**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 MOTION TO PARTIALLY STRIKE RESPONDENTS' STATEMENTS OF MESSRS. LUNDELIUS, VINELLA, AND SCHWARCZ**

## Introduction

The Division of Enforcement ("Division") respectfully moves to strike the portions of Respondents' newly-disclosed expert statements that do anything more than adopt the opinions of Respondents' previously-disclosed expert reports. Several weeks ago, Respondents moved to belatedly introduce new expert opinions under the guise of the unavailability of certain expert witnesses. The Division objected to this tactic, and Your Honor ordered that Respondents would not be permitted to "introduce new expert reports," but rather would be limited to substituting experts that "adopt the opinions of the existing expert report[s]." Despite this clear directive, Respondents have recently proffered three new expert witness statements that, on their face, violate this Order. Indeed, these statements make clear that Respondents' prior motion was precisely what the Division anticipated: an effort to introduce previously-undisclosed expert opinions well after expert reports were exchanged, and on the eve of the hearing. Respondents' continued attempts to belatedly introduce new expert witness testimony – in violation of Your Honor's Order – should

not be permitted. The portions of the expert witness statements that go beyond the plain language of the prior Order and offer new expert opinions should be stricken. Respondents should also be ordered to provide the Division and Your Honor with copies of the original expert reports indicating the specific portions that the substitute experts are adopting.

**Background**

The process for presenting expert testimony was established early on in this proceeding. The May 7, 2015 Prehearing Order provided a schedule for exchanging expert reports, and specifically noted that "[e]xpert witnesses' direct testimony will be via expert report." Order, Rel. No. 2647, dated May 7, 2015. On August 22, 2016 Respondents moved to modify this prehearing order to "permit them to submit reports from three new expert witnesses." Resps.' Memo. of Law in Support of Mot. for Limited Mod. of May 7, 2015 Order at 1, filed Aug. 22, 2016. The Division opposed this motion because, among other things, Respondents were "attempting to belatedly introduce ... opinions of" these expert witnesses. Div.'s Opp. to Resps.' Mot. for Limited Mod. of May 7, 2015 Order at 1, filed Aug. 29, 2016. As the Division noted, "Respondents should not be permitted to adjust their previously-disclosed expert opinions on the eve of trial under the guise of the unavailability of certain witnesses." *Id.* at 9-10.

On September 16, 2016, Your Honor denied Respondents' motion in large part. While Respondents were offered the opportunity to have each of these new expert witnesses "adopt the opinions of the existing expert report[s] as his own," that was all Respondents were permitted to do. Order at 2, Rel. No. 4161, dated September 16, 2016. The order could not have been more clear: "Insofar as Respondents propose to introduce new expert reports, their motion will be denied." *Id.*

Despite this explicit ruling, on October 3, 2016, Respondents served on the Division "statements" of the three new experts – Charles Lundelius, Peter Vinella, and Steven Schwarcz. *See* Ltr. from R. Mastro to D. Bliss, dated Oct. 3, 2016, attached hereto as Ex. 1. On their face, and as detailed below, each of these statements violates the September 16 Order.

**Argument**

Each of Respondents' newly-disclosed expert statements attempts to offer new expert opinions, in direct violation of Your Honor's prior Order.

