - JPMorgan

Peter Troisi - Barclays

Ed Groshans - Height Securities

Adam Sklar - Monarch

#### Operator

Welcome to the MBIA Inc. Second Quarter 2016 Financial Results Conference Call. I would now like to turn the call over to Greg Diamond, Managing Director of Investor and Media Relations at MBIA. Please go ahead.

**Greg Diamond**

Thank you, Crystal. Welcome to MBIA's conference call for our second quarter of 2016 financial results. After the market closed yesterday, we issued and posted several items on our websites, including our financial results press release, 10-Q, quarterly operating supplements and statutory financial statements for MBIA Insurance Corporation and National Public Finance Guarantee Corporation. We also posted updates to the listings of our insurance portfolios.

Regarding today's call, please note that anything said on the call is qualified by the information provided in the company's 10-K, 10-Qs and other SEC filings as our company's definitive disclosures are incorporated in those documents. We urge investors to read our 10-K and our 2016 10-Qs as they contain our most current disclosures about the company and its financial and operating results. The 10-K and 10-Qs also contain information that may not be addressed on today's call.

Regarding the non-GAAP terms included in our remarks today, the definitions and reconciliations of those terms may be found in our 10-K and 10-Q, our financial results press release and our quarterly operating supplements. A recorded replay of today's call will become available approximately 2 hours after the end of the call and the information for accessing it was included in yesterday's financial results press release.

And now, here is our Safe Harbor disclosure statement. Our remarks on today's conference call may contain forward-looking statements. Important factors such as general market conditions and the competitive environment could cause our actual results to differ materially from the projected results referenced in our forward-looking statements. Risk factors are detailed in our 10-K and 10-Qs which are available on the website at [mbia.com](http://mbia.com). The company cautions not to place undue reliance on any such forward-looking statements. The company also undertakes no obligation to publicly correct or update any forward-looking statement if it later becomes aware that such statement is no longer accurate.

For our call today, Jay Brown, Anthony McKiernan and Bill Fallon will provide some introductory comments then a question-and-answer session will follow. Now, here is Jay.

#### **Jay Brown**

Good morning, everyone. Thank you for taking the time to join us this morning. Since our last conference call, we have continued to make steady progress in several fronts. While the timing and outcome for the resolution of our Puerto Rico exposures remains uncertain, the results generated from our new business efforts continued to reflect steady, albeit modest progress. We remained very confident about our business model and our ability to deliver increased value to our shareholders over the coming quarters and beyond. We continue to believe that the concern about Puerto Rico is the biggest factor influencing our stock price and that the market has overstated the likely long-term economic impact of Puerto Rico outcomes for both National and the holding company.

As we disclosed in July, National paid its first insurance claims on certain Puerto Rico bonds that it insures and it now appears likely that we will pay more claims on our Puerto Rico bonds in the future, while the PROMESA board sorts out the island's long-term debt strategy with its many constituents. But importantly, our overall expectations regarding the resolution of our Puerto Rico exposures have not changed materially this quarter. We continue to believe that our ultimate losses will be relatively modest and that we are well situated for receiving meaningful recoveries on our paid claims. On a positive note, PREPA's restructuring continues to progress towards the year end or thereabouts conclusion. However, we expect that we will take longer to address and resolve our other Puerto Rico exposures.

After Anthony covers our financial results, Bill will address our Puerto Rico credits in greater detail. Before turning it over to Anthony to go through financial results in detail, I would like to highlight the fact that Adjusted Book Value, or ABV, increased by \$0.68 per share during the second quarter and by \$2.73 in the first half of 2016. Most, but not all of the improvement in ABV per share has resulted from our share repurchases, which continued to be executed on an opportunistic basis, where we carefully take into account the holding company's current and forecasted liquidity positions. I should also note that the holding company's liquidity position is evaluated under several modeled stress scenarios.

Turning briefly to MBIA Insurance Corp., our objectives remain unchanged, to maximize the margin of safety towards policyholders and to maximize the long-term returns for its surplus note holders. The MBIA Corp.'s statutory losses and loss adjustment expenses were \$60 million for the second quarter, but its claims paying resources of \$2.2 billion remained well above our insurance loss expectations for the MBIA Corp. insured portfolio. That said, as we have noted before, we are working on ways to ensure that MBIA Corp. has sufficient liquidity to satisfy the timing of payments that come due on its

insurance obligations. We continued to pursue the sale of MBIA UK and are engaged in conversations with key MBIA Corp.'s stakeholders. We expect to announce and close a MBIA UK transaction by year end. However, we have no new specific developments to report at this time and we will not be providing any further updates in our comments this morning.

Now, Anthony will provide details on our financials and then Bill will provide an update on National's activities.

**Bill Fallon**

Thanks, Jay and good morning, everyone. Combined operating income, a primary non-GAAP metric of short-term performance in the second quarter of 2016 was \$15 million or \$0.12 per diluted share compared to \$19 million or \$0.11 per diluted share for the second quarter of 2015. The decrease is primarily due to lower net premiums earned as we experienced less refundings this quarter as well as lower scheduled premiums. The company's share repurchases drove the increase in combined operating income per diluted share. Our focus remains on ensuring adequate liquidity at the holding company and redeploying some of National's ample excess capacity after there is reduced uncertainty regarding the outcomes for our Puerto Rico exposures. On a GAAP basis, consolidated net loss was \$27 million, \$0.20 per diluted share for the second quarter of 2016 versus net income of \$64 million or \$0.36 per diluted share for the second quarter of 2015.

I would like to spend a minute on the activity that drove the quarter-to-quarter decrease. Similar to our operating income, the adverse comparison was due in part to lower premium earnings, but different from operating income to a much greater extent results were driven by fair value effects and an increase in loss and LAE expense. The quarter-to-quarter comparable impact of certain fair value items was approximately a negative \$164 million, which was primarily due to three items, lower interest rates, which impacted our fixed pay swaps, related to MBIA Inc.'s GIC obligations; lower MTM gains on MBIA Inc.'s medium-term notes; and mark-to-market losses on MBIA Corp.'s insured credit derivatives as MBIA Corp.'s CDS spreads tightened this quarter, which increased our mark-to-market liability.

Partially offsetting these items was a positive impact from FX gains on the MBIA GFL MTNs as the dollar strengthened against the euro. These items typically generate quarter-to-quarter earnings volatility depending upon market conditions, but they are not expected to play a meaningful role on the long-term economic results of our company. Higher loss and LAE expenses were driven primarily by first lien RMBS loss reserve increases at MBIA Corp.

Book value and adjusted book value per share both increased during the first six months of the year, primarily reflecting the favorable impact of our share repurchases. Book value per share increased from \$24.61 to \$26.88 and ABV per share, a non-GAAP measure increased from \$29.69 to \$32.42. Share count decreased from \$152 million as of year end 2015 to \$136 million as of June 30, 2016. We believe this represents substantial longer term value for our ongoing shareholders.

During the second quarter of 2016, the company and its subsidiaries purchased \$1.7 million of its common shares. The average buyback price was \$7.02 per share. There was approximately \$88 million remaining under the company's \$100 million share repurchase authorization, which was approved during Q1 2016. We will continue to repurchase shares on an opportunistic basis and subject to MBIA Inc.'s current and forecast liquidity position.

Now, I would like to take a few moments to walk through the highlights in the reporting segments. National's operating income was \$34 million compared to \$40 million in 2015's Q2. The drivers of the reduced income were lower earned premiums as they were lower refunded earned premiums and National's insurance portfolio continues to decrease. National's GAAP net income was \$50 million for Q2 2016 versus \$37 million the second quarter of 2015 due primarily to realized gains related to the sale of investments. Loss on LAE of \$9 million for Q2 2016 was largely unchanged from the prior comparable quarter.

National's capital adequacy and liquidity positions continued to be robust. The balance sheet is anchored by National's \$4.4 billion investment portfolio, which is primarily comprised of highly rated marketable assets. Statutory capital and claims paying resources continue to strengthen totaling \$3.5 billion and \$4.7 billion respectively as of June 30, 2016.

Moving briefly to the corporate segment, this segment had a second quarter 2016 operating loss of \$19 million versus an operating loss of \$21 million for Q2 2015. Key metrics were essentially unchanged for this segment. As of June 30, 2016, MBIA Inc. held cash and liquid assets of \$295 million, which excludes its tax escrow account balance of \$273 million at quarter end as well as approximately \$800 million in assets pledged to the GICs and interest rate swaps.

Turning to MBIA Corp. and its statutory results, Corp. had statutory capital of \$755 million as of the end of the second quarter compared to \$885 million as of year end 2015. The decrease from year end was primarily due to increased loss and LAE expense. For the second quarter, Corp.'s statutory net loss was \$49 million compared with a net loss of \$47 million in the second quarter of 2015. The net loss for the second quarter of 2016 was primarily due to increased loss expectations in first lien and second lien RMBS. Increased severities drove our first lien RMBS losses for both our U.S. and Mexico portfolios and voluntary prepayments in our second lien RMBS portfolio remain elevated, which reduced our excess spread loss recoveries. MBIA Corp.'s liquid assets totaled \$288 million as of Q2 2016, up from \$264 million as of the end of the year.

Claims paying resources were \$2.2 billion as of June 30, 2016. As we have stated grievously, MBIA Corp. is focused on managing its resources to enable it to pay claim payments when due to its policyholders. The \$772 million *Zohar II* maturity on January 20, 2017 is the biggest challenge facing MBIA Corp. vis-à-vis its current liquidity position. And as Jay mentioned, we are pursuing strategies intended to address that challenge even though there is no assurance that we will be able to raise sufficient liquidity and restructure the *Zohar II* notes by the maturity date.

As we move forward, we continue to work towards creating shareholder value through the strategic repurchasing of our shares when optimal and increasing National's market presence in the bond insurance market. We are also working to resolve our Puerto Rico exposures, which we believe will both have a positive impact on National's ratings and subject to regulatory approval provide the ability for National to pay special dividends to the holding company.

And now, I will turn it over to Bill who will provide an update on National.

#### **Bill Fallon**

Thanks, Anthony. Good morning, everyone. It continues to be an interesting time for National. During the quarter, Puerto Rico generated lots of headlines. National continued growing new business production and its financial position strengthened. During the quarter, the PROMESA legislation became law. The 7-member oversight Board should be in place by September 15. We expect to work with the board, the Commonwealth and other creditors to address Puerto Rico's challenges, while aggressively pursuing repayment of National's insured debt. In July, we paid \$173 million of insurance claims on Puerto Rico bonds, of which \$169 million was paid for principal and interest that we insured on Puerto Rico's general obligation or GO bonds. The other \$4 million was for Highway and Transportation, HTA bonds that we insure.

Before year end, \$2.5 million of payments will come due on National insured Puerto Rico bonds and then the \$73 million will come due on January 1, 2017. The claims that we pay for the July 1 debt service amounts were taken into consideration in our June 30 loss reserving assessments and we expect to ultimately recover most, if not all, of the claims that we paid.

On the PREPA restructuring that continues to be progress, the parties are working to implement the terms of the restructuring support agreement, which has been extended to December 15 of this year. We continue to believe that the PREPA restructuring could close before the end of the year. In the meanwhile, some of the creditors, including National have purchased newly issued bonds from PREPA to help replenish PREPA's financial resources. During the second quarter, National purchased \$139 million of noninsured PREPA bonds that have maturities ranging from January 2018 to July 2020. Most of it, \$95 million matures during 2018. In addition to pursuing the PREPA restructuring, we, as did other creditors, initiated litigation that seeks to have Puerto Rico's Moratorium Law declared to be unconstitutional under the U.S. Constitution. Outside of Puerto Rico, the other credits to National's insured portfolio are performing within our expectations.

Turning to new business, our production continues to demonstrate steady and sustainable growth. We insured \$209 million of gross par during the second quarter, up from \$158 million of gross par in the first quarter of this year. For the six months of 2016, we have insured \$367 million of gross par versus \$311 million for the first six months of last year. But more importantly, the number of deals that we have insured has increased even more. We insured 59 deals for the first six months of 2016 versus 14 deals for the first six months of last year. We are steadily expanding the number of clients and intermediaries looking to transact with National. The bond insurance industry penetration for the first half of 2016 was 5.7% of total municipal issuance compared to 6.3% for the first half of 2015. Of the insurable market, that is new issue municipal bonds with BBB to A ratings, the insured penetration was 14%, which was down slightly from the first half of 2015 penetration of 15%. Low interest rates have been a challenge for the industry.

We continue to believe that our industry will experience growth over the coming years in large part due to the value that bond insurance provides to issuers and the market as demonstrated with respect to the Puerto Rico insured bonds as well as other recent examples of municipal defaults and bankruptcies. And National is well positioned to participate in that growth.

From a financial perspective, National reported \$34 million of operating income for the quarter and it ended the quarter with \$3.5 billion of statutory capital and \$4.7 billion of claims paying resources. As National's insured portfolio continues to amortize, its capital position and its capital ratio continue to improve. During the second quarter of 2016, National's insured portfolio reduced by \$12 billion of gross par and recorded \$138 billion of gross par outstanding. National ended the quarter with a leverage ratio gross par divided by stack capital of 40 to 1, down from 48 to 1 at year end 2015.

During the second quarter Kroll, Moody's and S&P all reaffirmed their credit ratings and outlooks for National. Under S&P stress tests, which was last assessed based on our year end 2015 insured portfolio and financial conditions, we estimated that National had approximately \$1.5 billion of excess capital. Given the further delivering of National's insured portfolio and it's positive financial results over the first six months of this year, that amount of excess capital has grown. As mentioned on previous calls, we plan to seek approval for National to pay a special dividend when there is less uncertainty regarding our insured Puerto Rico exposures. In the meanwhile, we expect National to be able to pay as of right dividend of approximately \$115 million during the fourth quarter of this year.

Now, we will open up the call for your questions.

### **Question-and-Answer Session**

#### **Operator**

[Operator Instructions] Your first question comes from the line of Chas Tyson with KBW.

#### **Chas Tyson**

Hi guys, good morning. I just want to follow-up on the special dividend, the interplay there obviously between the uncertainty in Puerto Rico and going to the regular questioning, I mean one, what are you – do you think that could potentially be a 2016 event and what do you need to see out of Puerto Rico before you feel more comfortable making the request?

#### **Bill Fallon**

Yes. Chas, as you know, we are following Puerto Rico quite carefully. I think one of the things we are looking for is the continued implementation of the PREPA restructuring, which as I indicated, we would hope that that closes this year. So I think that's one key thing to focus on. Second would be when the Oversight Board under PROMESA is put in place and how they set up to start looking at the financial situation in Puerto Rico. So I think as we head towards the fourth quarter, we will have a whole lot more information on that front.

#### **Chas Tyson**

Okay. And on the PREPA restructuring, one do you think – does that the base rate changed, that need to be permanent before you can get the securitization complete, because I think you noted in the Q that you wouldn't expect that until next year and do you think that, that securitization will obtain an investment grade rating, because there have been some rumors in the process as well as some creditors that may not obtain an investment grade rating?

#### **Jay Brown**

Yes. So two things, in terms of the special purpose vehicle, that's part and parcel of the restructuring agreement. So again we are hoping that all comes together before the end of the year. With regard to the investment grade rating, which you referred to PREPA will start working with the rating agencies. We would expect that process to start soon, perhaps next month. There was talk that there were expecting investment grade rating and as you had mentioned, there is some thought now that perhaps initially it would not be an investment grade rating. The deal can be done even if it doesn't have an investment grade rating, but again PREPA has indicated they would aspire to have an investment grade rating.

#### **Chas Tyson**

Okay. And then last one for me, I am not sure if you gave that GAAP book value of MBIA UK, but if you have that, that will be helpful. And then can you – would you guys rule out MBIA Inc. or National purchasing MBIA UK, are they potential bidders?

#### **Jay Brown**

With regard to the sale of the UK, other than the comments we have already made, because of the confidential nature of those negotiations, we are not going to comment further at this point in time.

**Chas Tyson**

Okay. Do you have the GAAP book value or no...?

**Anthony McKiernan**

The GAAP book value is approximately \$500 million.

**Chas Tyson**

Okay, thank you.

**Operator**

Your next question comes from the line of Andrew Gadlin with Odeon Capital Group.

**Andrew Gadlin**

Hi, good morning. Thank you for taking my question. Just want to follow-up on the last question about MBIA UK it sounds like that GAAP book value for UK actually increased in the quarter?

**Anthony McKiernan**

The UK continues to be profitable, so essentially it's just increasing by the profitability of the company.

