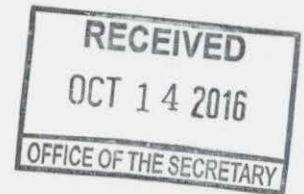


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



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

**DECLARATION OF MONICA LOSEMAN IN SUPPORT OF RESPONDENTS'  
MOTION TO COMPEL THE PRODUCTION OF *BRADY* MATERIAL AND JENCKS  
ACT WITNESS STATEMENTS**

I, Monica Loseman, under penalty of perjury, affirm as follows:

1. I am a partner in the law firm of Gibson, Dunn & Crutcher LLP, attorneys for the above-referenced Respondents. I submit this declaration in support of Respondents' Memorandum of Law in Support of Respondents' Motion to Compel the Production of *Brady* Material and Jencks Act Witness Statements.

**The Division's Impermissible Post-OIP Document Requests to Varde**

2. On September 1, 2016, Your Honor issued two subpoenas to the Division of Enforcement ("Division") of the Securities and Exchange Commission ("Commission"), one concerning the application of the Commission's amended Rules of Practice, and the other calling for communications between and among the Commission and various parties about Respondents or this proceeding. Attached hereto as Exhibits 1 and 2 are true and correct copies of those subpoenas.

3. On September 22, 2016, in response to the subpoenas Your Honor issued on September 1, 2016, the Division produced to Respondents a cover email and letter from counsel for Varde addressed to Division counsel (Amy Sumner and Nicholas Heinke), and dated June 5, 2015, which appears to have been sent along with Varde's document production to the Division that same day. Attached hereto as Exhibit 3 is a true and correct copy of Varde's June 5, 2015 email and letter, along with the attachments transmitted that same day to the Division.

**The Division's Delayed Disclosure of Information Learned in Witness Interviews**

4. On September 20, 2016, I received an email from Division counsel Nicholas Heinke producing certain information learned by the Division from a September 7, 2016 witness interview with David Aniloff of SEI Investments Company, one of the noteholders in the Zohar Funds. Attached hereto as Exhibit 4 is a true and correct copy of that email.

5. On October 3, 2016, I received an email from Nicholas Heinke producing certain information learned by the Division from an interview with Omar Bolli of Nord/LB, one of the noteholders in the Zohar funds. Attached hereto as Exhibit 5 is a true and correct copy of that email.

Dated: New York, New York  
October 12, 2016

  
\_\_\_\_\_  
Monica Loseman

Second Request



**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  
Custodian of Records  
United States Securities & Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

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

3. DATE AND TIME PRODUCTION IS DUE  
~~August 8, 2016~~ at 10:00 AM  
*September 14, 2016, or as agreed.* CFF

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 M. Mastro  
Gibson, Dunn & Crutcher, LLP  
200 Park Avenue  
New York, NY 10166

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, as modified by Lynn Tilton, Admin. Proc. Rulings Release No. 4116 (A.L.J. Sept. 1, 2016)* CFF

DATE SIGNED  
*Sept. 1, 2016*

SIGNATURE OF ADMINISTRATIVE LAW JUDGE  
*Carol Fox Foelak*

**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).

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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

**ATTACHMENT TO SUBPOENA DUCES TECUM TO THE SECURITIES AND  
EXCHANGE COMMISSION**

**DEFINITIONS**

1. The terms "You," "Your," and the "Commission" shall mean the United States Securities & Exchange Commission and any and all divisions or units thereof, including but not limited to the Division of Enforcement, the Office of General Counsel, and the Office of the Secretary, as well as any of its Commissioners or any other personnel.
2. The term "Amended Rules of Practice" means: (a) the Proposed Amendments to the Commission's Rules of Practice, Release No. 34-75976, Sept. 24, 2015, <https://www.sec.gov/rules/proposed/2015/34-75976.pdf>; (b) the Amendments to the Commission's Rules of Practice, 80 Fed. Reg. 60,091 (Oct. 5, 2015), <https://www.sec.gov/rules/proposed/2015/34-75976.pdf>; (c) the Amendments to the Commission's Rules of Practice, Release No. 34-78319, July 13, 2016, <https://www.sec.gov/rules/final/2016/34-78319.pdf>; and (d) any other draft, proposed rule, or rule relating to (a), (b), and (c).