Mr. Lundelius, who is offered as a replacement expert for Richard Dietrich, does adopt certain opinions of Dr. Deitrich. *See* Stmt. of Charles R. Lundelius, Jr., attached hereto as Ex. 2. However, Mr. Lundelius goes on to offer multiple new expert opinions. *See id.* ¶ 7 ("I adopt that opinion *and give the following additional reasons in support of that opinion*: ...") (emphasis added); ¶ 8 (I adopt that opinion *and give the following additional reasons in support of that opinion*: ...") (emphasis added); ¶ 9 (I adopt that opinion *and give the following additional reasons in support of that opinion:* ...") (emphasis added). Despite the clear language of Your Honor's September 16, 2016 order, Mr. Lundelius does not purport to simply adopt the opinion of Dr. Dietrich as his own, but instead introduces entirely new accounting concepts and cites to different accounting literature than what is contained in Dr. Dietrich's expert report. For example, Mr. Lundelius offers an opinion that the Division's accounting expert, Dr. Henning, should have evaluated certain loans to portfolio companies as Troubled Debt Restructurings ("TDRs") and considered FASB Accounting Standards Codification ("ASC") Subtopic 310-40 in his report. *Id.*, ¶ 7. However, Dr. Deitrich makes no mention of TDRs or ASC Subtopic 310-40 in his report. Mr. Lundelius's Statement is clearly an effort by Respondents to introduce an entirely new opinion on the eve of the hearing. Mr. Lundelius also gratuitously criticizes Dr. Henning offering the new

opinion that "Dr. Henning's opening and rebuttal reports are flawed for reasons beyond those described above." *Id.* ¶ 12.

Mr. Vinella, who is offered as a replacement expert for Marti Murray, similarly offers new expert opinions. Rather than simply adopting Ms. Murray's opinions, Mr. Vinella attempts to backdoor his own opinions into evidence. For example, Mr. Vinella comments on Ms. Murray's opinion that "the governing documents for the Zohar Funds provided Patriarch with the necessary tools, including the ability to modify loans to avert default." *See* Stmt. of Peter Vinella, attached hereto as Ex.3, at ¶ 6. Rather than simply adopting this opinion, Mr. Vinella offers his own views. *See id.* ("I adopt that opinion to the following extent: the Zohar Funds' governing documents permitted Patriarch Partners (as the collateral manager) broad authority over the management and disposition of the underlying loans, including, without limitation, the ability to modify loans for any reason at its sole discretion."). That is not adopting Ms. Murray's opinion. For example, Ms. Murray's report does not use the terms "broad authority" or "sole discretion." *See also* id. at ¶ 7 ("I adopt this opinion *in that it is consistent with the general language in Section 2.4 ....*") (emphasis added). And like Mr. Lundelius, Mr. Vinella also offers a new opinion that "Mr. Wagner's report is flawed for reasons beyond those described above." *Id.* at ¶ 9.

Mr. Schwarcz's statement suffers from the same problems as Mr. Vinella's. Mr. Schwarcz comments on only one of Ms. Murray's opinions. Rather than simply adopt this opinion, he also attempts to introduce his own views, offering several sentences of new opinions. *See* Stmt. of Steven L. Schwarcz, attached hereto as Ex. 4, at ¶ 6 ("I adopt that opinion to the following extent: successful execution of the Zohar Funds' investment strategy required flexibility in managing the portfolio-company investments. For example, Patriarch might choose to allow a portfolio company to delay payment of interest or principal on its debt, enabling the company to use the cash for other

purposes that could assist with its successful turnaround. A successful turnaround would enhance the portfolio company's value and potentially increase the amount the Funds would realize from their investment in the portfolio company."). Finally, like Messrs. Lundelius and Vinella, Mr. Schwarcz offers the new opinion that "Mr. Wagner's report is flawed" for additional reasons. *Id.* at ¶ 7.

Each of these statements goes beyond simply "adopt[ing] the opinions of the existing expert report[s] as his own." Order at 2, Rel. No. 4161, dated September 16, 2016. For that reason alone, these portions of the statements – anything beyond adoption of the original opinions – should be stricken. If Messrs. Lundelius, Vinella, and Schwarcz cannot simply adopt the opinion or opinions – because, for example, they do not agree with the opinions as stated – they should be ordered to withdraw any commentary on those opinions.