**Andrew Gadlin**

Interesting. I mean for stat basis, you actually brought down the admitted even the non-admitted valuation decline by \$20 million, admitted assets decreased by \$40 million, what drives – drives that discrepancy?

**Anthony McKiernan**

The 1408 penalty, the higher percentage the UK becomes a Corp. than more of a penalty we are taking essentially.

**Andrew Gadlin**

Got it. So it's a bigger benefit from the sale?

**Anthony McKiernan**

It's a bigger benefit value of the asset versus the total assets of Corp.

**Andrew Gadlin**

Got it. And then the derivatives at holdco which are now tying up \$311 million of cash, can you talk about those, what those are tied to and why that amount is increasing?

**Anthony McKiernan**

We have got swaps that are part of our legacy ALM business. The reason why the derivative liability increased was because interest rates continued to decline over the quarter, which increased our mark to market liability.

**Andrew Gadlin**

Okay, great. And then last question, on the PREPA bonds that were purchased at National, I think you said it was \$139 million, can you talk about how you are marking those, are you marking those to par, are you marking those to a discount, obviously they are not very liquid instruments?

**Anthony McKiernan**

We go through a process of they are marked to fair value and given the short maturity of those, to your point, they are not things that are trading in the marketplace. So we think, at quarter end, they were very close to the value – excuse me the price that we paid for them.

**Andrew Gadlin**

Got it. And then your – in an answer to the previous question you said that you would be thinking about the special dividend as Puerto Rico progresses through the year and I am just trying to think there are additional claims coming in January, I know it's difficult to put yourselves in the shoes of the rating agencies, but when you think about the concentration in National of the investment portfolio between your own wrapped COFINA bonds and these PREPA bonds and deducting cash flow you paid out, how do you think – how can you help us think about the amount that a dividend could be or the flexibility that you would have given those concentration levels?

**Jay Brown**

I think the thing to keep in mind is, as I mentioned the rating agencies all come out and confirm their ratings. In particular, S&P has done a separate piece with regard to the insurance industry that is the bond insurance industry. And the exposures that people have in Puerto Rico. And even after stressing the Puerto Rico exposures, they still believe that we have in excess of the AAA capital levels. So again we think from a capital and financial strength position, National is very well positioned.

**Andrew Gadlin**

Okay. Thank you very much.

**Operator**

Your next question comes from the line of Brett Gibson with JPMorgan.

**Brett Gibson**

Great. Thank you for taking the question. With liquidity issues mounting in Corp. in advance of a possible Zohar payment, can you update us on your philosophy on National providing support to Corp. and I am not just talking about a possible sale of UK to Corp. but whether it's their lending or any other form of support?

**Jay Brown**

Yes. With regards to that, I think I have been clear in the past, unless you can tell me how that would benefit National, we won't do it.

**Brett Gibson**

Okay. I mean I guess I would say not sending Corp. into receivership could be a benefit to National's ongoing interest in writing business, but I mean is that something that you would rule out, support for lending in any form?

**Jay Brown**

We are not going to comment any further on that.

**Brett Gibson**

Okay, great. Thanks. Moving on, can your update us related to the Corp. on the status of regulator discussions regarding a possible regulatory action receivership or of some sort – or stop payment, what timeline should we expect before we get the decision or any kind of update?

**Bill Fallon**

Related to the regulator, we are in constant contact with the regulator. We are updating them on all the initiatives that we have talked about for the last quarter or so related to raising liquidity and restructuring efforts on Zohar for MBIA Corp. So again, we have a full transparent line of communication. We are continuing to work down the avenues that we have discussed. And again, as long as we keep moving down that path, we hope to achieve what we are going for by the time the Zohar maturity occurs.

**Brett Gibson**

Okay. Thank you. And then you have also talked about looking at possible restructuring or mature which is related to Zohar, possible restructuring of the maturity or reducing the outstanding principal, can you help us understand what are the mechanics out of getting that through, what level of consent do you need from holders or any other details that can help us out in understanding that?

**Jay Brown**

We will not go into details and I would just tell you we have identified everything we need to do to accomplish the goals that we have in front of us.

**Brett Gibson**

Great. And my final question and maybe you can answer, but this relates to UK, last quarter you said there were multiple interested parties, can you just update on us if that's still the case? And thank you.

**Jay Brown**

Yes. As I have said, we are in discussions and negotiations and beyond that, because of the confidential nature, we can't comment any further at this time.

**Brett Gibson**

Okay, fair enough. Thank you, gentlemen.

**Operator**

Your next question comes from the line of Peter Troisi with Barclays.

**Peter Troisi**

Hi, Good morning guys. You mentioned earlier in the script that you are engaged in conversations with key MBIA Corp. stakeholders, is there anything more you can say about that?

**Jay Brown**

No.

**Peter Troisi**

I mean was that comment specific to UK or can we think about it more broadly?

**Jay Brown**

You can think about it more broadly.



**Peter Troisi**

Okay, great. Thank you.

**Operator**

Your next question comes from the line of [indiscernible] with Banco Finantia.

**Unidentified Analyst**

Hi. Thank you for taking my question. Is there any update regarding the recovery rate of Zohar, one, because I further remember from the last call there wasn't any. And my second question is, if the sale of MBIA UK fails, do you consider the sale of the investment portfolio to try to make for the Zohar payment, Zohar II payment in January or is that out of the question? Thank you.

**Jay Brown**

Actually, the first half of your question, we continue to pursue Zohar though we believe given the senior position we have in that transaction we expect a solid recovery there, but that's all I can comment on with that at this point.

**Bill Fallon**

In regard to the second one, the sales in UK, again as we have commented, we are in negotiations right now. I think your question is if for some reason that didn't proceed, could we sell the UK investment portfolio, because UK is the separate legal structure and is regulated by the PRA. We couldn't use the portfolio you would have to get distributions out of the UK. And just given the nature of the insured portfolio as we have said previously the way to monetize that is to sell it that would be the most effective way to do so.

**Unidentified Analyst**

I was thinking specifically about the MBIA Corp. U.S. operation portfolio, which you had mentioned \$400 million or something in fixed income assets, which I think includes already the...?

**Jay Brown**

MBIA Corp.'s liquid assets about \$288 million, the other assets and investments in subsidiaries I mean also tied to our portfolio. So there wouldn't be a large sale from the MBIA Corp. portfolio to satisfy the Zohar payment.

**Unidentified Analyst**

Okay. Thank you.

**Operator**

Your next question comes from the line of Ed Groshans with Height Securities.

**Ed Groshans**

Good morning and thank you for taking my questions. First, do you have plans to re-up the share repurchase authority?

**Anthony McKiernan**

We currently have another \$88 million outstanding, until that's used up, we will not go back to the Board and consider additional repurchases.

**Ed Groshans**

Okay. And is there any consideration of the special dividend and timing of that relative to future authorizations or would – are

they separate discussions?

**Jay Brown**

They are obviously intertwined in terms of having sufficient liquidity. If we were successful in getting the special dividend, it would obviously significantly alter the modeled and stressed portfolio for MBIA Inc. and that would allow us to purchase additional shares. So yes, they are linked.

**Ed Groshans**

Okay. And then just a couple of reporting items, you have the schedule of exposures and in the Puerto Rico exposure, it appears that you broke out PDA, or public building authority exposures as well as 98 subordinated transportation bonds, I guess, can you just talk about the thinking as to why to parse those out at this point in time?

**Bill Fallon**

We are just making sure we provide details at any investor or anybody who is interested would like to have the information. This is, I think, in particular about those exposures as you said, they are not necessarily the largest exposures that we have in Puerto Rico.

**Ed Groshans**

No, no, that's correct. Also, it does appear that at least what I am looking at GOs now with the breakout of GO separate from public building authority that those exposures did go up quarter-over-quarter about \$40 million, can you sort of address that?

**Bill Fallon**

On the GOs, if there is a small increase, I believe there is some capital appreciation bonds that you are referring to that have gone up slightly.

**Ed Groshans**

Okay, and that's resulted in the change. Okay, very much, thank you so much. Have a good day.

**Bill Fallon**

Thank you.

**Operator**

[Operator Instructions] And your next question comes from the line of Adam Sklar with Monarch.

**Adam Sklar**

Hi, thank you for taking my question. Can you talk a little bit about your Highway 98 exposure and how we should think about that relative to your loss in LA reserves of \$58 million in National? The market trades those bonds on an unwrapped basis in the '20s or '30s implying very low recovery rates there. And so the passage for me, so it seems like that end these very vulnerable to taking substantial losses. And second part of my question would be how should we think about the loss in LA reserves at National relative to not only the Highway exposure, but also the fact that you have already paid out \$173 million on your GO exposure alone?

**Jay Brown**

Okay. With regard to the first, on the Highway, as you know that we have two different intentions, we have the 98 and we have the 68. There are a lot of things going on. To your point, there is a lot of uncertainty exactly how we will get restructured. The Governor is taking certain actions would have now been challenged in Court. He has called back different revenues. He has also moved collateral effectively under the guys of the Moratorium Act. So, I think there is a lot of things there that will play out

over time with regard to litigation as well as the restructuring of HTA. With regard to the market prices, we go through a process, as you know, under GAAP with regard to how we come up with the loss reserves and that may or may not be the same, but there is nothing from market prices that informs what the reserves should be with regard to any of that.

**Adam Sklar**

Stepping away from GAAP for a second just from your business understanding, with \$4.5 billion of TV exposure, \$10 billion of future value exposure holding \$58 million of reserves would imply that the best use of your cash in your balance sheet would be to go and buy Puerto Rico bonds, there is a huge delta between the market level and where you are reserving is. And so I guess from a business perspective, living and breathing the situation in Puerto Rico, can you just discuss how you are expecting it to play out and where you are most concerned about losses where you expect to take losses and what the quantum of those losses will be?

**Jay Brown**

Yes. As you know, we don't comment on any specific credit in the loss reserves associated with it. As you know, we are quite familiar with everything you said. Again, keep in mind, there is a difference between the price of uninsured versus insured bonds. So, when we ever think about buying bonds, we are talking about buying the insured bonds which obviously trade at a different value than what you are talking about. I think we are the first to acknowledge the Highway situation as uncertain. It remains to be seen when the Oversight Board gets put in place, how they choose to deal with it? But I think it is one where there is clearly going to be a volatility in the near future. So, I don't think our view is any different than what you are suggesting.

**Adam Sklar**

Thank you.

**Jay Brown**

So, did you have another question, Adam?

**Operator**

At this time, there are no further questions in queue. I will now turn the conference back to Mr. Diamond.

**Greg Diamond**

Thank you, Crystal and thank you to all of you who joined the call today. Please contact me directly if you have additional questions. We also recommend that you visit our website at [mbia.com](http://mbia.com) for additional information. Thank you for your interest at MBIA. Good day and goodbye.

**Operator**

This concludes today's conference call. You may now disconnect.

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**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

<p>1. TO          MBIA Insurance Corporation          113 King Street          Armonk, NY 10504</p> <p>c/o Jeffrey Q. Smith, Esq.          Morgan Lewis          101 Park Avenue          New York, NY 10178</p>	<p>This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.</p>
<p>2. PLACE OF PRODUCTION          Brune &amp; Richard LLP          One Battery Park Plaza          New York, New York 10004</p>	<p>3. DATE AND TIME PRODUCTION IS DUE          June 18, 2015 at 10:00 AM</p>
<p>4. PARTY AND COUNSEL REQUESTING          ISSUANCE OF SUBPOENA</p> <p>Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC; and Patriarch Partners Agency Services, LLC</p> <p>By: MaryAnn Sung          Brune &amp; Richard LLP          One Battery Park Plaza          New York, New York 10004</p>	<p>5. THE PRODUCTION OF DOCUMENTS OR OTHER TANGIBLE EVIDENCE IS ORDERED BY</p> <p>The Honorable Carol Fox Foelak</p> <p>Administrative Law Judge          U.S. Securities and Exchange Commission</p>
<p>6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER</p> <p><b>In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462</b></p>	
<p>7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)</p>	

See attachment.

<p>DATE SIGNED</p> <p><i>May 27, 2015</i></p>	<p>SIGNATURE OF ADMINISTRATIVE LAW JUDGE</p> <p><i>Carol Fox Foelak</i></p>
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The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

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1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

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4. “Defaulted Assets” means, with respect to Zohar CDO 2003-1, Limited (“Zohar I”) and Zohar II 2005-1, Limited (“Zohar II”), the “Defaulted Obligation,” and with respect to Zohar III, Limited (“Zohar III”), the “Defaulted Investment,” as defined and used in Section 1.1 of applicable Zohar Indentures.

5. “Document” is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other

graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or "emails"), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files, electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other documents which are in your possession, custody, or control or to which you otherwise have access.

6. "Including" means including but not limited to. When the word "including" is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the documents requested.

7. "Interest Coverage Ratio" means the "Class A Interest Coverage Ratio" and the

“Class A Interest Coverage Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

8. “Overcollateralization Ratio” means the “Class A Overcollateralization Ratio” and “Class A Overcollateralization Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

9. “Loan Categories” means, with respect to Zohar I and Zohar II, the terms “Category 1”, “Category 2”, “Category 3”, and “Category 4” and, with respect to Zohar III, the terms “Collateral Investment” and “Defaulted Investment,” all as defined and used in Section 1.1 of the applicable Zohar Indentures.

10. “Related to”, “relating to”, and “in connection with”, in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

11. “Respondents” means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

12. “SEC” means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.



13. “You” or “your” means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country) and its and their present and former officers, directors, employees, partners, principals, representatives and agents..

14. “Zohar Funds” means the following collateralized loan obligations: Zohar I, Zohar II and Zohar III.

15. “Zohar Financial Statements” means the balance sheets and income statements (including all notes) and certificates as to financial statements issued quarterly for each of the Zohar Funds as described in Section 7.9 of the Zohar Indentures.

16. “Zohar Indentures” means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.

17. “Zohar Notes” means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

18. “Zohar Trustee” means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term “Zohar Trustee” includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

19. “Zohar Trustee Reports” means the “Monthly Report” and “Note Valuation Report” and any electronic data or other files that accompany such “Monthly Report” or “Note Valuation Report” prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

20. If you encounter any perceived ambiguity, vagueness, or confusion in construing

either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

21. References to any natural person shall be deemed to include that natural person's agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity's subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

22. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

23. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to

a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

24. All documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

25. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the foregoing, data files, including excel files, are to be produced in native format. Responsive documents that are not electronically stored are to be produced (i) in a single-page TIFF format, with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

26. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce documents from a prior time period to fully respond to a particular request, do so.

## **DOCUMENTS TO BE PRODUCED**

1. For the period January 1, 2003 through the date of your production, documents sufficient to show your current and/or prior holdings of any of the Zohar Notes, including documents sufficient to show the date(s) on which you acquired, sold, placed and/or traded any of the Zohar Notes (via cash or derivative transactions), the counterparties and the price(s) or other terms at which such transactions occurred.

2. For the period January 1, 2003 through the date of your production, all Documents comprising of, or relating to, marketing or due diligence materials relating to the Zohar Funds.

3. For the period January 1, 2003 through the date of your production, all Documents relating to any evaluation or decision by you to insure or “wrap” the Zohar Notes, including, without limitation, any credit, risk or investment committee memorandum or related Communications.

4. Documents sufficient to show the valuation assigned by you to the Zohar Notes held by you or the insurance policy you provided related to the Zohar Notes for any purpose, including but not limited to, accounting or profit/loss calculation purposes, including the dates such valuations were assigned.

5. All Documents relating to loan loss reserves, capital reserves or provisions taken on any Zohar Notes held by you or on any insurance policy you provided related to the Zohar Notes, including but limited to case loss reserve memoranda, reserve simulations, loss reserve reports, loss reserve comments, and any documents prepared for or by the loss reserve committee regarding the Zohar Funds.

6. All Documents relating to any valuation by you or a third party of any of the Zohar Notes, including, without limitation:

- a. Month-end or other periodic marks provided by your trading desk to you or any third party for any Zohar Notes;
- b. Month-end or other periodic marks obtained from any third party by you for any Zohar Notes;
- c. Bids or offers shown by or requested of you or any third party for any Zohar Notes (regardless of whether a transaction was contemplated or effected).

7. All Documents relating to:

- a. Overcollateralization Ratio as reported in the Trustee Reports;
- b. Interest Coverage Ratio as reported in the Trustee Reports;
- c. Loan Categories as reported in the Trustee Reports;
- d. Defaulted Assets as reported in the Trustee Reports
- e. Zohar Financial Statements;
- f. Ratings of the Zohar Notes issued by Moody's and Standard and Poor's.