3. "Document" shall be construed to the fullest extent under applicable law and shall mean, without limitation, the original and all copies and translations of any information in any written, recorded, electronic, or graphic form, including all memoranda, notes, inter-agency and intra-agency communications, telegrams, letters, e-mail, computer models, spreadsheets, data, reports, accounts, records, calendars, diaries, minutes, contracts or other legal documents, insurance policies, telephonic or personal communications, tape recordings, microfilm, film, stenographic notes, bulletins, notices, computer data and other data or information sources in any written, printed or recorded matter of any character in the possession, custody or control of the Commission, its attorneys, agents, and other persons under its control. Without limiting the foregoing, the term "document" or "documents" shall indicate any copy which differs in any respect from the original or other versions of the document, such as copies containing notations, insertions, corrections, marginal notes or any other variations.

4. The term "Communication" means all inquiries, discussion, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegrams, correspondence, memoranda, e-mail, facsimile transmissions, or other form of verbal, written, mechanical, or electronic intercourse.

5. The words "concerning," "regarding," "reflecting," "referring to," and/or "relating to" mean describing, discussing, constituting, containing, considering, embodying, evaluating, mentioning, memorializing, supporting, collaborating, demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, regarding, controverting, contradicting, made in connection with or by reason of, or derived or arising therefrom.

6. The term "Third Party" means any natural person or any legal entity, including a proprietorship, partnership, trust, firm, corporation, association, government agency, or other organization, or association other than the Commission or Respondents.

7. "Respondents" includes Lynn Tilton, Patriarch Partners LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIC, LLC, and Patriarch Partners XV, LLC.

8. The "Tilton Matter" means *In the Matter of Lynn Tilton, Patriarch Partners LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIC, LLC, and Patriarch Partners XV, LLC*, Administrative Proceeding File No. 3-16462, pending before Administrative Law Judge Carol Fox Foelak in the Securities and Exchange Commission.

9. "Rules of Practice" means the *Rules of Practice and Rules on Fair Fund and Disgorgement Plans*, as issued by the Commission in January 2006 and amended in March 2006.

10. "All" means any and all.

11. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

### **INSTRUCTIONS**

1. Each request for Documents requires the production of all Documents described therein in the possession, custody, or control of the Commission.

2. Each request seeks production of the Document in its entirety without abbreviations or expurgation, including all attachments or other matters affixed thereto.

3. One copy of each Document requested is to be produced. Any copy of a Document that varies in any way from the original or from any other copy of the Document, whether by reason of handwritten or other notation or otherwise, shall constitute a separate

Document and must be produced, whether or not the original of such document is within Your possession, custody, or control.

4. Each request herein requires that You produce any and all files from personal computers, notebook or laptop computers, file servers, personal digital assistants (PDAs), minicomputers, mainframe computers, Web servers, internet servers, or other storage devices including but not limited to web pages, hard disk drives, floppy disks, data bases backup or archival tapes, containing the requested documents.

5. You shall produce responsive Documents as they have been kept in the usual course of business or shall organize and label them to correspond to the requests. If there are no Documents responsive to any particular request, You shall so state in writing. All Documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other Documents, whether by use of binders, files, subfiles, or by dividers, tabs, or any other method, shall be left so segregated or separated. All labels or other forms of identification contained, placed, attached or appended on or to any binders, files, subfiles, dividers or tabs shall be produced.

6. In the event that any Documents called for by these requests is to be withheld on the basis of a claim of privilege, produce a log, contemporaneously with the documents responsive to the subpoena, that identifies each such Document by the following categories of information: author, addressee, indicated or blind copies, date, subject matter, number of pages, attachments or appendices, all persons to whom distributed, shown, or explained, present custodian, the nature of the privilege asserted, and the complete factual basis for its assertion.

7. If a portion of an otherwise responsive Document contains information subject to a claim of privilege, only those portions of the Document subject to the claim of privilege shall

be redacted from the document and the rest of the document shall be produced. If any portions of any otherwise responsive documents are redacted, those portions are to be included on the log of privileged documents and identified as required by the prior instruction.