In addition, allowing these new opinions to be introduced at this late stage of the proceeding would prejudice the Division. From the outset of this case, it has been clear that "[e]xpert witnesses' direct testimony will be via [their] expert report." Order, Rel. No. 2647, dated May 7, 2015. As a result, the Division has been preparing to examine Respondents' experts based on the opinions expressed in their written reports. For the same reasons the Division outlined in its opposition to Respondents' initial attempt to add new expert witnesses, disclosing new opinions just weeks before the hearing would cause serious prejudice. *See* Div.'s Opp. to Resps.' Mot. for Limited Mod. of May 7, 2015 Order at 8, filed Aug. 29, 2016. In sum, Respondents' continued efforts to substitute new expert opinions should be rejected.

The Division does not object to Respondents' substitute experts adopting less than the full reports of Dr. Deitrich or Ms. Murray. However, should Respondents' substitute experts adopt less

than the full reports – which appears to be the case[1] – Respondents should be ordered to make clear the portions of the expert report that is being adopted so the Division may plan for the substitute experts' cross-examination. To this end, should the substitute experts not wish to adopt a full expert report, Respondents should provide copies of the original expert reports that redact those portions which the substitute experts will not adopt. This will eliminate any confusion about which portions (both opinions and reasons therefore) of the respective expert report have been adopted, and will eliminate any confusion on cross-examination as to how the substitute expert has opined. This will also insure that, consistent with Your Honor's prior Order, a substitute expert is not going beyond the four corners of the expert report he is adopting.

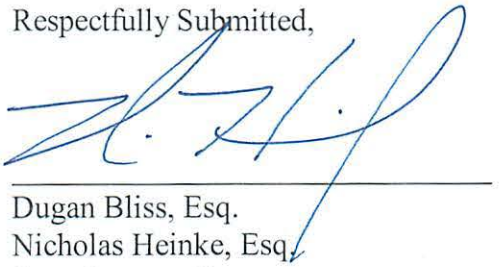
**Conclusion**

For the foregoing reasons, the portions of the statements of Messrs. Lundelius, Vinella, and Schwarcz that go beyond adopting the opinions of Respondents' original expert witnesses should be stricken. Respondents should further be admonished that any attempt to have Messrs. Lundelius, Vinella, and Schwarcz introduce new expert opinions at the hearing will not be permitted.

[1] For example, the Division notes that, in Respondents' cover letter providing these new expert statements, Respondents "withdraw Ms. Murray's report and will not seek to introduce it in evidence or otherwise rely on it in any way, except to the limited extent of the specific opinions adopted by Messrs. Vinella and Schwarcz." Ltr. from R. Mastro to D. Bliss, dated October 3, 2016, attached hereto as Ex. 1. The Division does not object to Respondents withdrawing certain of Ms. Murray's opinions.

Dated: October 11, 2016

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **DIVISION OF ENFORCEMENT'S MOTION TO PARTIALLY STRIKE RESPONDENTS' STATEMENTS OF MESSRS. LUNDELIUS, VINELLA, AND SCHWARCZ** was served on the following on this 11th day of October, 2016, in the manner indicated below:

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Brent Fields, Secretary
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(By Facsimile and original and three copies by UPS)

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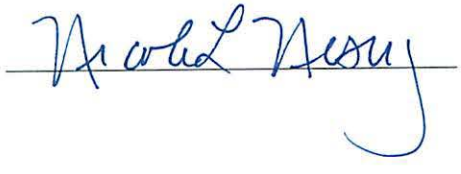

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October 3, 2016

VIA E-MAIL (BLISSD@SEC.GOV)

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

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

Dear Mr. Bliss:

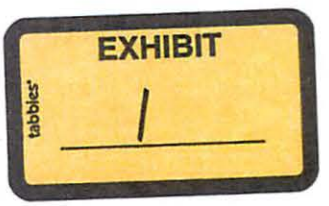
I write as counsel to Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Respondents") in the above-referenced matter.

On August 22, 2016, Respondents moved to modify the Prehearing Order, dated May 7, 2015, to allow them to submit additional reports from three new expert witnesses—Charles Lundelius, Peter Vinella, and Steven Schwarcz. Respondents' motion explained that new expert witnesses were necessary due to the unavailability of Richard Dietrich and Marti Murray to prepare for and testify at the hearing in this matter, which is currently scheduled to commence on October 24, 2016, and expected to last approximately three weeks.