8. All Documents related to your monitoring of the performance of the Zohar Funds, including but not limited to any surveillance reviews, quarterly classified lists, watchlist reports or any other monitoring reports relating to the Zohar Funds or Zohar Notes.

9. All Documents relating to any analyses, calculations, or computations performed by you using information or data provided by the Zohar Trustees and/or in the Zohar Trustee Reports, including Documents relating to any analyses, calculations, or computation of interest paid, interest accrued, and/or interest accrued and unpaid on an aggregate fund or loan-by loan basis.

10. All Documents relating to modeling or modeling runs performed by you relating to the Zohar Funds and/or Zohar Notes using any proprietary or commercial cashflow model, data, or software tools, such as but not limited to INTEX or Moody's Analytics.

11. All Documents that were produced by you and marked as an exhibit for any deposition or admitted into evidence in the civil action captioned *MBIA Insurance Corporation v. Patriarch Partners VIII, LLC and LD Investments, LLC*, No. 09 Civ. 3255 (S.D.N.Y.) (RWS).

12. Documents sufficient to identify the individual(s) employed or retained by you who have had significant responsibilities regarding the monitoring of the performance and/or valuation of the Zohar Funds and/or the Zohar Notes held or insured by you.

13. All Communications relating to the Zohar Funds, Zohar Notes, or Respondents for custodians Anthony McKiernan and Jonathan Sloan with the exception of e-mail Communications between such custodians on the one hand and Respondents on the other hand.

14. All Documents relating to conference calls or meetings with Respondents relating to the Zohar Funds.

15. All Documents relating to a document titled "Patriarch Partners – Zohar Transactions Summary of Certain Contractual Provisions," previously produced to the SEC at Bates number MBIA-PPSEC 00000295-301, including but not limited to any communications regarding the creation or revisions of this document, documents sufficient to show the author(s), date(s) of creation and/or revision of the document, and anyone who requested, received or reviewed the document, or was otherwise shown the document.

16. All Communications and all Documents relating to all Communications with the SEC relating to the Zohar Funds and/or Respondents.

August 9, 2016

BY FEDERAL EXPRESS AND EMAIL

Mr. Douglas H. Fischer  
Cadwalader, Wickersham & Taft LLP  
700 Sixth Street, NE  
Washington, DC 20001  
Douglas.fischer@cwt.com

Re: *In the Matter of Lynn Tilton et al.* (3-16462)  
Compliance with May 27, 2015 Subpoena Duces Tecum

Dear Mr. Fischer:

We are writing to advise you that we represent Respondents in the above captioned matter.

The record of prior communications between MBIA and Respondents' counsel reflects that prior to the September 17, 2015 stay of the proceedings in this action, MBIA produced some documents in response to Respondents' May 27, 2015 subpoena duces tecum (the "May 2015 Subpoena"). As you may be aware, the stay has now been lifted and an administrative hearing in this matter is now scheduled for October 24, 2016. Current MBIA employee Anthony McKiernan, and former MBIA employee David Crowle, have both previously been identified as witnesses the SEC "may call" at the administrative hearing.

Consistent with your obligations to comply with the May 2015 Subpoena, we ask that you confirm by close of business this Thursday, August 10, 2016, that MBIA has made a complete production, through the present, of all documents responsive to the subpoena, including specifically Request Numbers 13 (all communications relating to the Zohar Funds, Zohar Notes, or Respondents for custodian Anthony McKiernan) and 16 (all Communications relating to Communications with the SEC concerning the Zohar Funds and/or Respondents). For example, to the extent MBIA has had any communications with the SEC, or has within its possession, custody or control, any documents reflecting its or others' communications with the SEC, including since the date of the subpoena and during the pendency of the stay, those communications and documents must be produced. (For your convenience we attach the May 2015 Subpoena.)

# GIBSON DUNN

Mr. Douglas H. Fischer  
August 9, 2016  
Page 2

Months after Respondents' May 2015 Subpoena issued, on August 7, 2015 the SEC identified David Crowle as a potential witness on its witness list. Please confirm whether you have included Mr. Crowle as a custodian in continued compliance with the subpoena.

If MBIA has not made a complete production of documents responsive to the subpoena, and particularly with respect to Request Numbers 13 and 16, Respondents demand compliance forthwith and, in any event, no later than Monday, August 15, 2016 at Noon EST. If at that time MBIA has not produced such documents, Respondents will be forced to move for immediate relief from Judge Foelak.

If you have questions or would like to discuss, please contact me.

Sincerely,



Monica K. Loseman  
Gibson, Dunn & Crutcher LLP  
Counsel for Respondents

MKL/mkl  
Attachment

cc: Jonathan Hoff, Esq.  
Susan Brune, Esq.



# CADWALADER

Cadwalader, Wickersham & Taft LLP  
One World Financial Center, New York, NY 10281  
Tel +1 212 504 6000 Fax +1 212 504 6666  
www.cadwalader.com

New York London Charlotte Washington  
Houston Beijing Hong Kong Brussels

August 19, 2016

## VIA EMAIL

Monica K. Loseman  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166

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

Dear Ms. Loseman:

I am writing to follow up on my letter to you of August 11, 2016, and in response to your letter of August 9, 2016, regarding the subpoena *duces tecum* served on MBIA Insurance Corporation (“MBIA”) by Respondents in the above-captioned proceeding.

In your August 9 Letter, you request that MBIA confirm “that MBIA has made a complete production, through the present, of all documents responsive to the subpoena” and that MBIA make a “complete production” to the extent it has not already done so. Additionally, you requested that MBIA confirm whether David Crowle was among the document custodians whose documents were searched in connection with MBIA’s production of documents responsive to the subpoena.

As you may be aware, following service of the subpoena, MBIA made clear to Respondents that the subpoena is objectionable on multiple grounds, including, among other reasons, it is overly broad and unduly burdensome. MBIA’s objections are particularly appropriate in light of Respondents’ responsibility to “take reasonable steps to avoid undue burden or expense when they subpoena non-parties,” and that Respondents’ right to discovery is balanced against the burden and expense of compliance imposed on the third party. *See Morgan Asset Mgmt., Inc.*, 2010 SEC LEXIS 2200, at \*2-3 (July 6, 2010). With these principles in mind, MBIA notified Respondents that it, nevertheless, was prepared to engage in discussions regarding the scope of the subpoena.

MBIA and Respondents thereafter engaged in extensive meet and confer discussions resulting in agreements with respect to the following:

## C A D W A L A D E R

Monica Loseman  
August 19, 2016

### **A. Request Nos. 4, 6-10 And 13-14**

- (1) MBIA would search the email files for custodians Stephen Silverman, John Hale, Joseph Sevely, Gerry Berrigan, Eric McAlley, Alexander Ng, Jason Cameron, Thomas Vandermark, Oliver North, Fred Pastore and Tom Ringel, for the period January 1, 2008 to June 18, 2015 using search terms Zohar, ZI, ZII, Z1 Z2 and Patriarch, and limiting the search to emails that that were to, from, cc or bcc Jason Cameron, Thomas Vandermark, Oliver North, Fred Pastore and Tom Ringel.
- (2) MBIA would search the email files for custodians Anthony McKiernan and Jonathan Sloan for the period January 1, 2008 to June 18, 2015 using search terms set forth in Attachment A hereto.
- (3) David Crowle was not among the thirteen custodians agreed to by Respondents. We note that, at the time MBIA and Respondents negotiated custodians for MBIA's email search, Respondents knew Mr. Crowle had provided testimony in connection with the Commission's investigation and thus potentially could be identified as a witness in this proceeding.
- (4) With respect to Request No. 4, MBIA would produce non-privileged documents sufficient to show quarterly marks made by MBIA with respect to the Zohar Notes. MBIA produced all such non-privileged documents it was able to locate.

With respect to Request Nos. 6-10 and 13-14, MBIA agreed only to review documents located pursuant to the foregoing search parameters and produce documents responsive to these Requests. MBIA, however, did not agree to produce documents that contain confidential or proprietary information relating to MBIA's loss reserves, its non-Zohar asset portfolio and certain of its internal processes. MBIA maintains its position in this regard.

### **B. Request Nos. 1-3, 5, 11-12 And 15-16**

- (1) Request No. 1: MBIA would not need to produce any documents if it confirmed in writing that it has not made any trades with respect to the Zohar Notes. MBIA will revert to Respondents on this issue.
- (2) Request No. 2: MBIA will produce marketing and due diligence materials, if any, relating to Zohar II created during the time period November and

## C A D W A L A D E R

Monica Loseman  
August 19, 2016

December 2004. At the time the stay order was entered, MBIA had not completed its search for these documents.

- (3) Request No. 3: MBIA would produce "Committee Memos," if any, relating to MBIA's decision to insure the Zohar Notes, which documents are located pursuant to reasonable non-electronic document searches. The parties further agreed to exclude from this request any memoranda relating to Zohar I and the memorandum addressed to the Executive Risk Committee relating to Zohar II because they were already in Respondents' possession. MBIA produced all such non-privileged documents.
- (4) Request No. 5: Respondents agreed to set this request aside pending their review of emails produced by MBIA.
- (5) Request No. 11: MBIA would not need to produce any documents because responsive documents were already in Respondents' possession. MBIA would sign an appropriate agreement necessary to allow Respondents to use such documents in connection with this proceeding.
- (6) Request No. 12: MBIA need not produce any documents if it provides Respondents with a list of employees that had significant responsibilities regarding the valuation of the Zohar Funds. At the time the stay order was entered, MBIA had not completed its compilation of this list.
- (7) Request No. 15: Following a good-faith search, MBIA did not locate non-privileged documents responsive to this request.
- (8) Request No. 16: Respondents would provide MBIA with a list of dates pursuant to which Respondents would propose that MBIA conduct a search for email communications involving the agreed-upon custodians set forth in Section A, above. At the time the stay order was entered, Respondents had not provided MBIA with the foregoing dates.

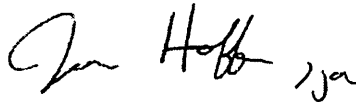
Based on the foregoing, MBIA produced more than 3,900 pages between June 25 and July 24, 2015. Discussions between MBIA and Respondents ceased in August 2015. With the exception of specific documents and information set forth above, MBIA does not agree to search for or produce additional documents in connection with the Subpoena. Nor does MBIA agree to renegotiate the agreements reached with Respondents during the meet and confer process, which was the basis on which MBIA agreed to produce documents.

C A D W A L A D E R

Monica Loseman  
August 19, 2016

Further, except as expressly set forth above, MBIA will not produce any documents created after the Order Instituting Proceedings, dated March 22, 2015 (“OIP”), and is under no continuing obligation to search for or produce documents. Documents created after the OIP are irrelevant and beyond the scope of this proceeding, and the collection, search, review and production of such documents would be unduly burdensome to MBIA. We note that Respondents themselves seek to quash the subpoena *duces tecum* served on MBIA Commission on the grounds that the documents sought were created after the filing of the subpoena and thus “outside the scope of the OIP,” including because they are “outside its timefra

Very truly yours,

A handwritten signature in black ink that reads "Jonathan M. Hoff" with a stylized flourish at the end.

Jonathan M. Hoff

Attachment

**ATTACHMENT A**

(Zohar or ZI or ZII or Z1 or Z2 or Patriarch)

AND

(mark or value or valuation or price or OC or O/C or overcollateralization or overcollateralization or IC or I/C or interest or spread or coupon or categor\* or default or defaults or defaulted or defaulting or non-performing or indenture or disclosure\* or "cash flow\*" or intex or model\* or trustee or "data file\*" or SIFMA or performance or equity or control\* or distressed or unique or company\* or borrower\* or Tilton or Lynn or manager or call or meeting or notes or rating\* or downgrade\* or F/S or FS or "financial statements" or financials)

(with \* denoting extenders)



**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

<p>1. TO          MBIA Insurance Corporation          1 Manhattanville Road, Suite 301, Purchase, NY 10577           c/o Mr. Jonathan Hoff, Cadwalader, Wickersham &amp; Taft LLP          200 Liberty Street, New York, NY 10281</p>	<p>This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.</p>
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<p>2. PLACE OF PRODUCTION          Gibson, Dunn &amp; Crutcher LLP          200 Park Avenue          New York, NY 10166-0193</p>	<p>3. DATE AND TIME PRODUCTION IS DUE          September 21, 2016 at 10:00am</p>
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<p>4. PARTY AND COUNSEL REQUESTING ISSUANCE OF SUBPOENA           Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC           By: Randy Mastro, Esq.          Gibson, Dunn &amp; Crutcher LLP          200 Park Avenue          New York, NY 10166-0193</p>	<p>5. THE PRODUCTION OF DOCUMENTS OR OTHER TANGIBLE EVIDENCE IS ORDERED BY           The Honorable Carol Fox Foelak           Administrative Law Judge          U.S. Securities and Exchange Commission</p>
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6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER  
**In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462**

7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)  
  
 See attachment.

<p>DATE SIGNED  <i>Sept 16, 2016</i></p>	<p>SIGNATURE OF ADMINISTRATIVE LAW JUDGE  <i>Carol Fox Foelak</i></p>
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**GENERAL INSTRUCTIONS**

**MOTION TO QUASH**  
 The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

**ATTACHMENT TO SUBPOENA DUCES TECUM  
TO MBIA INSURANCE CORPORATION**

**DEFINITIONS AND INSTRUCTIONS**

1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

2. “And” and “or” have both the conjunctive and disjunctive meanings, and the terms “each,” “any,” and “all” mean “each and every.”

3. “A&M” means Alvarez & Marsal and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys

4. “Barclays” means Barclays Capital, Inc. and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

5. “Common Interest Agreement” or “Joint Defense Agreement” means any written and/or oral agreement pursuant to which confidential information is exchanged and protected.



6. "Communication" means any form of contact, documentary, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence.

7. "Document" is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or "emails"), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files,

electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other Documents which are in your possession, custody, or control or to which you otherwise have access.

8. “Including” means including but not limited to. When the word “including” is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the Documents requested.

9. “MBIA” means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys

10. “Moody’s” means Moody’s Investor Service and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives, agents, and its and their present and former attorneys.

11. “Nord” means Norddeutsche Landesbank Girozentrale and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives, agents, and its and their present and former attorneys.

12. “Order Instituting Proceedings” means the United States Securities and Exchange Commission’s Order Instituting Proceedings in *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, dated March 30, 2015

13. “Rabobank” means Rabobank International and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

14. “Related to”, “relating to”, and “in connection with”, in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

15. “Respondents” means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

16. “SEC” means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.

17. "SEI" means SEI Investments Company and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

18. "Standard & Poor's" means Standard & Poor's Financial Services LLC and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

19. "Varde Partners" means Varde Partners, Inc. and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys

20. "You" or "your" or "MBIA" means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

21. "Zohar Funds" means the following collateralized loan obligations: Zohar I,

Zohar II and Zohar III.

22. "Zohar Indentures" means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.

23. "Zohar Notes" means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

24. "Zohar Trustee" means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term "Zohar Trustee" includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

25. "Zohar Trustee Reports" means the "Monthly Report" and "Note Valuation Report" and any electronic data or other files that accompany such "Monthly Report" or "Note Valuation Report" prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

26. If you encounter any perceived ambiguity, vagueness, or confusion in construing either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

27. References to any natural person shall be deemed to include that natural person's agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity's subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former

employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

28. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the Document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

29. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

30. All Documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

31. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored Documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the

foregoing, data files, including excel files, are to be produced in native format. Responsive Documents that are not electronically stored are to be produced (i) in a single-page TIFF format, with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

32. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce Documents from a prior time period to fully respond to a particular request, do so.

## **DOCUMENTS TO BE PRODUCED**

1. All Documents reflecting any Communications, including but not limited to, interviews, telephone calls and other meetings or discussions, with the SEC relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings, including, but not limited to, communications which on information and belief occurred between the week of May 25, 2015 and present;

2. All Documents reflecting any Communications, including but not limited to interviews, telephone calls and other meetings or discussions with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds, any ratings agencies, including but not limited to Standard & Poor's and/or Moody's, any of the Zohar Trustees, and/or A&M, relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings;

3. Any Common Interest Agreement or Joint Defense Agreement with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds related in any way to Respondents or the Zohar Funds.