### **REQUESTS FOR DOCUMENTS**

1. All Documents concerning, referencing, or reflecting any Communication or meeting, relating to the application or applicability of any or all of the Amended Rules of Practice to Respondents or the Tilton Matter.
2. All Documents concerning, referencing, or reflecting any Communication or meeting, relating to the drafting or proposal of any amendment to the Rules of Practice, to the extent such communication or meeting also relates to Respondents or the Tilton Matter.
3. All Documents concerning, referencing, or reflecting any meetings or Communications between or among (a) any employee or political appointee within the Commission's Division of Enforcement, (b) any employee or political appointee within the Commission's Rulemaking Division, (c) any employee or political appointee within the Commission's Office of the General Counsel, (d) any employee or political appointee of the Commission's Office of the Secretary, and (e) any Commissioner or his or her staff relating to the application or applicability of the Amended Rules of Practice to Respondents or the Tilton Matter.
4. All Documents concerning, referencing, or reflecting any meetings or Communications between or among (a) any employee or political appointee of the Commission, and (b) any Third Party, relating to the application or applicability of the Amended Rules of Practice to Respondents or the Tilton Matter.



5. All Documents concerning, referencing, or reflecting any meetings or Communications between or among (a) any employee or political appointee within the Commission's Division of Enforcement, (b) any employee or political appointee within the Commission's Rulemaking Division, (c) any employee or political appointee within the Commission's Office of the General Counsel, (d) any employee or political appointee within the Commission's Office of the Secretary, and (e) any Commissioner or his or her staff, relating to the timing of the Commission's vote on the Amended Rules of Practice, or the date on which the Amended Rules of Practice would be implemented by the Commission.

6. All Documents concerning, referencing, or reflecting any Communication or meeting, relating to the application or applicability of the Amended Rules of Practice to any or all Securities and Exchange Commission administrative proceedings (a) pending as of the Effective Date of the Amended Rules of Practice (as defined therein), but for which there have been no initial prehearing conferences; (b) stayed as of such Effective Date; or (c) awaiting hearings as of such Effective Date.

7. All Documents concerning, referencing, or reflecting any meetings or Communications between or among (a) the Commission, and (b) any Third Party, relating to the timing of the Commission's vote on the Amended Rules of Practice, or the date on which the Amended Rules of Practice would be implemented by the Commission.

First Request



**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  
Custodian of Records  
United States Securities & Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

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

3. DATE AND TIME PRODUCTION IS DUE  
~~August 8, 2016~~ at 10:00 AM  
*September 14, 2016, or as agreed CFF*

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 M. Mastro  
Gibson, Dunn & Crutcher, LLP  
200 Park Avenue  
New York, NY 10166

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, as modified by Lynn Tilton, Admin. Proc. Rulings Release No. 4116 (A.L.J. Sept. 1, 2016) CFF*

DATE SIGNED <i>Sept. 1, 2016</i>	SIGNATURE OF ADMINISTRATIVE LAW JUDGE <i>Carol Fox Foelak</i>
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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).

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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

**ATTACHMENT TO SUBPOENA DUCES TECUM TO THE  
SECURITIES AND EXCHANGE COMMISSION**

**DEFINITIONS**

1. The terms "You," "Your," and the "Commission" shall mean, individually and/or collectively, United States Securities & Exchange Commission and any and all divisions or units thereof, including but not limited to the Division of Enforcement, the Office of General Counsel, and the Office of the Secretary, as well as any of its Commissioners or any other personnel.

2. "Document" shall be construed to the fullest extent under applicable law and shall mean, without limitation, the original and all copies and translations of any information in any written, recorded, electronic, or graphic form, including all memoranda, notes, inter-agency and intra-agency communications, telegrams, letters, e-mail, computer models, spreadsheets, data, reports, accounts, records, calendars, diaries, minutes, contracts or other legal documents, insurance policies, telephonic or personal communications, tape recordings, microfilm, film, stenographic notes, bulletins, notices, computer data and other data or information sources in any written, printed or recorded matter of any character in the possession, custody or control of the Commission, its attorneys, agents, and other persons under its control. Without limiting the

foregoing, the term “document” or “documents” shall indicate any copy which differs in any respect from the original or other versions of the document, such as copies containing notations, insertions, corrections, marginal notes or any other variations.

3. The term “Communication” means all inquiries, discussion, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegrams, correspondence, memoranda, e-mail, facsimile transmissions, or other form of verbal, written, mechanical, or electronic intercourse.