On September 16, 2016, the ALJ denied Respondents' motion to submit additional reports from new expert witnesses. However, the ALJ further ruled that "Respondents may consider having one or more of [the proposed experts] adopt the opinions of the existing expert report[s] as his own and being examined by the Division on those opinions." Lynn Tilton, Admin. Proc. Rulings Release No. 4161, at 2 (ALJ Sept. 16, 2016) (the "September 16 Order") (second alteration in original).

The September 16 Order did not require Respondents to provide any advance notice either to the Division or to the ALJ if Respondents elected to "hav[e] one or more of [the proposed experts] adopt the opinions of the existing expert report[s] as his own." However, as we have now considered the ALJ's suggestion, Respondents are providing the Division—and, by copy, the ALJ—with the attached statements from Messrs. Lundelius, Vinella, and Schwarcz.





In accordance with the ALJ's September 16 Order, Charles Lundelius adopts the opinions of Dr. Dietrich as described in his attached statement. As Dr. Dietrich had limited availability during the period of the scheduled hearing, Respondents propose to call Mr. Lundelius instead of Dr. Dietrich. Peter Vinella and Steven Schwarcz adopt the opinions of Ms. Murray to the limited extent described in their respective attached statements. Respondents hereby withdraw Ms. Murray's report and will not seek to introduce it in evidence or otherwise rely on it in any way, except to the limited extent of the specific opinions adopted by Messrs. Vinella and Schwarcz. As Ms. Murray is unavailable during the period of the scheduled hearing, she will not be able to be called in any event.

Sincerely,

/s/ Randy M. Mastro

Randy M. Mastro (MKF)

Randy M. Mastro

RMM
Enclosure

cc: The Honorable Carol Fox Foelak, Administrative Law Judge
Nicholas Heinke
Amy Sumner
Mark L. Williams

## STATEMENT OF CHARLES R. LUNDELIUS, JR.

1. I have been retained by counsel for Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VII, LLC, Patriarch Partners XIV, LLC and Patriarch Partners XV, LLC (collectively, "Respondents" or "Patriarch Partners").

2. I understand that Richard Dietrich may be unavailable to prepare to testify at the hearing in this matter, which is currently scheduled to commence on October 24, 2016, and last approximately three weeks.

3. I have been told that, on August 22, 2016, Respondents moved to modify the Prehearing Order, dated May 7, 2015, to allow them to submit additional reports from three new expert witnesses, including myself. I understand that, on September 16, 2016, the Court denied Respondents' motion to submit additional reports from new expert witnesses. However, the Court wrote that "Respondents may consider having one or more of [the proposed experts] adopt the opinions of the existing expert report[s] as his own and being examined by the Division on those opinions." *Lynn Tilton*, Admin. Proc. Rulings Release No. 4161 (ALJ Sept. 16, 2016).

4. Consistent with the ALJ's order, I have reviewed the reports of Dr. Steven Henning (the Division's expert) and Dr. Dietrich. I "adopt the opinions of [Dr. Dietrich] as [my] own," as described below.

5. Dr. Dietrich opines that Dr. Henning's report "considered debt instruments only – an approach inconsistent with my understanding of the Zohar Funds' business model and the characteristics of the CDO/CI investments," and that, in contrast, "the Zohar Funds consider the entirety of each CDO/CI in evaluating the value of the *Collateral Debt Obligations/Collateral Investments* asset." Dietrich Report at 3. I adopt this opinion.

6. Dr. Dietrich also opines that "Dr. Henning's analysis does not consider the business purpose of the Zohar Funds, does not demonstrate an understanding of the methods by which the Zohar Funds can receive value from the CDO/CI investments, and considers only debt instruments within each CDO/CI investment," and that, therefore, "his analysis cannot be relied upon to conclude that the Zohar Funds did not appropriately account for the *Collateral Debt Obligations/Collateral Investments* asset in conformity with GAAP." Dietrich Report at 3-4. I adopt this opinion.