4. Documents related to MBIA's evaluation, assessment and/or negotiation of its investment and/or its disposition of its investment in the Zohar Funds, including Documents reflecting any evaluation of the indentures and collateral management agreements for the Zohar Funds;

5. All Documents reflecting any evaluation or analysis of, or Communications regarding the Zohar Trustee Reports or other information available from the Zohar Trustees regarding MBIA's investment in the Zohar Funds;

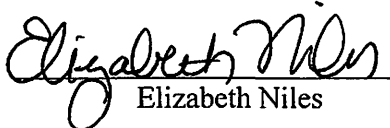


6. All Communications and Documents related to the Zohar Funds, Zohar Notes, Patriarch, or Respondents for custodians Anthony McKiernan and David Crowle, and any other individual whom the SEC has notified MBIA it may call to testify, or MBIA has reason to believe may be called to testify, in connection with the hearing ordered in the Order Instituting Proceedings, to commence before the Honorable Carol Fox Foelak, Administrative Law Judge, on October 24, 2016 (including, but not limited to, e-mails between, on the one hand, McKiernan and/or Crowle, and, on the other, Respondents and/or the Zohar Trustee, to the extent not already produced to the SEC in this investigation and/or administrative proceeding).

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of a Subpoena to Produce Documents directed at MBIA Insurance Corporation and issued by Judge Carol Fox Foelak on September 16, 2016 upon counsel, Jonathan Hoff, Esq., on this 16<sup>th</sup> day of September, 2016, in the manner indicated below:

Jonathan Hoff, Esq.  
Cadwalader, Wickersham & Taft LLP  
200 Liberty Street  
New York, NY 10281  
(By Express Mail)

  
Elizabeth Niles



**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

1. TO  
Anthony McKiernan  
c/o Mr. Jonathan Hoff, Cadwalader,  
Wickersham & Taft LLP  
200 Liberty Street, New York, NY 10281

This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.

2. PLACE OF PRODUCTION  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166-0193

3. DATE AND TIME PRODUCTION IS DUE  
September 21, 2016 at 10:00am

4. PARTY AND COUNSEL REQUESTING  
ISSUANCE OF SUBPOENA  
Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC,  
Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC  
  
By: Randy Mastro, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166-0193

5. THE PRODUCTION OF DOCUMENTS OR OTHER  
TANGIBLE EVIDENCE IS ORDERED BY  
  
The Honorable Carol Fox Foelak  
  
Administrative Law Judge  
U.S. Securities and Exchange Commission

6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER  
**In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462**

7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)

See attachment.

DATE SIGNED	SIGNATURE OF ADMINISTRATIVE LAW JUDGE
<i>Sept. 16, 2016</i>	<i>Carol Fox Foelak</i>

**GENERAL INSTRUCTIONS**

**MOTION TO QUASH**

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

**ATTACHMENT TO SUBPOENA DUCES TECUM  
TO ANTHONY MCKIERNAN**

**DEFINITIONS AND INSTRUCTIONS**

1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

2. "And" and "or" have both the conjunctive and disjunctive meanings, and the terms "each," "any," and "all" mean "each and every."

3. "A&M" means Alvarez & Marsal and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

4. "Barclays" means Barclays Capital, Inc. and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

5. "Common Interest Agreement" or "Joint Defense Agreement" means any written and/or oral agreement pursuant to which confidential information is exchanged and protected.

6. "Communication" means any form of contact, documentary, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence.

7. "Document" is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or "emails"), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files,

electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other Documents which are in your possession, custody, or control or to which you otherwise have access.

8. "Including" means including but not limited to. When the word "including" is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the Documents requested.

9. "MBIA" means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

10. "Moody's" means Moody's Investor Service and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives, agents, and its and their present and former attorneys.

11. "Nord" means Norddeutsche Landesbank Girozentrale and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

12. "Order Instituting Proceedings" means the United States Securities and Exchange Commission's Order Instituting Proceedings in 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, dated March 30, 2015.

13. "Rabobank" means Rabobank International and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

14. "Related to", "relating to", and "in connection with", in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

15. "Respondents" means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

16. "SEC" means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.

17. "SEI" means SEI Investments Company and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

18. "Standard & Poor's" means Standard & Poor's Financial Services LLC and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

19. "Varde Partners" means Varde Partners, Inc. and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

20. "You" or "your" means Anthony McKiernan, and all of your representatives, agents, and present and former attorneys.

21. "Zohar Funds" means the following collateralized loan obligations: Zohar I, Zohar II and Zohar III.

22. "Zohar Indentures" means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.



23. "Zohar Notes" means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

24. "Zohar Trustee" means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term "Zohar Trustee" includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

25. "Zohar Trustee Reports" means the "Monthly Report" and "Note Valuation Report" and any electronic data or other files that accompany such "Monthly Report" or "Note Valuation Report" prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

26. If you encounter any perceived ambiguity, vagueness, or confusion in construing either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

27. References to any natural person shall be deemed to include that natural person's agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity's subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

28. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the Document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

29. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

30. All Documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

31. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored Documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the foregoing, data files, including excel files, are to be produced in native format. Responsive Documents that are not electronically stored are to be produced (i) in a single-page TIFF format,

with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

32. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce Documents from a prior time period to fully respond to a particular request, do so.

## **DOCUMENTS TO BE PRODUCED**

1. All Documents reflecting any Communications, including but not limited to, interviews, telephone calls and other meetings or discussions, with the SEC relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings, including, but not limited to, communications which on information and belief occurred between the week of May 25, 2015 and present;

2. All Documents reflecting any Communications, including but not limited to interviews, telephone calls and other meetings or discussions with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds, any ratings agencies, including but not limited to Standard & Poor's and/or Moody's, any of the Zohar Trustees, and/or A&M, relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings;

3. Any Common Interest Agreement or Joint Defense Agreement with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds related in any way to Respondents or the Zohar Funds;

4. Documents related to MBIA's evaluation, assessment and/or negotiation of its investment and/or its disposition of its investment in the Zohar Funds, including Documents reflecting any evaluation of the indentures and collateral management agreements for the Zohar Funds;

5. All Documents reflecting any evaluation or analysis of, or Communications relating to the Zohar Trustee Reports or other information available from the Zohar Trustees relating to MBIA's investment in the Zohar Funds;

6. All Communications and Documents related to the Zohar Funds, Zohar Notes, Patriarch, or Respondents (including, but not limited to, e-mails between You, on the one hand, and Respondents and/or the Zohar Trustee, on the other, to the extent not already produced to the SEC in this investigation and/or administrative proceeding).

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of a Subpoena to Produce Documents directed at Anthony McKiernan and issued by Judge Carol Fox Foelak on September 16, 2016 upon his counsel, Jonathan Hoff, Esq., on this 16<sup>th</sup> day of September, 2016, in the manner indicated below:

Jonathan Hoff, Esq.  
Cadwalader, Wickersham & Taft LLP  
200 Liberty Street  
New York, NY 10281  
(By Express Mail)

  
Elizabeth Niles

**From:** [Loseman, Monica K.](mailto:MLoseman@gibsondunn.com)  
**To:** [Hoff \[PARTNER\], Jonathan M.](mailto:Jonathan.M.Hoff@cw.com)  
**Cc:** [Maloney, Mary Beth](mailto:MMaloney@gibsondunn.com); [Niles, Elizabeth M.](mailto:ENiles@gibsondunn.com)  
**Subject:** RE: Subpoena to MBIA Corp. In re Tilton et al. (AP No. 3-16462)  
**Date:** Tuesday, October 4, 2016 12:22:25 PM

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Thank you; I appreciate the prompt response. We intend to move to compel Wednesday afternoon but will amend the motion to the extent MBIA agrees to produce anything on Thursday. Based on our last meet and confer call, it seemed highly unlikely MBIA would be inclined to produce anything at all; indeed, you noted MBIA is not inclined to produce any document in response to the second subpoena. Given the impending hearing date, I am not inclined to wait to bring this to the ALJ's attention even one more day. But we will note for the ALJ the short timetable confronted by both MBIA and Respondents and the intervening holidays.

Monica

**Monica K. Loseman**

## GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1801 California Street, Denver, CO 80202-2642  
Tel +1 303.298.5784 • Fax +1 303.313.2828  
[MLoseman@gibsondunn.com](mailto:MLoseman@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

**From:** Hoff [PARTNER], Jonathan M. [<mailto:jonathan.hoff@cw.com>]  
**Sent:** Tuesday, October 4, 2016 9:54 AM  
**To:** Loseman, Monica K. <[MLoseman@gibsondunn.com](mailto:MLoseman@gibsondunn.com)>  
**Cc:** Maloney, Mary Beth <[MMaloney@gibsondunn.com](mailto:MMaloney@gibsondunn.com)>; Niles, Elizabeth M. <[ENiles@gibsondunn.com](mailto:ENiles@gibsondunn.com)>  
**Subject:** RE: Subpoena to MBIA Corp. In re Tilton et al. (AP No. 3-16462)

I was out yesterday for Rosh Hashanah and the person at the client responsible for this was out yesterday and again today. Thus, it's highly unlikely that we'll be able to respond by tomorrow. Probably Thursday.

Jonathan M. Hoff  
Partner  
Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, NY 10281  
Tel: +1 212.504.6474  
[REDACTED]  
Fax: +1 212.504.6666  
[jonathan.hoff@cw.com](mailto:jonathan.hoff@cw.com)  
[www.cadwalader.com](http://www.cadwalader.com)

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**From:** Loseman, Monica K. [<mailto:MLoseman@gibsondunn.com>]  
**Sent:** Monday, October 03, 2016 3:41 PM  
**To:** Hoff [PARTNER], Jonathan M.  
**Cc:** Maloney, Mary Beth; Niles, Elizabeth M.

**Subject:** Subpoena to MBIA Corp. In re Tilton et al. (AP No. 3-16462)

Mr. Hoff,

Thank you for the call last Wednesday regarding Respondents' subpoena to MBIA Corp. in the *In re Tilton et al.* Administrative Proceeding (No. 3-16462). We understand that you are not inclined to produce documents in response to the subpoena given MBIA's prior production. However, as noted on our call, because both Mr. McKiernan and Mr. Crowle were listed on the Division's witness list, we continue to believe that these communications and documents are directly relevant to the Division's case and necessary for cross-examination (indeed, these documents may be relevant to other witness' testimony as well). In the interest of avoiding undue burden, we endeavored to develop an even narrower set of requests for your consideration, set forth below. The October 24 hearing is fast approaching, and Respondents need to procure these documents sufficiently in advance to afford them an opportunity to prepare. Respondents therefore intend to move to compel on Wednesday afternoon unless MBIA agrees to produce the narrow set of documents requested below before that time.

- All Documents reflecting any Communications, including but not limited to interviews, telephone calls and other meetings or discussions, with the SEC relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings. This would include communications between January 3, 2011 (the first day we believe the Division contacted MBIA) and the present between You, on the one hand, and any member of the Division of Enforcement or any other employee, agents or representative of the SEC (including, for example, any communications with Charles River & Associates), on the other hand, relating to the investigation or this proceeding. (September 16, 2016 Subpoena Request No. 1.) As we noted on our meet and confer call, no other subpoena recipient objected to this request.
- Any and all communications concerning or relating to the Division of Enforcement's provision of documents to you on or about December 18, 2014 and January 30, 2014, or any other documents provided to you by the Division in connection with the investigation or this proceeding, including but not limited to internal communication, and communications with others on the Division's list, the Trustee or the subsequent collateral manager. (September 16, 2016 Subpoena Request Nos. 1, 2, 5, 6.)
- All communications between January 3, 2011 and the present with those entities listed in Request No. 2 concerning or relating to the effect of the SEC investigation or the Administrative Proceeding on a) Your rights and responsibilities as Credit Enhancer or the Controlling Party for Zohar I and Zohar II, b) any potential restructuring or extension of maturity of Zohar I and Zohar II, and c) the sale of any Zohar I or Zohar II obligors or Collateral. (September 16, 2016 Subpoena Request No. 2.)
- Any and all recordings of communications between You and Ms. Tilton or any other employee or representative of Respondents. (September 16, 2016 Subpoena Request No. 6.)
- Any common interest or joint defense agreement with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds related in any way to Respondents or the Zohar Funds. (September 16, 2016 Subpoena Request No. 3)



- All Communications and Documents related to the Zohar Funds, Zohar Notes, Patriarch, or Respondents for custodian David Crowle. (September 16, 2016 Subpoena Request No. 6.) We understand that such documents for Mr. McKiernan have already been produced. MBIA may no longer possess such documents for Mr. Crowle given his employment with MBIA terminated some time ago. If that is the case, please confirm.

If helpful, I would be happy to discuss at your convenience.

Thank you,

Monica  
**Monica K. Loseman**

## GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1801 California Street, Denver, CO 80202-2642  
Tel +1 303.298.5784 • Fax +1 303.313.2828  
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MBIA course  
Call w/ Bingham  
only can use - info 4 purposes v-  
lit. Its discovery material. Tray brought tr-

She did a brief w/ MBIA peeps in  
2010 and provided a package of info  
She provided to Moody's. She didn't  
ask it 2 be kept confidential.

No regular docs she got b4 - trustee  
report.

She cranks out reports say. Shows in  
compliance w/ appropriate standards when  
PAs said tray didn't receive - info  
tray rated.

We read - Feb 14. say. & were  
seek. to own Zohar I. If we knew  
about the skepticism, would be kept  
more enthusiastic. We want to  
understand these deals, and test  
them.

PP 2 aware v our subpoena, we  
can issue a subpoena. We'd like 2  
talk about 2 diff. things.

① What are your <sup>own</sup> questions, what  
does info does MBIA and why

② Are there people who can tell  
~~what~~ is what you were told  
about the deal.

#1 is easily doable. The 2nd piece is  
more challenge. b/c - people @ MBIA  
who committed 2 us are not there  
anymore. No what was said about  
Zohar I b/c there was dep testimony.

not a similar record 4 Zohar II, + pr. - people +  
use respon, went there, Troy is second  
hand stories. Some contemporaneous docs,  
but peeps are done.

We do w people who know about -  
recent docs.

- primary benefit - a sub, is that witness  
can share everything he knows instead of  
worry what he learned from docs by  
obtain - order or otherwise.

MBIA ~~was~~ may be more comfortable

<sup>MBIA</sup>  
Relieves has talk 2 some investors  
and been on investor calls. Relieves -  
investors wld like 2 know more about  
~~Status~~ companies.

We ask 4 who they've spoken to.

4d ask - typed records v-call.  
Relieves  
The Natixis ~~banker~~ was also an  
investor in this deal.

## Carolyn Schiff

---

**From:** Lynn Tilton  
**Sent:** Friday, March 15, 2013 5:00 PM  
**To:** Anthony.McKiernan@mbia.com  
**Subject:** Zohar CDO 2003-I1 Term Sheet Draft (Privileged and Confidential)  
**Attachments:** 031513 Zohar I Draft Restructuring Term Sheet.doc; Zohar I -Conformed Indenture (Waterfall Section).pdf; Fourth\_Supplemental\_Indenture.pdf

*Anthony,*

*Please find attached the term sheet for the Zohar I restructure. I presented it to Jaime at Barclays today and I believe that they agree that this is the best thing for the deal.*

*Needless to say, the rumors of the week has accelerated the need to get something done more pronounced.*

*I know we are meeting next Friday but I am available to discuss any time over the weekend.*

*Please let me know if you would like to go through it over the phone.*

*Best Regards,*

*Lynn*



PATRIARCH PARTNERS

*Lynn Tilton*

*Chief Executive Officer*

*Patriarch Partners, LLC*

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**Confidential Preliminary Draft for Discussion 3/15/13**

**Proposed Modifications to Zohar CDO 2003-1**

The following is a summary of changes to the Indenture for Zohar CDO 2003-1 which are under discussion.