4. The words “concerning,” “regarding,” “reflecting,” “referring to,” and/or “relating to” mean describing, discussing, constituting, containing, considering, embodying, evaluating, mentioning, memorializing, supporting, collaborating, demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, regarding, controverting, contradicting, made in connection with or by reason of, or derived or arising therefrom.

5. The term “OIP” means the *Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, and Notice of Hearing*, dated March 30, 2015, in the above-captioned matter.

6. “Commissioners” means and includes all current and former commissioners of the United States Securities and Exchange Commission, including but not limited to Chair Mary Jo White, Commissioner Kara M. Stein, and Commissioner Michael S. Piwowar.

7. The term “MBIA” means MBIA Insurance Corporation, and its direct or indirect corporate parents, subsidiaries, affiliates, predecessors or successors, and their respective officers, directors, members, employees, partners, representatives, agents, including in-house and outside counsel, and all other persons or entities acting or purporting to act on its behalf.

8. "Nord" means and includes Norddeutsche Landesbank Girozentrale, and its direct or indirect corporate parents, subsidiaries, affiliates, predecessors or successors, and their respective officers, directors, members, employees, partners, representatives, agents, including in-house and outside counsel, and all other persons or entities acting or purporting to act on its behalf.

9. "Hannover" means and includes Hannover Funding Company LLC, and its direct or indirect corporate parents, subsidiaries, affiliates, predecessors or successors, and their respective officers, directors, members, employees, partners, representatives, agents, including in-house and outside counsel, and all other persons or entities acting or purporting to act on its behalf.

10. "A&M" means Alvarez & Marsal Zohar Management, LLC, and its direct or indirect corporate parents, subsidiaries, affiliates, predecessors or successors, and their respective officers, directors, members, employees, partners, representatives, agents, including in-house and outside counsel, and all other persons or entities acting or purporting to act on its behalf.

11. "Millennium" means Millennium Partners LP, Millennium USA LP, Millennium Management LLC, and any of their direct or indirect corporate parents, subsidiaries, affiliates, including any partnerships for which any of them is the general partner, predecessors or successors, and their respective officers, directors, members, employees, partners, representatives, agents, including in-house and outside counsel, and all other persons or entities acting or purporting to act on its behalf.

12. "Zohar III Indenture" means the Indenture among Zohar III, Limited, Zohar III, Corp., Zohar III, LLC, Natixis Financial Products, Inc., and LaSalle Bank National Association,

dated April 6, 2007 and as produced by Respondents to the Division of Enforcement in connection with the investigative phase of this proceeding.

13. "Zohar III Controlling Class" has the meaning set forth in the Zohar III Indenture, and includes, but is not limited to, Varde Partners, Deer Park Road Corporation, Rabobank Group, and Halcyon Capital Management, LLC, and their respective direct or indirect corporate parents, subsidiaries, affiliates, predecessors or successors, and their respective officers, directors, members, employees, partners, representatives, agents, including in-house and outside counsel, and all other persons or entities acting or purporting to act on their behalf.

14. "Zohar Funds" means the three collateralized loan obligation funds previously managed by certain of the Respondents and has the same meaning as that term as used in the OIP.

15. "Zohar Investor" means any current or prior holder of notes in one of more of the Zohar Funds.

16. "U.S. Bank" means U.S. Bank, National Association, in its capacity as indenture trustee for each of the Zohar Funds, and its direct or indirect corporate parents, subsidiaries, affiliates, predecessors or successors, and their respective officers, directors, members, employees, partners, representatives, agents, including in-house and outside counsel, and all other persons or entities acting or purporting to act on its behalf.

17. "Respondents" includes Lynn Tilton, Patriarch Partners LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIC, LLC, and Patriarch Partners XV, LLC.

18. The "Tilton Matter" means *In the Matter of Lynn Tilton, Patriarch Partners LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIC, LLC, and Patriarch Partners XV, LLC,*

Administrative Proceeding File No. 3-16462, pending before Administrative Law Judge Carol Fox Foelak in the Securities and Exchange Commission.

19. "All" means any and all.

20. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

### INSTRUCTIONS

1. Each request for Documents requires the production of all Documents described therein in the possession, custody, or control of the Commission.

2. Each request seeks production of the Document in its entirety without abbreviations or expurgation, including all attachments or other matters affixed thereto.

3. One copy of each Document requested is to be produced. Any copy of a Document that varies in any way from the original or from any other copy of the Document, whether by reason of handwritten or other notation or otherwise, shall constitute a separate Document and must be produced, whether or not the original of such document is within Your possession, custody, or control.