7. Furthermore, Dr. Dietrich opines that "Dr. Henning's conclusion that Patriarch did not perform GAAP-compliant impairment analysis is unsupported because he considered only a subset of financial instruments [i.e., debt only] that comprise the Collateral Debt Obligations/Collateral Investments asset [of debt and equity] and because he considered only one method for impairment analysis [ignoring the portfolio approach]." I adopt that opinion and give the following additional reasons in support of that opinion: Although Dr. Henning cites to ASC 310-10-35-16, he ignores the last sentence which provides the directive to "[s]ee Subtopic 310-40 for specific application of [the] guidance to loans restructured in a troubled debt restructuring." Accordingly, Subtopic 310-10 must be evaluated by reference to Subtopic 310-40, *Troubled Debt Restructuring by Creditors*,

which is relevant to this matter because Patriarch restructured loans for firms in financial distress. Dr. Henning makes no mention of Subtopic 310-40 in either his opening or rebuttal report. Moreover, had Dr. Henning looked to Subtopic 310-40, his evaluation should have included other key documents that support Dr. Dietrich's opinion, including FASB's Accounting Standards Update 2011-02, and related publications by the Federal Reserve Bank of Richmond and the Federal Deposit Insurance Corporation.

8. Additionally, Dr. Dietrich opines that Dr. Henning's conclusion that the Zohar Funds' financial statements were "'false and misleading because they disclosed' that a GAAP-compliant analysis had been performed" is "unsupported" because "[t]he fundamental question is whether the amounts shown in the financial statements are materially different from amounts that would be calculated based on a GAAP-compliant impairment analysis" and that "Dr. Henning does not conclude that the amounts reported in the Zohar Funds' financial statements are materially misstated." Dietrich Report at 4. I adopt that opinion and give the following additional reasons in support of that opinion: The Committee of Sponsoring Organizations of the Treadway Commission's ("COSO") 1992 and 2013 versions of *Internal Control – Integrated Framework* allows for the use of verbal (unwritten) policies and procedures. Furthermore, there is no US GAAP requirement that such procedures be documented. Accordingly, Patriarch's analyses of CDO/CI impairment were permissible under COSO and GAAP.

9. Further, Dr. Dietrich opines that "Dr. Henning presents no analysis to demonstrate that the fair value of the *Collateral Debt Obligations/Collateral Investments* asset differs from the carrying value stated in the Funds' financial statements" and that it is therefore "not reasonable to conclude that the Funds' financial statements are not fairly presented." Dietrich Report at 4. I adopt that opinion and give the following additional reasons in support of that opinion: According to Pre-FAS 157 valuation guidance found in FAS 107, *Disclosures about Fair Value of Financial Instruments*, fair value was determined first by looking at quoted prices, if available, and, if not, using management's "best estimate" utilizing prices for similar securities or other valuation techniques. Statement on Auditing Standards No. 101 elaborated that "GAAP requires that valuation methods incorporate assumptions that marketplace participants would use in their estimates of fair value whenever that information is available without undue cost and effort." Here, marketplace participants would look to the combined loan and equity positions in a Portfolio Company when entering into a "current transaction." In addition, Patriarch was free to use its own assumptions as long as there are no reasonably available contrary data indicating that marketplace participants would use different assumptions. Therefore, it was appropriate that Patriarch evaluate fair value based upon management's "best estimate" of anticipated future cash flows from the combined loan and equity positions. Moreover, pursuant to FAS 157 valuation guidance, fair value assessment is determined by market participant assumptions. For the Zohar Funds, market participants would evaluate the combined loan and equity positions. Finally, the Private Equity Industry Guidelines Group ("PEIGG") and the International Private Equity and Venture Capital ("IPEV") guidelines support the opinion that Patriarch used appropriate valuation methodologies.