<b>Part I. Proposal</b>	
	In brief, the proposal is to simplify the Indenture by eliminating many of the tests and requirements which are not relevant to the goal of repayment of the Notes. The Stated Maturity would also be extended, and amendments would be made so that principal prepayments on the Class A Notes would be increased. The rating agencies would be asked to withdraw all ratings on the Notes, which would eliminate the many ratings-based restrictions and requirements in the Indenture.
<b>PART II: Major Terms to be Amended</b>	
	Extend Stated Maturity from November 2015 to January 2017 (which will become a Payment Date).
	Eliminate all Coverage Tests - <u>Exhibit A</u> shows the resulting amendments to the Priority of Payments. One result of this change is that Interest Proceeds that currently are applied to pay various expenses if the Coverage Tests are satisfied will now all be used to pay principal of the Class A Notes, pro rata; as a result of this "turbo", there will be no Interest Proceeds to pay certain fees and expenses and Class A Additional Interest while the Class A Notes are outstanding unless these payments are moved up in the Priority of Payments so that they are paid immediately before the "turbo".
	Release \$11.6 million of funds from the Interest Reserve Account into the Principal Collection Account and distribute pursuant to the revised Principal Proceeds Priority of Payments. This should result in pro rata payments of principal of the Class A Notes. Because this reserve would no longer be available to avoid an interest payment default, the interest payment event of default would be amended so that it is only applicable at Stated Maturity and the coverage of interest shortfalls under the financial guaranty would be revised in the same way.
	Release approximately \$1.5 million of funds held by Trustee in the Arranger Fee Escrow Account to CDC/Natixis, and release \$1.5 million held by Trustee in the Holdback Account to be applied to pay principal of Class A Notes, pro rata.
	Eliminate Events of Default relating to withholding taxes (Section 5.1(i)), Collateral Value Ratio (Section 5.1(k)) and minimum balance of cash reserve account (Section 5.1(n)).
	Eliminate the ratings by Standard & Poor's and Moody's of all Classes of Notes and all related notice, reporting and rating confirmation obligations. Eliminate fees to agencies and annual ratings updates.
	Change criteria for discretionary sales of Collateral Debt Obligations by eliminating ratings requirements and 15% annual limitation on discretionary sales. There will be no reinvestment of sales proceeds.

	The amount in the Principal Collection Account (\$9.75 million) that is currently reserved to meet lending commitments would remain available for follow-on lending, but only to existing Obligor. (This is the remainder of the amount that was reserved prior to the end of the Reinvestment Period for commitments to make loans). The allocation of this amount among the existing Obligor would be determined by the Collateral Manager.
	All rating agency driven reporting (collateral quality tests, concentration limits, rating agency categories of obligations, etc.) would be deleted from the reports.
<b>PART III: Other Terms to be Amended or Deleted</b>	
	As the Class A-1 Notes are now fully funded, references to the Class A-1 Note Agent, covenants and obligations relating to the Class A-1 Note Agent, to payments of Class A-1 Additional Amounts and Class A-1 Note Agent Fees, and references to borrowings, commitments and commitment fees, will be deleted. The Class A-1 Note Agent would no longer be a party to the Indenture.
	Change terms for optional redemption requirements to eliminate rating agency requirements (including discounts to Market Value for certain categories of assets).
	Eliminate Hedge Agreements and related concepts.
	Eliminate CP Conduit funding of Class A Notes (and, accordingly, eliminate incremental interest related to funding by CP Conduits).
<b>Part IV: Process</b>	
	If all Noteholders and MBIA approve in concept the proposed changes, the Collateral Manager will (i) prepare draft amendments and restatements to the Indenture, Collateral Management Agreement, Note Purchase Agreements and related documents for review by all parties, (ii) prepare a request from all parties to the Rating Agencies asking that they withdraw their ratings of the Notes, and (iii) discuss the proposal with the trustee and the Rating Agencies.

This term sheet is for discussion purposes only and is not a commitment or agreement of any kind on the part of Patriarch Partners VIII, Zohar CDO 2003-1 or any of their affiliates and should not be relied on as such nor does it describe all of the terms of the proposed transaction. Any obligation of Patriarch Partners VIII, Zohar CDO 2003-1 or any of their affiliates will only arise upon the signing of formal documents in form and substance satisfactory to Patriarch Partners VIII, Zohar CDO 2003-1 and their legal counsel and advisors, and upon satisfaction of the conditions to effectiveness provided for in such documents. The information contained herein is strictly confidential and is intended for review by the parties, their advisors and legal counsel only.

**Exhibit A** - Summary of proposed changes to the Priority of Payments that result primarily from the deletion of the coverage ratios.

This is only a summary, and the actual provisions are much more detailed. Many of the provisions described below as "remaining the same" will be revised to delete terms and provisions that are no longer applicable.

**I. Interest Proceeds Waterfall – Section 11.1(a)(i) of Indenture.**

- 1) Clauses (A) through (D) of Section 11.1(a)(i) to remain the same.
- 2) Clause (E) of Section 11.1(a)(i) to be deleted because there are no Hedge Agreements and there will be no Hedge Agreements.
- 3) Clause (F) of Section 11.1(a)(i) to remain the same.
- 4) Clause (F1) and (F2) of Section 11.1(a)(i) provide for the payment of any unpaid Senior Collateral Management Fee and then for the payment of unpaid Supplemental Credit Enhancement Premium and Credit Enhancement Premium. The provisions would remain the same except that the proviso relating to the Class A Interest Coverage Ratio Test will be removed.
- 5) Clause (G) of Section 11.1(a)(i) – currently allows payment of Credit Enhancement Liabilities to MBIA, subject to a cap (the Credit Enhancement Liabilities Threshold Amount) so long as (x) no Event of Default has occurred and is continuing or (y) the Class A Overcollateralization Ratio is at least 105%. The Class A Overcollateralization Ratio conditions listed in (y) would be removed such that, if MBIA funds under the Credit Enhancement, repayment under Clause (G) would be subject to the cap unless an Event of Default has occurred and is continuing.
- 6) A new clause will be added after Clause (G) to provide for payment of expenses not paid under clauses (A), (B) and (G) above due to the dollar limits described in those clauses, in the same order of priority, and additional reasonable fees and expenses of the Zohar Obligors. This clause will continue to be subject to a cap of \$200,000 per Payment Date. These amounts are currently paid in clause (J); however, because Clause (H) below will now be a "turbo" of the Class A Notes, unless we make this change Interest Proceeds will not be available to pay these amounts until the Class A Notes are paid in full.
- 7) A second new clause will be added after Clause (G) to provide for payment of Class A Additional Interest. This was previously paid in clause (K); however, because Clause (H) below will now be a "turbo" of the Class A Notes, unless we make this change Interest Proceeds will not be available to pay the Class A Additional Interest until the Class A Notes are paid in full.
- 8) A third new clause will be added after the payment of Class A Additional Interest to provide for the payment of the Subordinated Management Fee and the Arranger Fee (as to the Arranger Fee, subject to any existing caps where this is currently paid in the

Priority of Payments), pro rata, so long as no Event of Default has occurred and is continuing. This was previously paid in Section 11.2(a)(iv); however, because Clause (H) below will now be a "turbo" of the Class A Notes, unless we make this change no funds will be available to pay these fees until the Class A Notes are paid in full.

9) Clause (H) of Section 11.1(a)(i) currently provides that if any Class A Coverage Test is not satisfied, principal on the Class A Notes is paid from Interest Proceeds, pro rata, to Class A-1, A-2 and A-3 based on a principal sharing percentage until all Class A Coverage Tests are satisfied. The Coverage Tests will be deleted so that Clause (H) of Section 11.1(a)(i) will become a "turbo" under which all remaining Interest Proceeds would be paid, pro rata, to each Class of Class A Notes (according to the applicable sharing percentage) until the outstanding principal of the Class A Notes has been paid in full.

10) Clause (I) of Section 11.1(a)(i) to remain the same.

11) Clause (J) of Section 11.1(a)(i) to be deleted as these amounts will be paid at a higher priority (see Item (6) above).

12) Clause (K) of Section 11.1(a)(i) to be deleted as these amounts will be paid at a higher priority (see Item (7) above), and "Additional Amounts" should no longer be payable because the Notes have been fully funded and will be treated as term notes.

13) Clause (L) of Section 11.1(a)(i) to be deleted. The Class A-1 Note Agent Fee should no longer be paid because there are no unfunded commitments and there will be no Class A-1 Note Agent after the amendment.

14) Clause (M) of Section 11.1(a)(i), which currently provides for any remaining Interest Proceeds to be transferred to the Cash Collateral Account, will remain the same.

## **II. Principal Proceeds Waterfall – Sec. 11.1(a)(ii).**

1) Clauses (A) and (B) of Section 11.1(a)(ii) to remain the same.

2) Clauses (C) through (F) of Section 11.1(a)(ii) will be deleted.

3) Clause (G) of Section 11.1(a)(ii) to remain the same.

4) Clause (H) of Section 11.1(a)(ii) to remain the same.

5) Clause (I) of Section 11.1(a)(ii) to remain the same.

6) Clause (J) of Section 11.1(a)(ii), which currently provides for any remaining Principal Proceeds to be transferred to the Cash Collateral Account, will remain the same.

**III. Section 11.2 - Disbursements from the Cash Collateral Account.** Because of the changes to the Principal Proceeds waterfall and Interest Proceeds waterfall, no payments will be made from the Cash Collateral Account so long as any Class A Notes remain outstanding.



- 1) Section 11.2(a)(i), which provides for the replenishment of the Cash Reserve Account to the Required Reserve Amount, will be deleted.
- 2) Section 11.2(a)(ii) will remain the same.
- 3) Section 11.2(a)(iii) will be deleted as the payments to the Preference Shares have been made.
- 4) Section 11.2(a)(iiiA) provides that, if the Class A Coverage Tests are satisfied, then Additional Class A-3 Adjusted Amounts and accrued and unpaid Additional Premium Adjusted Amounts will be paid. This would be changed to remove the reference to the Class A Coverage Tests.
- 5) Section 11.2(a)(iv) provides for the Subordinated Management Fee and the Arranger Fee to be paid pro rata if no Event of Default has occurred and is continuing and the Class A Coverage Tests are satisfied (as to the Arranger Fee, subject to any existing caps in Section 11.2(a)(iv)). This would be changed to remove the reference to the Class A Coverage Tests.
- 6) Section 11.2(a)(v) will be deleted as it applied only during the Reinvestment Period.
- 7) Section 11.2(a)(vi) will be deleted as the Class A Notes will be paid in full from the Interest Proceeds waterfall and the Principal Proceeds waterfall before funds are deposited in the Cash Collateral Account.
- 8) Section 11.2(a)(vii), which provides for payment of the Minimum Total Credit Enhancement Premium to the to the extent not already paid, would remain the same.
- 9) Section 11.2(a)(viii) relating to payment of principal of the Class B Notes and Class C Notes, would remain the same.
- 10) Section 11.2(a)(ix) relating to payments of the Credit Enhancement Liabilities to the extent not paid, would remain the same.
- 11) Section 11.2(a)(x) relating to payments due under any Hedge Agreements, would be deleted.
- 12) Section 11.2(a)(xi) providing for payments of any remainder to holders of the Preference Shares, would remain the same.

8/22/13

MBIA

- Susan Allen Byrnes + Bryan Goff
- Ull
- Knott

( ) ( )

The one purpose of the meeting was to talk about whether there was going to be an exclusion + (unsettled commitment) did not come up at all - so take note of

- <sup>extension of ZI</sup> after of ZI
- usual sort - everyone is out to get her
- she did not buy up well you tell us what SEC is doing
- Bus. aspects were absent

① ~~Barclay~~ <sup>continues</sup> talked up Barclay  
 2pm reported to Barclay that MBIA was a board of extension  
 + Barclay told MBIA to wait

you to get what they would  
so antz was <sup>partnership</sup> <sup>negotiating</sup> what  
bought want

wants to go to go of my fees) <sup>from</sup>  
of forward <sup>semen +</sup>  
proceed includes <sup>sub</sup>

<sup>dis + term skill</sup>  
of one did not have tract  
she is up to go of sub  
fell <sup>willis</sup>

+ bought wants entire fee  
of forward + an equit equities

valued for a few of at  
least 3 top eligous

need a handle on what their experience  
of - firm doesn't want to sell  
it - someone to take over her  
believed co's

TOP 3  
are:  
MD, ACF  
+ Retirement

connected with wants  
what - more info

No more fees + eqy, Valuat

— I'm not used to free - not go to  
Wanted give of series but  
will give of Salvorducted

— All eqy Valuat was - always wanted  
to have 3<sup>rd</sup> part - but she died  
identifying that she promised to  
you all an atly analysis  
by the 11 @'s that she said

came to SEZ - 2I + 2II

- 1.4 times <sup>2II</sup>
- 2 I 60% coverage

- part from the equity
- She is will to Goal, Pat +  
to reine

Valuat of Top 11 part of the equity  
came to SEZ

② My concern is from view is open to go  
to us is to extract semit - excliate -

① the stuff about you guy ② what barclays wants - word  
well to  
The rest of what was discussed file

② - the tax thing

③ Valuations

→ the tax thing - the IRS - potential  
new tax bill w/ IRS  
④ \$750 Million tax bill

Are you exempt? No - How possible?  
She tried to exit: last 7 years  
IRS says she is mainly treaty tax liability  
on underlying oil & gas CO's service work

She is netting gains & losses - aggregate  
+ pay taxes out of her fees

As interest debt on loans has been decreased  
that went down is income to the oil & gas  
that interest received is debt forgiven  
+ more to oil & gas - not treated as  
more to oil & gas - so taxes of oil & gas  
not done properly for 7 years  
+ interest is unpaid or not forgiven

Tax liability that rolls up to her

all her marital fees - in to pay taxes  
she will be in court - great next week  
she is challenging

she says she  
won't  
need it  
on the  
2/11/03

- Ann a copy of the copy -  
~~letter~~

MD Helicopter was a real audit?

In her court in terms of new info  
about at least the top 3 -  
backup + MBIA went prepared  
to go forward

top 3  
II

Issue of Class A Notes - she agreed to  
~~it~~ - consent

Not a real start point

Agree: (that Date extend  
Notes Date

(in of Sub del - go forward)

Not enough to get

4/9 -

Chief Portfolio Officer

- Anthony McKernan - callendar - special situation
- + Kristin - ityok
- Jonathan - Brian
- Susan Dillio

Met with group 3 or 4 weeks ago -  
 extend 2I maturity - discussed in detail

(R) + the unfunded commitment in 2I + II

Senior (Tranche)  
 100% of Senior 2I - wrapped by MBSA  
 + piece of 2II  
 would that extend to 2III (?)  
 RA paid down nearly to degree we would have  
 worked

Get CO's ready - for scaled repi

Cascading  
 Cascading effort across the transactions  
 extended any sea to the maturity of 2I  
 continued movement on int. rate to  
 pay what they can pay to not default

(R) what is the plan  
 unfunded commitment

(R) No stalled infrastructure. could keep people  
 lean in droves

Also pieces of MFT - like at Duran - <sup>Dura</sup> just left

see outside from  
 with

when she offers to transfer. MCM. K...  
say to her.

Your conflicts are so "entrenched"

CEO, lender, equity, many for noteholder

She recommended to noteholder - Barclays.  
- Natixis

I want to use the unpledged commitments in general  
or specific of

\$ 8 mil in 21 ) Unpledged commitments  
\$ 45 " " 211

general pool for all co's  
concentrate issues

~~\$ used for the deal~~

Continues to talk about IRS - wants to get  
rid of without tax based default -  
never seen someone ask to unwind

Says IRS is "up her butt". She says taxes personal  
\$ 750 mil in a few she uses - don't know  
anything about this

James understands your ask.  
Barclays + Natixis - you have to give them info.

Barclays offered all Natixis sheet  
refi + pay down the deal

Constant about that  
she is coming out of protection per 10/10/08  
letter



Market them all as one business - the "Patriarch Family"

That's not how we bought the deal - 75 CO's - one etc.

If you're not going to work up me etc.

(A)

- every position? I can't do that. Then you're in ~~to~~ remove you as manager -

MD is the "Korn Ferry"

- sole bd member of at least one of the CO's *Natixen under*
- Agent lender to all of the CO's
- Managing 2 banks
- CEO - at least 3 or 4
- Lender
- Equity position participant (There was a close relationship of equity positions ~~to~~ from MBIA)

They're on subordinated lenders  
- committed to a # of CO's

- She says she will put pressure on Natixen
- Bancorp - will give you but we need info. I don't care - you will lose

Natixen  
They're  
all good  
of NY  
11-2015

~~Moody's~~ - try view us as ally -

I don't trust anyone to take the CEO position

- Agent bank to all the CO's

Q Asked to dox related to commitments  
she wouldnt provide

— time to me was come to an end to use the  
unfunded commitments  
Q — slightly unclear?

— need an account to do so - & we must provide  
— even to fund the unfunded -  
we need to look at this cost at first  
time

Justice wouldnt send until dispute was resolved  
so by MBIA said come to us in a costly cost  
vain.

Q Asked what CO's you invested in: - Yes

A. CO I can keep alive in any way -  
is better than letting it go. (pay phone CO.)

If it ains its not dead & I can save it.

All noteholders have to consent -

— Loan agent - well Mt ap.

A of amendments that have occurred

SEC NO DES 000659  
CONFIDENTIAL

Did MBIA  
provide?