4. Each request herein requires that You produce any and all files from personal computers, notebook or laptop computers, file servers, personal digital assistants (PDAs), minicomputers, mainframe computers, Web servers, internet servers, or other storage devices including but not limited to web pages, hard disk drives, floppy disks, data bases backup or archival tapes, containing the requested documents.

5. You shall produce responsive Documents as they have been kept in the usual course of business or shall organize and label them to correspond to the requests. If there are no

Documents responsive to any particular request, You shall so state in writing. All Documents that are physically attached to each other when located for production shall be left so attached. Documents that are segregated or separated from other Documents, whether by use of binders, files, subfiles, or by dividers, tabs, or any other method, shall be left so segregated or separated. All labels or other forms of identification contained, placed, attached or appended on or to any binders, files, subfiles, dividers or tabs shall be produced.

6. In the event that any Documents called for by these requests is to be withheld on the basis of a claim of privilege, produce a log, contemporaneously with the documents responsive to the subpoena, that identifies each such Document by the following categories of information: author, addressee, indicated or blind copies, date, subject matter, number of pages, attachments or appendices, all persons to whom distributed, shown, or explained, present custodian, the nature of the privilege asserted, and the complete factual basis for its assertion.

7. If a portion of an otherwise responsive Document contains information subject to a claim of privilege, only those portions of the Document subject to the claim of privilege shall be redacted from the document and the rest of the document shall be produced. If any portions of any otherwise responsive documents are redacted, those portions are to be included on the log of privileged documents and identified as required by the prior instruction.

8. Unless otherwise indicated, the time period for each of the categories of Documents to be Produced set forth below is January 1, 2009 through the date of Your production.

#### **REQUESTS FOR DOCUMENTS**

1. All Documents concerning, referencing, or reflecting any Communications or meetings between or among (a) anyone associated with the Commission, on the one hand, and



any of (b) MBIA, A&M, U.S. Bank, Nord, Hannover, the Zohar III Controlling Class, any other Zohar Investor, or Millennium, including through their respective in-house or outside counsel, on the other hand, relating to any of the Respondents, the Tilton Matter, or the Zohar Funds.

2. All Documents concerning, referencing, or reflecting any instruction by any employee or political appointee of the Commission to (a) any other employee or political appointee of the Commission, or (b) counsel for any of MBIA, A&M, U.S. Bank, Nord, Hannover, the Zohar III Controlling Class, any other Zohar Investor, or Millennium not to take notes respecting Communications or meetings relating to any of the Respondents, the Tilton Matter, or the Zohar Funds.

3. All Documents concerning, referencing, or reflecting Communications between anyone associated with the Commission and any prospective expert witness in the Tilton Matter who either: (a) advised the Commission that he/she could not or would not offer an opinion in the Tilton Matter; or (b) the Commission determined not to retain for any reason relating to the substance of a prospective opinion by the prospective expert witness.

4. All Documents concerning, referencing, or reflecting any Communications prior to March 30, 2015 between anyone associated with the Commission and any expert witness listed on the Division's August 7, 2015 witness list in the Tilton Matter relating to any of Respondents or the Zohar Funds.

5. All Documents concerning, referencing, or reflecting any Communications or meetings between or among (a) any Commissioner or his or her staff, on the one hand, and (b) any employee or political appointee in the Commission's Division of Enforcement, on the other hand, relating to any of the Respondents, the Tilton Matter, or the Zohar Funds.

6. All Documents concerning, referencing, or reflecting any Communications or meetings between or among (a) anyone associated with the Commission, on the one hand, and (b) any member or representative of the press, on the other hand, relating to any of the Respondents, the Tilton Matter, or the Zohar Funds, including relating to the background of and facts underlying the Tilton Matter, whether on or off the record.

7. All Documents concerning, referencing, or reflecting any Communications or meetings between or among (a) anyone associated with the Commission, on the one hand, and (b) any employee or political appointee within the Internal Revenue Service, on the other hand, relating to any of the Respondents, the Tilton Matter, or the Zohar Funds.

8. All Documents concerning, referencing, or reflecting any Communications or meetings between or among (a) anyone associated with the Commission, on the one hand, and (b) any employee or political appointee within the United States Department of Treasury, on the other hand, relating to any of the Respondents, the Tilton Matter, or the Zohar Funds.