10. Dr. Dietrich also opines that "Dr. Henning's assertion that 'the Funds' financial statements and accompanying certifications recently eliminated the statements referencing GAAP compliance is an acknowledgement by the Respondents that the prior reports departed from GAAP' is not an accounting opinion. It also is unsupported and does not conform to the rules of logic." Dietrich Report at 5. I adopt that opinion.

11. The opinions I adopt above, and the additional reasons I describe, are based on my extensive accounting experience and not intended to constitute a legal opinion. I have also relied on the literature described above and other professional and academic resources.

12. I understand that the Court has ordered that I may not submit an expert report in this matter. However, it is my opinion that Dr. Henning's opening and rebuttal reports are flawed for reasons beyond those described above. If I were permitted to submit an expert report, I would detail those opinions and the reasons for them.

October 3, 2016

/s/ Charles R. Lundelius, Jr.
Charles R. Lundelius, Jr.

## STATEMENT OF PIETRO (PETER) VINELLA

1. I have been retained by counsel for Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VII, LLC, Patriarch Partners XIV, LLC and Patriarch Partners XV, LLC (collectively, "Respondents" or "Patriarch Partners").

2. I understand that Marti Murray will be unavailable to prepare to testify at the hearing in this matter, which is currently scheduled to commence on October 24, 2016, and last approximately three weeks.

3. I have been told that, on August 22, 2016, Respondents moved to modify the Prehearing Order, dated May 7, 2015, to allow them to submit additional reports from three new expert witnesses, including myself. I understand that, on September 16, 2016, the Court denied Respondents' motion to submit additional reports from new expert witnesses. However, the Court wrote that "Respondents may consider having one or more of [the proposed experts] adopt the opinions of the existing expert report[s] as his own and being examined by the Division on those opinions." *Lynn Tilton*, Admin. Proc. Rulings Release No. 4161 (ALJ Sept. 16, 2016).

4. In her report, Ms. Murray "provide[s] testimony and opinions in response to certain opinions and conclusions of the Division's expert Ira Wagner (Wagner). Specifically, [she] address[es] Mr. Wagner's opinions that '[i]nstead of following the indentures as she was obligated to do, Tilton came up with a subjective approach to categorizing assets,' and that the failure to categorize the assets in the manner he opines was required 'was adverse to the interests of the Zohar CLO funds and the investors and beneficial to Tilton,' as well as his conclusions that Patriarch Partners ('Patriarch') and Lynn Tilton ('Tilton') breached the standard of care and other obligations set forth in the Collateral Management Agreements ('CMA') for the Zohar Funds (the 'Funds') and violated Patriarch's duties to the Funds." Murray Report at 1 (¶ 1).

5. I have reviewed the reports of Ira Wagner and Ms. Murray. I adopt the opinions of Ms. Murray as my own, to the extent described below.

6. Ms. Murray opines that:

> While it is unusual to house a Distressed Debt Turnaround strategy in a CLO, the governing documents for the Zohar Funds provided Patriarch with the necessary tools, including the ability to modify loans to avert default. This flexibility allowed Patriarch to preserve optionality, and provided the Funds and their stakeholders with an opportunity for success and upside. Murray Report at 1 (¶ 1.ii).

Based on my experience implementing such agreements and without offering any opinion regarding a Distressed Debt Turnaround strategy, I adopt that opinion to the following extent: the Zohar Funds' governing documents permitted Patriarch Partners (as the collateral manager) broad authority over the management and disposition of the

underlying loans, including, without limitation, the ability to modify loans for any reason at its sole discretion.

7. Additionally, Ms. Murray opines that:

> Under the standard set forth in Section 2.4 of the CMA, rather than the benchmark of "typical CLO"' managers, Patriarch's management approach should be evaluated from the perspective of what a manager of a Distressed Debt Turnaround strategy would have reasonably done operating within a CLO that provides the same level of constraints and discretion as the Zohars under the circumstances that Patriarch faced. Murray Report at 2 (¶ 1.v).