No mention of removing the agent  
① Selling agent rights - The credit agent  
PPAS is selling assets

---

Amth took over Strat Fin in 2007

21 - new general uses true purchase discounted  
loans + ~~seller as originator~~ later known  
as originator

sell debt at premium or get out at par  
D of an equity contract  
weighted average life expectancy of loans:  
WAL (exp) 3 years

(You'd have some defaults etc - but would  
get paid out relatively quickly)

- but when slight to originate  
spg at PAR

RA LO's in "left support"  
would have a good amount of purf. credits  
now transferred to "hone run" status

4% for  
orig. rate  
at PAR  
good interest  
rates in these  
loans

~~Had~~ ~~call~~ ~~Apr~~ is  
there was a belief that aligned interests  
were there - but this turned into a per-  
sonal monster

Bankers in room will get paid  
1700 173

17 to  
get to

Deal makes sense about equity

"hone run" is recent development

How is there no plan to ps this deal down?  
We don't want to be sell in a down market  
just but to rephrase

I don't want to hit the trigger - we're not  
supposed to be manage to the trigger

You'll have a negative auction here to wait the  
triggers

2000(1)  
Nov 7 - June Jeff stopped from Anna - talk @  
to this say?

Who was at the meeting?

Antony + Lynn only at the  
meeting

~~Sell~~ on big chunk?

worried about the equity when she would  
refi? - asks Susan

She says it's don't tell the story

I have no clue whether there is a plan  
① is there a written report?

What to look at

Trustee Rep

- = an investigation
- = sub mgt fee
- = defaulted loans
- = OC tests - take up a huge part of asset
- (a lot of the tests - conducted)

Party agencies -

try have sum up

We will sit down & go thru the copies of other Managers  
① NOT credible - her fear of someone steal the CO.

It has become a fee based instead of equity based

"I haven't done the best job"

WALSH ~  
3 years - had  
was the plan

Why would she give you the info? - Co's will look bad - vacuum of info  
interest disc re character expenses are going

- Got some for stats - 2008, 9, 10 - 2 papers  
- memo for + val sheet

she made a <sup>payphone</sup> call ~~with~~ after you after  
I met after

- She says she funded the co herself -  
(the unperfected control she asked for)

I brought up my  $\$$  a sub-manager  
(- she says no info will get out + co)  
(will be under attack)

- I have issues to do up fees get paid

( $\$$ ) Principal Statute

issues about co  
in - equity allocation

( $\$$ ) Credit templates - described the equity ownership  
to (25 co's)

also  
cont. projections  
re: whether  
need about  
provisions

Once a year check up on a professional level

In Start - We look at and test for consistency of trustee reports  
- claims period one period - if some "critical" signs certify

- Value of collateral in In Start vs. trustee reports -  
- couldn't reconcile - different disputes

Have you tested whether they are following GAAP? - NO  
I assume everyone is following GAAP

OC Test -

Subordinated Fee sheets  
- analyze for debt

- our leverage increases  
We must throw consultants in

Try to make her go all in now has been  
more our strategy

→ Has her as manager equalizing the damage she could do

Offer in writing? Yes - she uses it as a threat - need up? am not repin

Expense for her - if we feel that <sup>she</sup> she would want a full release -  
wouldn't anal

Xinkuer - other eq's? -

Had loan not been extended for 12 months  
and a day - we'd have a gov. council  
opinion

② We're assuming how can there be 4's?

or LIBOR + 9 to LIBOR -  
or revenues shrinking, exp. balloon

Not mod up at which there would have been  
a default.

ATF is a 4 - she made several loans even  
last 12 months. Higher COGS than Revenue!  
CO is hemorrhaging. Revenue

Some resp. - if I am given enough time  
I can fix it around & keep it alive  
in all cases it's better than letting it die

When she switches to default?

(When the entire world would know in which  
she defaults)



Yes we are aware of "subject's"  
- She is doing this

Didn't know about Amendment

But Debb + Mathey on Trustee Report

("with respect to matters") - is it significant  
+ why?

- Concentrat units

They mean that concentrat units have been  
failing - it was more critical during  
restructured periods

Concentrat units matter to us in general

MBIA is not in Volcan III - so no M&A

"Symbiotic relationship" - yes we saw  
shared operations - us, facilitates  
some we get access to the financial  
we saw that -

I don't think that was the intention  
to give credits to other - matter it had  
to be strictly commercial refu - all ~~same~~

(8)

a sale basket which is opposite  
of what this trustee was designed  
to do.

She has talked about overlying trust structures

Stila & Jewel game  
~~of out there & I set it because I need  
this even point~~

(Matis one <sup>division</sup> into a class of derivatives)

- Ratings issue is moot - bc you are asking for  
financial info

Haircuts

We do care that she hasn't been paid  
the credit estimates - she will trade  
its proceeds for cancellation -  
she says she has produced more than  
enough

triggers, coverage, yield in all works to be  
look at.

Director  
Sandra Siler on Laurel, Market

- M&A - cont call out of position

Our need for a scenario not to go off -  
it is very multi textured situation for us  
not as simple as just pull out the collateral  
Mx.

Do I think RTI would get preference over  
RT absolutely.

~~① Strategic context~~

① Term sheet - yes in unit

② Warren <sup>of conflict of interest</sup> doesn't regard her fid. resp.

③ Jeltan says:  
Im capacity, conflict of the note holders +  
those CO's

to degree of how an advisory impact.

~ \$300 million for RTI + II

Meetings before last meeting - in when she says it

I have a loyalty to Noteholders  
the 200,000 I employ

But I have  
a conflict

to you are deeper than  
conflict day by day

(Patient's structure is complex, inadequate)

- She did not invest 27 funds in the 27

- She has sheet - deferred  
- there is a fee dispute currently (Nadler & Her)  
(a couple million dollars)  
to +

- ① ~~NO ZITT books who care?~~ Radion was some reimbursement on ZIT
- ② Who is a good cell Mgr? Jordan +
- ③ Fees - Trentel - They will think + it's hard to do

④ Most likely place where no problems exist

It is over \$4 million.

- spreadsheet has all the payments on it

PFZ - is then expert in the litigation

Kaplan here - counsel for Zucker + House

+ African Kaplan

MOFO ~~was~~ <sup>tax expert</sup> Hughes - on the debt to tax  
equal issue

4<sup>th</sup> Mill

Shulte Roth  
Shulte Roth - cannot deal with as per  
dispute re: Zohar VII deals -  
should not be coming out of ZI

Michelle for Natixis - also - maybe <sup>very</sup> related  
~~to~~ reimbursement then for discom related  
to litigation

Deborahs Layton & Dimp - then Delaware  
court - where we originally filed  
the lawsuit

never been told any info on this  
- 2008 default - unquote 10

Arc One &  
Zohar 55 Aug. -> she provides no info  
on these CO's.

Call of  
D. L. ... 7/30/13

- Susan D. L...

MBIA

can't  
tell if  
same  
been  
particular  
need  
email  
that goes  
with

(1) - Term sheet / Dec  
reflect per proposal  
re unrolled commitment

(2) - when Z.I. indenture was  
unrolled in 2004

Bonshen went back +  
checked at dex activity  
of a contract + found  
note that amount of \$

any  
copy of  
pages  
log -

+ Z.I.

Fuller is more \$ - unrolled  
commit in Z.II - No report  
yet on Z.II as far as she  
knew



except that they  
were in up

diff to get change the  
policy, agencies

negotiation  
so we were to Part 1 Part  
(\*) & ratify agency on other  
ratify agencies

MOA looked at & amended  
what the changes were



They need to announce ZI  
publish out that of 11/1/17  
2017 - some as ZII

- sort of make sense
- extend that of much less
- increase net flex
- eliminate coverage for  
- being events of default  
- we said no

of 73 sub for Ad <sup>per 24, down</sup>

She is only in primary concept  
but we don't like the  
language ability  
individual ability to analyze  
the concept of amortization



---

**From:** Smith, John B.  
**Sent:** Thursday, December 19, 2013 6:07 PM  
**To:** 'DiCicco, Susan F.'  
**Cc:** Biron, Kevin J.; Goff, Bryan P.; Sumner, Amy A.  
**Subject:** RE: In re Patriarch Partners -- MBIA

We have not confirmed these meanings with Patriarch but believe them to mean Principal, Interest payment made, Reversal of interest payment, and Waiver of interest payment. We have spot-checked some of these entries against entries in the trustee reports to confirm our understanding. I can go over our analyses of these entries in more detail when we talk.

John

---

**From:** DiCicco, Susan F. [<mailto:Susan.DiCicco@bingham.com>]  
**Sent:** Thursday, December 19, 2013 3:54 PM  
**To:** Smith, John B.  
**Cc:** Biron, Kevin J.; Goff, Bryan P.; Sumner, Amy A.  
**Subject:** RE: In re Patriarch Partners -- MBIA

Ok, thanks. For now, we just have a quick question to verify the meaning of the heading types: "P", "INT\_PAY", "REV\_INT\_PAY", and "WAIVE\_INT\_PAY".  
Susan

---

**From:** Smith, John B. [<mailto:SmithJB@SEC.GOV>]  
**Sent:** Thursday, December 19, 2013 5:51 PM  
**To:** DiCicco, Susan F.; Sumner, Amy A.  
**Subject:** RE: In re Patriarch Partners -- MBIA

My phone number is 303-844-1025. I will be out of the office for the rest of today and tomorrow, but I will be in Monday and Tuesday. If you are ready to talk by then, I would suggest Monday after 1 pm MT = 3 pm ET or Tuesday after 9 am MT = 11 am ET. I also plan to be in the office next Thursday and Friday.

I look forward to talking with you.

John

---

**From:** DiCicco, Susan F. [<mailto:Susan.DiCicco@bingham.com>]  
**Sent:** Thursday, December 19, 2013 9:32 AM  
**To:** Sumner, Amy A.  
**Cc:** Smith, John B.  
**Subject:** RE: In re Patriarch Partners -- MBIA

Thanks. John, what is your phone number?  
Susan

---

**From:** Sumner, Amy A. [<mailto:SumnerA@SEC.GOV>]  
**Sent:** Wednesday, December 18, 2013 12:01 PM  
**To:** DiCicco, Susan F.

**Cc:** Smith, John B.

**Subject:** [WARNING: MESSAGE ENCRYPTED]RE: In re Patriarch Partners -- MBIA

Susan,

I am attaching the documents in an encrypted zip file. I will forward the password in a separate email.

I will be out of the office beginning Friday and will return on January 2. John is generally around, other than December 31. I would appreciate it if you could determine the availability of your team and work on scheduling a follow up call with John.

Best Regards,  
Amy

---

**From:** DiCicco, Susan F. [<mailto:Susan.DiCicco@bingham.com>]

**Sent:** Tuesday, December 17, 2013 11:57 AM

**To:** Sumner, Amy A.; Lee, Allison H.

**Cc:** Smith, Jeffrey Q. (ny); Biron, Kevin J.; DiCicco, Susan F.

**Subject:** In re Patriarch Partners -- MBIA

Allison and Amy,

Based on our prior discussions, we understand that you have certain documents you plan to share with MBIA and its counsel in furtherance of having additional off the record discussions with MBIA concerning the Zohar I and Zohar II transactions. We appreciate the opportunity to review these documents in advance of meeting with the Staff so that we can review and digest the material and then have a more efficient and productive meeting.

As discussed, MBIA agrees to receive these documents on the following terms proposed by the SEC:

1. The documents provided are confidential material and will be treated confidentially by MBIA and its counsel.
2. MBIA and its counsel will not use the documents provided for any purposes other than cooperating with the SEC's investigation of Patriarch.
3. You have stressed that MBIA cannot create any documents that reference or summarize any of the confidential documents provided and that the SEC would consider that an impermissible use of the documents.
4. Notwithstanding the foregoing, based on information MBIA learns in the documents, MBIA may discuss the documents or information with Ms. Tilton or other representatives of Patriarch or reference it in correspondence to Patriarch.
5. Notwithstanding the foregoing, based on information MBIA learns in the documents or otherwise, MBIA may freely commence litigation against Ms. Tilton, Patriarch or their related entities. MBIA will not cite or attach any of the documents received from the SEC to any complaint while those documents remain confidential and non-public. MBIA is free to use other copies of the documents if MBIA obtains them through means other than the SEC.

In addition, MBIA requests that the SEC not inform Ms. Tilton, Patriarch or their representatives that the documents and information have been provided to MBIA and its counsel without first apprising MBIA and its counsel of that fact. We appreciate the Staff's willingness to accommodate this request.

Please advise if this email accurately summarizes the arrangement for the delivery of the documents.

Please send the documents to my attention. We had also contemplated a follow up call among my Bingham team with John Smith to walk through certain data. Assuming we receive the documents this week, we should be able to schedule that call promptly.

Regards,

Susan

Susan F. DiCicco  
T +1.212.705.7421  
F +1.212.752.5378  
[susan.dicicco@bingham.com](mailto:susan.dicicco@bingham.com)

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---

**From:** Sumner, Amy A.  
**Sent:** Thursday, January 30, 2014 10:39 AM  
**To:** 'DiCicco, Susan F.'  
**Cc:** Smith, John B.  
**Subject:** Patriarch (HO-11665; D-3350)

Susan,

I'm attaching the documents relating to Global that I inadvertently omitted when I sent you documents in December. I will send the password in a separate email.

Can we set a time to speak about next steps? I am fairly open Monday and Tuesday of next week.



 |||

Regards,

**Amy A. Sumner**  
Division of Enforcement ||  
U.S. Securities and Exchange Commission ||  
Denver Regional Office ||  
1801 California St., Suite 1500, Denver CO 80202 ||  
tel: 303.844.1089 || email: [sumnera@sec.gov](mailto:sumnera@sec.gov)

---

**From:** Sumner, Amy A.  
**Sent:** Thursday, January 30, 2014 10:39 AM  
**To:** 'DiCicco, Susan F.'  
**Subject:** Patriarch (HO-11665; D-3350)

Password: #Sec!801



**Amy A. Sumner**  
Division of Enforcement ||  
U.S. Securities and Exchange Commission ||  
Denver Regional Office ||  
1801 California St., Suite 1500, Denver CO 80202 ||  
tel: 303.844.1089 || email: [sumnera@sec.gov](mailto:sumnera@sec.gov)

10/2/13

(Susan Dilisco)

④ want to send you doc

① what if data does MBIA already have?

② need your rep use only <sup>no</sup> copy  
for purposes of interest  
& will destroy after

③ what I'm for to send

- but annuals
- but payments

on X # of CO's

- ACF  
- Global  
- (Maybe  
Returned  
a MBIA?)

(Trans-legal  
civil part)

- some financial (or) etc of CO's
- log run or runy scrips
- aucted on market

late 2011

summary Credit Legales tract  
 sue against tract with  
 backwater in time  
 Authy

said  
~~some~~ Credit ag <sup>did not</sup> ~~would~~ have seized ag  
 ("Corporate Credit ag")

In connect w/ our other sites -  
 the "former MIT people"  
 who worked on these deals + a  
 couple of men all throughout

By name

Neither side called for,

Walter Tucker's dep came in at trial

One of the other guys wanted next to do up the litigation

we don't know what he would say about the what of these deals

all well + good + how well expect the deals to perform

when you depend on him he tried to be helpful to them but also kept some secret mach - he wouldn't

- David Crowle - he is harmless - no axe to grind against NSA - but not try to do any great things -

He wanted not to do anything

not the real price  
kind of  
strutted  
intentionally  
he doesn't  
want  
as to  
as



Helpful - really crowd

enter crowd  
↳ BOSS

Patrick ?

Patrick & would make for me  
now

got \$50 million  
not go to new  
to

Much ado - \$30 million swing  
black black

needed  
to  
in a

Bill

one concern on all of this - do  
I have a better sense about what  
we're really talking about

the size & magnitude matters - remember  
one who goes down on road -

then as large as a aircraft

**To:** Sumner, Amy A.[SumnerA@SEC.GOV]  
**Cc:** Bliss, Dugan[BlissD@SEC.GOV]  
**From:** Tompkins, Anne  
**Sent:** Mon 6/1/2015 10:30:52 AM  
**Importance:** Normal  
**Subject:** RE: Update

great

**From:** Sumner, Amy A. [mailto:SumnerA@SEC.GOV]  
**Sent:** Monday, June 01, 2015 10:17 AM  
**To:** Tompkins, Anne  
**Cc:** Bliss, Dugan  
**Subject:** RE: Update

Thanks, we will call you then.

**From:** Tompkins, Anne [mailto:Anne.Tompkins@cwt.com]  
**Sent:** Monday, June 01, 2015 8:09 AM  
**To:** Sumner, Amy A.  
**Cc:** Bliss, Dugan  
**Subject:** RE: Update

perfect. Thanks – is it more convenient for you to call me? I'm at [REDACTED] (direct line). Or, if you all are in different places, I can send a call-in number.