9. All Documents concerning, referencing, or reflecting any Communications or meetings between or among (a) anyone associated with the Commission, on the one hand, and (b) any employee or political appointee within the United States Department of Justice, on the other hand, relating to any of the Respondents, the Tilton Matter, or the Zohar Funds.

10. All Documents concerning, referencing, or reflecting any Communications or meetings between or among (a) anyone associated with the Commission, on the one hand, and (b) any employee or political appointee within the Executive Office of the President of the United States, on the other hand, relating to any of the Respondents, the Tilton Matter, or the Zohar Funds.

**To:** Heinke, Nicholas[HeinkeN@SEC.GOV]; Sumner, Amy A.[SumnerA@SEC.GOV]  
**From:** Dave Marple  
**Sent:** Fri 6/5/2015 4:19:12 PM  
**Importance:** Normal  
**Subject:** In the Matter of Lynn Tilton, et al.

Amy and Nic –

Per our call earlier this week, attached please find a cover letter along with copies of the correspondence to date between Värde and Patriarch. Apologies for not including Mr. Bliss on this message but I don't have his e-mail address.

Please let us know if you have any questions or would like to discuss further.

Regards,

Dave.

David A. Marple

General Counsel

Värde Partners, Inc.

8500 Normandale Lake Boulevard, Suite 1500

Minneapolis, MN 55437

Direct dial: 952.374.6970

dmarple@varde.com

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NOTICE: The information contained in this transmission is privileged, confidential, and intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this transmission is strictly prohibited. If you have received this transmission in error, please notify the sender and destroy the original message and all copies. Thank you.





**FOIA CONFIDENTIAL TREATMENT  
REQUESTED BY VÄRDE PARTNERS, INC. IN ACCORDANCE  
WITH 17 C.F.R. § 200.83**

June 5, 2015

**VIA E-MAIL**

Amy A. Sumner, Esquire  
Senior Counsel, Division of Enforcement  
United States Securities and Exchange Commission  
Denver Regional Office  
1961 Stout Street, Suite 1700  
Denver, CO, 80294

Re: In the Matter of Lynn Tilton et al.

Dear Ms. Sumner:

Pursuant to your request, attached please find copies of the correspondence to date by or on behalf of Värde Partners, Inc. and certain of its affiliated private funds ("Värde"), on the one hand, and Patriarch Partners VI, LLC, on the other. The attachments bear bates numbers VPI0000001 through VPI0000010.

The production of this letter and the attached materials relates to confidential and non-public matters under the Freedom of Information Act ("FOIA"), 5 U.S.C. §§ 552(b)(3), (b)(4), (b)(6), and (b)(7) and applicable Commission regulations. In accordance with Title 17, Code of Federal Regulations, Section 200.83 and other applicable laws and regulations, Värde Partners, Inc. ("Värde") submits these documents to the Commission with a request that they be kept in a non-public file, and that only Commission staff have access to them. At the conclusion of the Commission's interest in these matters, whenever that may be, Värde requests that the attached materials submitted to the Commission, and any copies thereof, be returned to the undersigned.

Moreover, should any person request an opportunity to inspect or copy the documents or related materials produced here, Värde requests that it, via the undersigned, be notified immediately of any such request and be furnished promptly with all written materials pertaining to such request. See, e.g., *Chrysler Corp. v. Brown*, 441 U.S. 281 (1979). Värde further requests that it thereafter be notified promptly of any agency determinations with respect to such request and be given ten days' notice prior to any intended release so that Värde may, if it is deemed necessary or appropriate, submit additional material substantiating this claim.

Amy A. Sumner, Esq.  
U.S. Securities and Exchange Commission  
June 5, 2015  
Page 2

The name, address, and telephone number of the person making this FOIA Confidential Treatment Request on behalf of Värde, and to whom notice of any potential disclosure should be provided, is:

David A. Marple  
General Counsel  
Värde Partners, Inc.  
8500 Normandale Lake Boulevard  
Suite 1500  
Minneapolis, MN 55437  
Tel: (952) 374-6970

Please contact me if you have any questions about the attached documents or this FOIA Confidential Treatment Request.