Based on my experience as a CLO administrator implementing such agreements, I adopt this opinion in that it is consistent with the general language in Section 2.4, requiring the collateral manager to "render its services to the same degree of skill and attention exercised by institutional investment managers of national standing generally in respect of assets of the nature and character of the Collateral and for clients having similar investment objectives and restrictions, in each case except as otherwise expressly provided in the Indenture."

8. I adopt these opinions, to the extent described above, based on my years of experience as a CLO collateral administrator, the material I have reviewed, and my familiarity with literature in the field. My reasons described above are not intended to be a legal opinion.

9. I understand that the Court has ordered that I may not submit an expert report in this matter. However, it is my opinion that Mr. Wagner's report is flawed for reasons beyond those described above. If I were permitted to submit an expert report, I would detail those opinions and the reasons for them.

Pietro Vinella

October 3, 2016

Pietro (Peter) Vinella

## STATEMENT OF STEVEN L. SCHWARCZ

1. I have been retained by counsel for Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VII, LLC, Patriarch Partners XIV, LLC and Patriarch Partners XV, LLC (collectively, "Respondents" or "Patriarch Partners").

2. I understand that Marti Murray will be unavailable to prepare for, or to testify at, the hearing in this matter, which is currently scheduled to commence on October 24, 2016, and last approximately three weeks.

3. I have been told that, on August 22, 2016, Respondents moved to modify the Prehearing Order, dated May 7, 2015, to allow them to submit additional reports from three new expert witnesses, including myself. I understand that, on September 16, 2016, the Court denied Respondents' motion to submit additional reports from new expert witnesses. However, the Court wrote that "Respondents may consider having one or more of [the proposed experts] adopt the opinions of the existing expert report[s] as his own and being examined by the Division on those opinions." *Lynn Tilton*, Admin. Proc. Rulings Release No. 4161 (ALJ Sept. 16, 2016).

4. In her report, Ms. Murray "provide[s] testimony and opinions in response to certain opinions and conclusions of the Division's expert Ira Wagner (Wagner). Specifically, [she] address[es] Mr. Wagner's opinions that '[i]nstead of following the indentures as she was obligated to do, Tilton came up with a subjective approach to categorizing assets,' and that the failure to categorize the assets in the manner he opines was required 'was adverse to the interests of the Zohar CLO funds and the investors and beneficial to Tilton,' as well as his conclusions that Patriarch Partners ('Patriarch') and Lynn Tilton ('Tilton') breached the standard of care and other obligations set forth in the Collateral Management Agreements ('CMA') for the Zohar Funds (the 'Funds') and violated Patriarch's duties to the Funds." Murray Report at 1 (¶ 1).

5. I have reviewed the reports of Wagner and Ms. Murray. I adopt the opinion of Ms. Murray as my own, to the extent described below.

6. Ms. Murray opines as follows:

> While it is unusual to house a Distressed Debt Turnaround strategy in a CLO, the governing documents for the Zohar Funds provided Patriarch with the necessary tools, including the ability to modify loans to avert default. This flexibility allowed Patriarch to preserve optionality, and provided the Funds and their stakeholders with an opportunity for success and upside. Murray Report at 1 (¶ 1.ii).

I adopt that opinion to the following extent: successful execution of the Zohar Funds' investment strategy required flexibility in managing the portfolio-company investments. For example, Patriarch might choose to allow a portfolio company to delay payment of interest or principal on its debt, enabling the company to use the cash for other purposes that could assist with its successful turnaround. A successful turnaround would enhance

the portfolio company's value and potentially increase the amount the Funds would realize from their investment in the portfolio company.

7. I understand that the Court has ordered that I may not submit an expert report in this matter. However, it is my opinion that Mr. Wagner's report is flawed. If I were permitted to submit an expert report, I would detail my opinions and the reasons for them.

October 3, 2016

/s/ Steven L. Schwarcz

Steven L. Schwarcz