**From:** Sumner, Amy A. [mailto:SumnerA@SEC.GOV]  
**Sent:** Monday, June 01, 2015 10:08 AM  
**To:** Tompkins, Anne  
**Cc:** Bliss, Dugan  
**Subject:** RE: Update

Hi Anne—How about 4:30 EST today?

**From:** Tompkins, Anne [<mailto:Anne.Tompkins@cwt.com>]  
**Sent:** Monday, June 01, 2015 7:35 AM  
**To:** Sumner, Amy A.  
**Subject:** Update

Hi Amy –

I wanted to check in with you and see if you have time for an update call this afternoon or tomorrow? As you know, MBIA received a third party subpoena last Friday and we have also been working on the issues in the Indenture regarding the May 20<sup>th</sup> sale date. I'm free today from around 3:30 EST on – so if you have time today or tomorrow, let me know.

Thanks,

Anne

Anne M. Tompkins

Cadwalader, Wickersham & Taft LLP

227 West Trade Street

Charlotte, NC 28202

Tel: +1 704.348-5222

Fax: +1 704.348.5200

[anne.tompkins@cwt.com](mailto:anne.tompkins@cwt.com)

[www.cadwalader.com](http://www.cadwalader.com)

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## FIFTH SUPPLEMENTAL INDENTURE

FIFTH SUPPLEMENTAL INDENTURE, dated as of June 19, 2015 (this "Supplemental Indenture") to the INDENTURE, dated as of November 13, 2003 (including any amendments thereto, the "Indenture"), among:

ZOHAR CDO 2003-1, LIMITED, an exempted company with limited liability incorporated and existing under the laws of the Cayman Islands, as Issuer;

ZOHAR CDO 2003-1, CORP., a corporation organized and existing under the laws of the State of Delaware, as the Co-Issuer);

ZOHAR CDO 2003-1, LLC, a limited liability company organized and existing under the laws of the State of Delaware, as the Zohar Subsidiary;

MBIA INSURANCE CORPORATION, a stock insurance company incorporated under the laws of the State of New York, as the Credit Enhancer (and also the Controlling Party);

CDC FINANCIAL PRODUCTS INC., corporation organized and existing under the laws of the State of Delaware, as agent for the holders of the Class A-1 Notes; and

U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as Trustee.

### W I T N E S S E T H:

WHEREAS, pursuant to Section 8.2 of the Indenture, subject to the proviso thereto, with the consent of (x) the Controlling Party and (y) the Collateral Manager, delivered to the Trustee and the Zohar Obligors, the Trustee and the Zohar Obligors may enter into one or more supplemental indentures to add any provisions to, or change in any manner or eliminate any of the provisions of the Indenture or modify in any manner the rights of the holders of the Notes or the Holders of the Preference Shares;

WHEREAS, Section 12.2(e) of the Indenture provides, subject to the conditions and limitations contained therein, that promptly following the Payment Date in May, 2015, the Issuer and the Zohar Subsidiary (or the Collateral Manager on their behalf) shall direct the Trustee to sell all Collateral Debt Obligations in the manner directed by the Collateral Manager without regard to the limitations in Section 12.2(a) or Section 12.2(c);

WHEREAS, the Collateral Manager and Controlling Party have agreed to provide their consent to a change to the provisions of Section 12.2(e) regarding the sale of Collateral Debt Obligations;

NOW, THEREFORE, in consideration of the premises herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Unless otherwise noted herein, terms defined in the Indenture and used herein shall have the meanings given to them in the Indenture.

2. Amendment to Section 12.2(e) of the Indenture. The text of Section 12.2(e) of the Indenture is hereby deleted in its entirety and replaced with the following text:

"At any time following the Payment Date occurring in May 2015, the Collateral Manager, on behalf of the Issuer and the Zohar Subsidiary, may (but shall not be required to) direct the Trustee in writing to sell, and if directed by the Collateral Manager the Trustee shall sell in the manner directed by the Collateral Manager in writing, any or all Collateral Debt Obligations without regard to the foregoing limitations in Section 12.2(a) or Section 12.2(c); provided that the Collateral Manager may direct the sale of any Collateral Debt Obligation pursuant to this Section 12.2(e) only at a price that in its sole judgment is commercially reasonable."

3. Limited Effect and Reservation of Rights. Except as provided herein, the Indenture shall remain unchanged and in full force and effect, and each reference to the Indenture and words of similar import in the Indenture and other Transaction Documents shall be a reference to the Indenture as amended hereby and as the same may be further amended, supplemented or otherwise modified. This Supplemental Indenture shall not become effective unless and until it has been consented to by each of the Controlling Party and the Collateral Manager.

The provisions contained herein shall not be construed as a waiver or amendment of any other provision of the Indenture. Nothing herein shall be deemed in any manner to waive, limit, impair, or restrict the ability of any party hereto to protect and preserve its rights, remedies, and interests. Each party hereto expressly reserves all right, remedies, positions, and defenses under or with respect to the Indenture, Transaction Documents, and under applicable law.


4. GOVERNING LAW; Miscellaneous. (a) THIS SUPPLEMENTAL INDENTURE AND ALL MATTERS ARISING OUT OF OR RELATING TO THE INDENTURE AND EACH NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

(b) This Supplemental Indenture may be executed by the parties to this Supplemental Indenture on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Supplemental Indenture by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof.

(c) The Section headings herein are for convenience only and shall not affect the construction hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first above written.

ZOHAR CDO 2003-1, LIMITED,  
as Issuer

By:   
Name: Christopher Watler  
Title: Director

ZOHAR CDO 2003-1, CORP.,  
as Co-Issuer

By: \_\_\_\_\_  
Name:  
Title:

ZOHAR CDO 2003-1, LLC,  
as Zohar Subsidiary

By: Zohar CDO 2003-1, Limited,  
as Managing Member

By:   
Name:  
Title: **Christopher Watler**  
**Director**

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

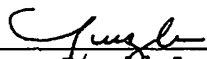
By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first above written.

ZOHAR CDO 2003-1, LIMITED,  
as Issuer

By: \_\_\_\_\_  
Name:  
Title:

ZOHAR CDO 2003-1, CORP.,  
as Co-Issuer

By:  \_\_\_\_\_  
Name: Donald J. Puglisi  
Title: President

ZOHAR CDO 2003-1, LLC,  
as Zohar Subsidiary

By: Zohar CDO 2003-1, Limited,  
as Managing Member

By: \_\_\_\_\_  
Name:  
Title:

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Name:  
Title:



IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed and delivered by their respective proper and duly authorized officers as of the day and year first above written.

ZOHAR CDO 2003-1, LIMITED,  
as Issuer

By: \_\_\_\_\_  
Name:  
Title:

ZOHAR CDO 2003-1, CORP.,  
as Co-Issuer

By: \_\_\_\_\_  
Name:  
Title:

ZOHAR CDO 2003-1, LLC,  
as Zohar Subsidiary

By: Zohar CDO 2003-1, Limited,  
as Managing Member


By: \_\_\_\_\_  
Name:  
Title:

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Name:  
Title: **Ben D. DeRoss**  
**Vice President**

CONSENTED TO AND AGREED:

MBIA INSURANCE CORPORATION,  
as Credit Enhancer and Controlling Party

By:   
Name: *Anthony McKernan*  
Title: *Managing Director*

PATRIARCH PARTNERS VIII, LLC,  
as Collateral Manager

By: \_\_\_\_\_  
Name:  
Title:

CONSENTED TO AND AGREED:

MBIA INSURANCE CORPORATION,  
as Credit Enhancer and Controlling Party

By: \_\_\_\_\_  
Name:  
Title:

PATRIARCH PARTNERS VIII, LLC,  
as Collateral Manager

By:  \_\_\_\_\_  
Name:  
Title:

# THE WALL STREET JOURNAL.

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<http://www.wsj.com/articles/sec-files-fraud-charges-against-lynn-tilton-patriarch-partners-1427726853>

MARKETS

## SEC Files Fraud Charges Against Lynn Tilton, Patriarch Partners

Agency says company misled investors about performance of loan assets; Tilton denies charges



Lynn Tilton attends the 12th Annual Living Legends of Aviation Awards in January. The SEC alleged Ms. Tilton and her Patriarch Partners defrauded investors, charges Ms. Tilton denied *PHOTO: ROB LATOUR/INVISION/ASSOCIATED PRESS*

By **MATT JARZEMSKY** And **ARUNA VISWANATHA**

Updated March 30, 2015 7:19 p.m. ET

Flashy financier Lynn Tilton and her Patriarch Partners LLC are facing allegations that they defrauded investors by hiding the true value of loans in some funds managed by the private-equity firm.

The Securities and Exchange Commission on Monday said Ms. Tilton and Patriarch, which invests in troubled companies, “breached their fiduciary duties” by valuing the loans using a different methodology than described in the funds’ offering documents. In doing so, Ms. Tilton misled investors about the quality of complex investment products managed by Patriarch and collected almost \$200 million in fees she wouldn’t otherwise be entitled to, the agency said.

Ms. Tilton created “a major conflict of interest that was never disclosed” to investors, SEC enforcement director Andrew Ceresney said in announcing the case. The SEC filed the charges before an internal administrative law judge but didn’t disclose what penalties it is seeking.

Ms. Tilton said Patriarch has adequately reported the funds’ performance to investors who are well aware of how her firm operates. Patriarch manages companies that are largely owned by the loan funds, known as collateralized loan obligations.

None of the investors in Patriarch’s CLOs—large, sophisticated institutions—has ever complained to the firm about its practices, she said.

“I’m choosing to fight,” Ms. Tilton said. “My reputation is very important to me and my companies. When my integrity or my intent are questioned, I fight back and let truth prevail.”

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READ MORE

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- How Patriarch Partners CEO Lynn Tilton Built Her Empire (June 5, 2014)
- Tilton Flaunts Her Style at Patriarch (Jan. 8, 2011)

The dust-up pits Ms. Tilton, who launched Patriarch with her own money 15 years ago, against a regulator pushing for greater transparency from investment firms. Patriarch

has invested in more than 75 companies, including auto-parts supplier Dura Automotive Systems and mapmaker Rand McNally, according to its website.

Ms. Tilton, a rare woman at the helm of a private-equity firm, is known for her frank manner and brash personal style.

After a Ford Motor Co. executive asked her whether she would “strip and flip” her companies, she responded, “it’s only men that I strip and flip. My companies I hold long and close to my heart,” according to a 2011 profile in *The Wall Street Journal*.

Several years ago, she was slated to star in a reality television show focused on her business dubbed “Diva of Distressed,” but the show never aired.

Ms. Tilton, who said she spends about 300 days a year traveling to Patriarch’s companies, sports the résumé of a Wall Street veteran. She has worked at Morgan Stanley, Goldman Sachs Group Inc. and Amroc Investments LLC, the investment firm co-founded by billionaire investor Marc Lasry.

At issue is how Patriarch reported the value of investments held by three CLOs—pools of corporate loans made or purchased with investor funds. The funds, known as the Zohars, are managed by Patriarch and have raised more than \$2.5 billion from investors, according to the SEC.

The SEC said Patriarch failed to appropriately communicate to investors that some loans in the pools were actually in default.

“Nearly all valuations of loan assets have been reported to investors as unchanged from the time they were acquired despite many of the companies making partial or no interest payments to the funds for several years,” the SEC said.

Ms. Tilton said the CLO fund documents don’t require Patriarch to classify loans with short-term problems in default, she said. Indeed, she added, bumps in the road are normal for many of her companies because she actively seeks to invest in distressed businesses.

The conflict stems in part from Patriarch’s strategy of managing the companies in which its CLOs invest.

“It is not passive by any means, but a very active strategy where the value depends deeply on our participation,” Ms. Tilton said.

Some of Patriarch’s companies have ended up in bankruptcy. In February, the firm asked investors to discuss a restructuring of the three Zohar funds, according to an investor letter reviewed by The Wall Street Journal. The reorganization could include delaying repayment or reducing the amount of principal investors would receive, the letter said.

Mr. Ceresney said the SEC brought the case through its in-house court in part to try to move it quickly, since one of the funds at issue has a maturity date of November 2015. The agency has stepped up its use of the courts in recent years, to some criticism from defendants who argue the process is tilted toward the commission and doesn’t offer the same protections as U.S. federal court.

A spokesman for Patriarch said Ms. Tilton, through her personal affiliates, owns more than two thirds of the notes and the equity in the fund with the November maturity. “This case belongs in district court,” he said.

The Wall Street Journal reported in October the agency had a 100% win rate for the 12 months through September when it brought cases before SEC-appointed administrative judges. Earlier this month, the agency lost part of a case it brought in the forum.

**Write to** Matt Jarzemsky at [matthew.jarzemsky@wsj.com](mailto:matthew.jarzemsky@wsj.com) and Aruna Viswanatha at [Aruna.Viswanatha@wsj.com](mailto:Aruna.Viswanatha@wsj.com)

**Corrections & Amplifications:**

An earlier version of this story incorrectly said Patriarch Partners LLC uses its own cash to buy struggling companies. The companies are largely owned by the loan funds, known as collateralized loan obligations. Lynn Tilton, through her personal affiliates, invests in the CLOs. (March 30)

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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  
AMENDED WITNESS LIST

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

Dated: August 22, 2016

Respectfully Submitted,



\_\_\_\_\_  
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 **DIVISION OF ENFORCEMENT'S AMENDED WITNESS LIST** was served on the following on this 22<sup>nd</sup> day of August, 2016, in the manner indicated below:

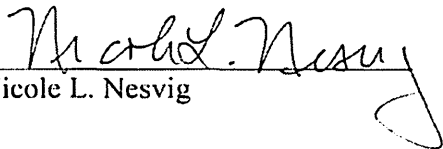
Securities and Exchange Commission  
Brent Fields, Secretary  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
(By Facsimile and original and three copies by UPS)

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

Randy M. Mastro, Esq.  
Lawrence J. Zweifach, Esq.  
Barry Goldsmith, Esq.  
Caitlin J. Halligan, Esq.  
Reed Brodsky, Esq.  
Monica K. Loseman, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166  
(By email pursuant to the parties' agreement)

Susan E. Brune, Esq.  
Brune Law PC  
450 Park Avenue  
New York, NY 10022  
(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**

<b>1. Will Call List</b>	
<b>Name and Contact Information</b>	<b>Area of Testimony</b>
Lynn Tilton c/o Randy Mastro Gibson Dunn & Crutcher 200 Park Avenue New York, NY 10166	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.

<b>2. May Call List</b>	
<b>Name and Contact Information</b>	<b>Area of Testimony</b>
<p>Carlos Mercado  c/o Marc A. Weinstein  Hughes Hubbard &amp; Reed LLP  One Battery Park Plaza  New York, NY 10004-1482</p>	<p>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.</p>
<p>Peter Berlant  Anchin, Block and Anchin  c/o Eric Reider  Bryan Cave LLP  1290 Avenue of the Americas  New York, NY 10104-3300</p>	<p>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.</p>
<p>Steve Panagos  Moelis &amp; Co.  c/o Jeff Sinek  Kirkland &amp; Ellis LLP  333 South Hope Street  Los Angeles, CA 90071</p>	<p>Mr. Panagos may be called to testify regarding restructuring proposals for the Zohar Funds.</p>
<p>Karen Wu  c/o Marc A. Weinstein  Hughes Hubbard &amp; Reed LLP  One Battery Park Plaza  New York, NY 10004-1482</p>	<p>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.</p>
<p>Jaime Aldama  Rohit Chaku  Barclays  c/o Andrew Michaelson  Boies, Schiller &amp; Flexner LLP  575 Lexington Avenue, 7th Floor  New York, NY 10022</p>	<p>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.</p>

<p>Anthony McKiernan  MBIA, Inc.  c/o Jonathan Hoff  Cadwalader, Wickersham &amp; Taft LLP  200 Liberty Street  New York, NY 10281</p>	<p>Mr. McKiernan may be called to testify regarding MBIA's investment in the Zohar Fund(s), MBIA's insurance of Zohar I and II, communication regarding the investment or insurance, MBIA's relationship with Patriarch, MBIA's role with respect to the Zohar Funds, 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.</p>
<p>David Crowle  MBIA, Inc.  c/o Susan DiCicco  Morgan Lewis  101 Park Avenue  New York, NY 10178</p>	<p>Mr. Crowle may be called to testify regarding MBIA's investment in 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.</p>
<p>Wendy Ruttle  Rabobank  c/o Jantra Van Roy  Zeichner, Ellman &amp; Krause LLP  1211 Avenue of the Americas, 40th Floor  New York, NY 10036</p>	<p>Ms. Ruttle may be called to testify regarding Rabobank's investment in the Zohar Fund(s), communication regarding the investment, relationship with Patriarch, her understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Rabobank's investment.</p>
<p>Ramki Muthukrishnan  Tim Walsh  Standard and Poors  c/o Penny Windle  Cahill Gordon &amp; Reindel LLP  Eighty Pine Street  New York, NY 10005-1702</p>	<p>Mr. Muthukrishnan and/or Mr. Walsh may be called to testify regarding Standard and Poor's rating and/or monitoring of the Zohar Funds, communications regarding the rating and/or monitoring of the Zohar Funds, information received from Patriarch, and any interactions with Tilton or other Patriarch employees.</p>

<p>Jeremy Hedberg  Matt Mach  Varde Partners  c/o Matthew Rossi  Mayer Brown LLP  1999 K Street N.W.  Washington DC 20006-1101</p>	<p>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.</p>
<p>Omar Bolli  Nord/LB  c/o Michael M. Fay  Berg &amp; Androphy  120 W. 45th Street, 38th Floor  New York, NY 10036</p>	<p>Mr. Bolli may be called to testify regarding Nord/LB'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 Nord/LB's investment.</p>
<p>David Aniloff  SEI  c/o Merri Jo Gillette  Morgan Lewis  77 West Wacker Dr.  Chicago, IL  60601-5094</p>	<p>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.</p>
<p>Michael Craig-Scheckman  <b>REDACTED</b></p>	<p>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.</p>
<p>Any witness identified by Respondent</p>	
<p>Any witness necessary for rebuttal (including but not limited to rebuttal to affirmative defenses)</p>	
<p>Any witness necessary to authenticate a document or the source of certain materials</p>	

STEIN, J.  
PART I

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

At AS Part \_\_\_ of the Supreme Court of the  
State of New York, held at the County  
Courthouse, 60 Centre Street, New York,  
New York, on the \_\_\_ of September, 2016.

PRESENT: Hon. \_\_\_\_\_, J.S.C.

~~SUPREME COURT OF THE STATE OF NEW YORK~~  
~~COUNTY OF NEW YORK~~

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 9/15/16

PATRIARCH PARTNERS XV, LLC and  
OCTALUNA LLC,

Plaintiffs,

v.

U.S. BANK NATIONAL ASSOCIATION and  
MBIA INSURANCE CORPORATION,

Defendants.

x  
: CASE NO. 1:16-CV-07218  
: INDEX NO. 654812 / 2016  
: ~~AS Part~~  
: ~~Justice~~  
: ORDER TO SHOW CAUSE  
: x

The Court having considered the Summons and Verified Complaint in this action, to be  
utilized as an Affidavit pursuant to CPLR 105(u); the Affirmation of Mark A. Kirsch, dated  
September 12, 2016, and exhibits annexed thereto; the Affidavit of John H. Reohr IV, and  
exhibits annexed thereto; the Affidavit of Steven L. Schwarcz, and exhibits annexed thereto; and  
the memorandum of law of Plaintiffs Patriarch Partners XV, LLC and Octaluna LLC  
(collectively, "Plaintiffs") in support of their application by order to show cause for a temporary  
restraining order and preliminary injunction in respect of a proposed September 15, 2016 sale by  
the Trustee (the "Proposed Sale") of collateral (the "Collateral") held by the Trustee on behalf of  
non-parties Zohar CDO 2003-1, Limited, Zohar CDO 2003-1, Corp., and/or Zohar 2003-1, LLC

SM/S

*argument down and been had on the record in Ct on 23rd Sept 13, 2016,*

(collectively, "Zohar I"); and having found sufficient reason alleged and good cause appearing therefore, it is hereby:

ORDERED that Defendants U.S. Bank National Association ("U.S. Bank" or the

"Trustee") and MBIA Insurance Corporation ("MBIA") (collectively, "Defendants"), or

Defendants' attorneys, show cause before ~~this Court, at LAS Part of the Supreme Court of~~ *the United States District Court For The Southern District of New York* ~~the State of New York, County of New York, located at 60 Centre Street, New York, New York,~~

*500 Pearl Street*  
10007, on the 6 day of October, 2016 at 10: A .m., or as soon thereafter as counsel can

be heard, why an order should not be issued, pursuant to ~~CPLR §§ 6301, 6313, 3101(a), 3102(b),~~ *Fed. R. Civ. P. 65,*

~~3106(a), 3107, and 3120.~~

- a. Granting Plaintiffs a preliminarily injunction, pending trial and determination of Plaintiffs' application for a permanent injunction, enjoining and restraining Defendants, their agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them, from (i) proceeding in any way with and/or consummating the Trustee's Proposed Sale of the Collateral; (ii) directing and/or instructing any person (including but not limited to any liquidation agent appointed by the Trustee) to proceed in any way with and/or consummate the Trustee's Proposed Sale of the Collateral; (iii) proceeding in any way with and/or consummating any future proposed sale of the Collateral or any part thereof; or (iv) directing and/or instructing any person to proceed in any way with and/or consummate any future proposed sale of the Collateral;
- b. Compelling the Trustee to provide Plaintiffs with all books and records concerning the Proposed Sale and any related marketing efforts;

- c. Granting Plaintiffs expedited discovery in connection with their preliminary injunction application in advance of any hearing on that application; and
- d. Granting Plaintiffs such other relief as this Court deems just and proper;

and it is further

ORDERED that, pending the hearing and determination of Plaintiffs' application for a preliminary injunction, Defendants, their agents, servants, employees, officers, attorneys, and all other persons in active concert or participation with them are temporarily enjoined and restrained from (i) proceeding in any way with and/or consummating the Trustee's Proposed Sale of the Collateral; (ii) directing and/or instructing any person (including but not limited to any liquidation agent appointed by the Trustee) to proceed in any way with and/or consummate the Trustee's Proposed Sale of the Collateral; (iii) proceeding in any way with and/or consummating any future proposed sale of the Collateral or any part thereof; or (iv) directing and/or instructing any person to proceed in any way with and/or consummate any future proposed sale of the Collateral or any part thereof; and it is further

ORDERED that, pursuant to CPLR §§ 3101(a), 3102(b), 3106(a), 3107, and 3120, Plaintiff shall be permitted to serve requests for production of documents (in the form attached hereto as Exhibits 1 and 2), and to notice the deposition of one representative of each Defendant, upon entry of this Order, and that Defendants shall produce all documents responsive to Plaintiffs' requests no later than fourteen days prior to the date set forth below for oral argument on Plaintiffs' application for a preliminary injunction (the "Oral Argument Date"), and shall produce their representatives for deposition within seven days prior to the Oral Argument Date; and it is further



ORDERED that service upon Defendants of a copy of this Order to Show Cause, together with the papers upon which it was granted, along with the Summons and Verified Complaint, by hand, facsimile, or electronic mail on or before 5:00 p.m. on the 14 day of September, 2016,

shall be deemed good and sufficient service thereof; and it is further

ORDERED that answering and responsive papers, <sup>to the motion for a preliminary injunction</sup> if any, shall be served by hand or by electronic mail on Mark A. Kirsch, of the law firm Gibson, Dunn & Crutcher LLP, 200 Park

Avenue, New York, New York, 10166, counsel for Plaintiffs, on or before ~~12:00 noon~~ on the 27 day of September, 2016; and it is further

ORDERED that reply papers, if any, be served upon Defendants, or their attorneys, if

any, by hand or email delivery on or before the 27 day of ~~October~~ <sup>September</sup> ~~2016~~ <sup>October 2016 at noon;</sup> and it is further <sup>Ordered that the hearing of plts' motion for a preliminary injunction shall take place on October 6 at 10 AM.</sup>

ORDERED that oral argument is directed on Plaintiffs' application for a preliminary injunction on the \_\_\_\_\_ day of \_\_\_\_\_, 2015 at \_\_\_\_\_ m., or as soon thereafter as counsel may be heard.

SECURITY WILL BE POSTED IN THE AMOUNT OF \$ 250,000. ,  
BY: 12: Noon on Sept 15

ENTERED:  
9/14/16  
[Signature]  
U.S.D.J.  
PART I

279

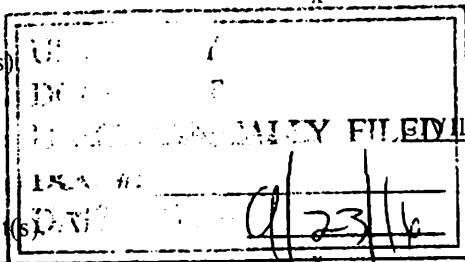
Patriarch Partners

Plaintiff(s)

-v-

US Bank National Association

Defendant(s)



CASE MANAGEMENT PLAN (JUDGE RAKOFF)

16cv7128 (JSR)

This Court requires that this case shall be ready for trial on 03-01-2017.

After consultation with counsel for the parties, the following Case Management Plan is adopted. This plan is also a scheduling order pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure.

- A. The case (is) (is not) to be tried to a jury. [Circle as appropriate]
- B. Joinder of additional parties must be accomplished by 10/17/16.
- C. Amended pleadings may be filed without leave of Court until 10/17/16.
- D. Discovery (in addition to the disclosures required by Fed. R. Civ. P. 26(a)):
  - 1. Documents. First request for production of documents, if any, must be served by 9/27/16. Further document requests may be served as required, but no document request may be served later than 30 days prior to the date of the close of discovery as set forth in item 6 below.
  - 2. Interrogatories. Interrogatories pursuant to Rule 33.3(a) of the Local Civil Rules of the Southern District of New York must be served by 9/27/16. No other interrogatories are permitted except upon prior express permission of Judge Rakoff. No Rule 33.3(a) interrogatories need be served with respect to disclosures automatically required by Fed. R. Civ. P. 26(a).
  - 3. Experts. Every party-proponent of a claim (including any counterclaim, cross-claim, or third-party claim) that intends to offer expert testimony in respect of such claim must make the disclosures required by Fed. R. Civ. P. 26(a)(2) by 11/19/16. Every party-opponent of such claim that intends to offer expert testimony in opposition to such claim must make the disclosures required by Fed. R. Civ. P. 26(a)(2) by 12/5/16. No expert testimony (whether designated as "rebuttal" or otherwise) will be permitted by other experts or beyond the scope of the opinions covered by the aforesaid disclosures except upon prior express permission of the Court, application for which must be made no later than 10 days after the date specified in the immediately preceding sentence. All experts may be deposed, but such depositions must occur within the time limit for all depositions set forth below.
  - 4. Depositions. All depositions (including any expert depositions, see item 3 above) must be completed by 12/7/16. Unless counsel agree otherwise or the Court so orders, depositions shall not commence until all parties have completed the initial disclosures required by Fed. R. Civ. P. 26(a)(1) or until four weeks from the date of this Order, whichever is earlier.

Depositions shall proceed concurrently, with no party having priority, and no deposition shall extend beyond one business day without prior leave of the Court.

5. Requests to Admit. Requests to Admit, if any, must be served by 12/23/16 [insert date that is no later than 30 days prior to date of close of discovery as set forth in item 6 below.]

6. All discovery is to be completed by 1/19/17. Interim deadlines for items 1-5 above may be extended by the parties on consent without application to the Court, provided the parties are certain they can still meet the discovery completion date set forth in this paragraph. The discovery completion date may be adjourned only upon a showing to the Court of extraordinary circumstances, and may not be extended on consent.

E. Post-discovery summary judgment motions in the form prescribed by the Court's Individual Rules of Practice may be brought on without further consultation with the Court provided that a Notice of any such motion, in the form specified in the Court's Individual Rules of Practice, is filed no later than one week following the close-of-discovery date (item D-6 above) and provided that the moving papers are served by 1/27/17, answering papers by 2/10/17, and reply papers by 2/17/17 [the last of these days being no later than six weeks following the close of discovery]. Each party must file its respective papers with the Clerk of the Court on the same date that such papers are served. Additionally, on the same date that any papers are served and filed, counsel filing and serving the papers must arrange to deliver courtesy non-electronic hard copies to the Courthouse for delivery to Chambers.

F. A final pre-trial conference, as well as oral argument on any post-discovery summary judgment motions, shall be held on 3/1/17 at 4pm [date to be inserted by the Court], at which time the Court shall set a firm trial date. The timing and other requirements for the Joint Pretrial Order and/or other pre-trial submissions shall be governed by the Court's Individual Rules of Practice.

G. All motions and applications shall be governed by Judge Rakoff's Individual Rules of Practice. Counsel shall promptly familiarize themselves with all of the Court's Individual Rules, as well as with the Local Rules for the United States District Court for the Southern District of New York.

SO ORDERED.

  
JED S. RAKOFF  
U.S.D.J.

DATED: New York, New York  
9/20/16

To: Sumner, Amy A.[SumnerA@SEC.GOV]  
Cc: Avergun, Jodi[Jodi.Avergun@cwt.com]  
From: Tompkins, Anne  
Sent: Thur 4/23/2015 6:11:15 PM  
Importance: Normal  
Subject: MBIA

Hi Amy –

I just left you a voicemail and wanted to also send you an email to introduce myself and Jodi Avergun. We represent MBIA and asked Susan DiCicco to reach out to you to let you know of this transition. Susan told us that you all had spoken today.

Jodi and I wanted to introduce ourselves to you. Please give me a call at your convenience. We look forward to meeting you and getting a sense of what you all might need from MBIA in the Patriarch litigation.

Thanks so much,

Anne

Anne M. Tompkins

Cadwalader, Wickersham & Taft LLP

227 West Trade Street

Charlotte, NC 28202

Tel: +1 704.348-5222

Fax: +1 704.348.5200

[anne.tompkins@cwt.com](mailto:anne.tompkins@cwt.com)

[www.cadwalader.com](http://www.cadwalader.com)

-----  
NOTE: The information in this email is confidential and may be legally privileged. If you

are not the intended recipient, you must not read, use or disseminate the information; please advise the sender immediately by reply email and delete this message and any attachments without retaining a copy. Although this email and any attachments are believed to be free of any virus or other defect that may affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Cadwalader, Wickersham & Taft LLP for any loss or damage arising in any way from its use.

-----

**To:** 'Hoff [PARTNER], Jonathan M.'[jonathan.hoff@cwt.com]  
**From:** Sumner, Amy A.  
**Sent:** Mon 9/19/2016 1:24:17 PM  
**Importance:** Normal  
**Subject:** RE:

303 844 1089.

Talk to you then. Thanks.

**From:** Hoff [PARTNER], Jonathan M. [mailto:jonathan.hoff@cwt.com]  
**Sent:** Monday, September 19, 2016 11:23 AM  
**To:** Sumner, Amy A.  
**Subject:** RE:

That works. Should I call you? If so, what number?

Jonathan M. Hoff


Partner

Cadwalader, Wickersham & Taft LLP

One World Financial Center

New York, NY 10281

Tel: +1 212.504.6474

  
Fax: +1 212.504.6666

[jonathan.hoff@cwt.com](mailto:jonathan.hoff@cwt.com)

[www.cadwalader.com](http://www.cadwalader.com)

**From:** Sumner, Amy A. [mailto:[SumnerA@SEC.GOV](mailto:SumnerA@SEC.GOV)]

**Sent:** Monday, September 19, 2016 1:22 PM  
**To:** Hoff [PARTNER], Jonathan M.  
**Subject:** RE:

10:30 Eastern tomorrow?

**From:** Hoff [PARTNER], Jonathan M. [<mailto:jonathan.hoff@cwt.com>]  
**Sent:** Monday, September 19, 2016 11:06 AM  
**To:** Sumner, Amy A.  
**Subject:**

Can we set up a time to talk? I'm available today until 2 pm, Eastern, and between 4 and 5 pm, Eastern, and tomorrow between 10:30 am and 4:30 pm, Eastern.

Jonathan M. Hoff

Partner

Cadwalader, Wickersham & Taft LLP

One World Financial Center

New York, NY 10281

Tel: +1 212.504.6474

Cell Phone: +1 914.980.8100

Fax: +1 212.504.6666

[jonathan.hoff@cwt.com](mailto:jonathan.hoff@cwt.com)

[www.cadwalader.com](http://www.cadwalader.com)


CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copies of 1) Respondents' Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, 2) Respondents' Memorandum of Law in Support of Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, and 3) the Declaration of Mary Beth Maloney in Support of Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, on this 5<sup>th</sup> day of October, 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)

  
Ariel Santamaria