Sincerely,



David A. Marple

cc: Office of Freedom of Information and Privacy Act Operations,  
U.S. Securities and Exchange Commission (Facsimile: 202-772-9336 or 9337)





# MAYER • BROWN

Mayer Brown LLP  
1999 K Street, N.W.  
Washington, D.C. 20006-1101

Main Tel +1 202 263 3000  
Main Fax +1 202 263 3300  
www.mayerbrown.com

Matthew A. Rossi  
Direct Tel +1 202 263 3374  
Direct Fax +1 202 263 5374  
mrossi@mayerbrown.com

April 9, 2015

BY EXPRESS MAIL

Patriarch Partners XV, LLC  
c/o Patriarch Partners, LLC  
227 W. Trade St., Suite 1400  
Charlotte, North Carolina 28202  
Attention: Lynn Tilton

Re: Zohar III, Limited

Dear Ms. Tilton:

We represent Värde Partners, Inc. and certain of its affiliated private funds (collectively, "Värde") in connection with its investment in Class A-1D, A-1T and A-2 notes issued by Zohar III, Limited ("Zohar III") in the principal amounts of \$3,975,801, \$53,275,733 and \$31,000,000, respectively. Based on currently available information, it appears that Patriarch Partners, LLC and its affiliates (collectively "Patriarch") are attempting to restructure Zohar CDO 2003-1, Limited ("Zohar I") without the participation of noteholders of Zohar II 2005-1, Limited ("Zohar II"), and Zohar III (all three funds collectively, the "Zohar Funds"), even though all of the funds have overlapping collateral. Värde believes that Patriarch's exclusion of Zohar II, Zohar III, and their noteholders from attempts to restructure Zohar I, materially breaches the Zohar Funds' collateral management agreements and representations in the offering memoranda as well as Patriarch's own Code of Ethics. Värde also believes that Patriarch is in further material breach of its obligations under the Zohar III Collateral Management Agreement ("CMA"), including with respect to its incorrect calculation of the Class A Overcollateralization Test and resultant wrongful receipt of the Subordinated Collateral Management Fee and distributions from the Preference Share Distribution Account.<sup>1</sup> Accordingly, we request that Patriarch immediately cease all attempts to restructure Zohar I independently from Zohar II and Zohar III, promptly inform Värde and all other noteholders of the Zohar Funds of any additional restructuring efforts relating to any of those funds, and provide the Zohar Funds noteholders the opportunity to participate in all restructurings of any Zohar Funds. Värde further requests that Patriarch stop collecting the Subordinated Collateral Management Fee and making deposits into the Preference Share Distribution Account in connection with Zohar III, provide all of the information requested below to correctly calculate the Class A Overcollateralization Test, and return to Zohar III all monies wrongfully received with respect to the Subordinated Collateral Management Fee or Preference Share distributions.

<sup>1</sup> Capitalized terms not otherwise defined herein, are used as defined in the Zohar III Transaction Documents.

VPI0000001

Patriarch Partners XV, LLC  
Attention: Lynn Tilton  
April 9, 2015  
Page 2

### Restructuring of the Zohar Funds

Patriarch's attempt to restructure Zohar I independently from the other Zohar Funds raises serious conflict of interest issues that cannot be adequately resolved without the full participation of noteholders from all three Zohar Funds in the restructuring. Patriarch acknowledged in its February 6, 2015 letter to noteholders of the Zohar Funds that "there is an overlap among the obligors of the collateral held by all three Zohar funds." In 2013, Ms. Tilton testified in litigation involving the Zohar Funds that "There was almost complete overlap [of collateral] amongst all three deals [i.e., Zohar I, II & III]."<sup>2</sup> In light of the overlapping collateral, attempts to restructure Zohar I independently will almost certainly cause serious financial harm to noteholders of Zohar II and Zohar III by, for example, permitting prompt full payment to Zohar I noteholders while delaying payment of remaining obligor assets, if any, to satisfy noteholders of the other Zohar Funds. These conflicts of interest are even more acute if, as reported in the media, it is true that approximately two-thirds of the Zohar I notes are held by affiliates of Patriarch.

Furthermore, the CMA and Offering Memorandum for the Zohar III Fund require Patriarch to appropriately resolve conflicts of interest. These provisions, which presumably exist in similar agreements for Zohar I and II, make clear that Patriarch must take steps to address conflicts of interest arising from its role as collateral manager for all of the Zohar Funds. For example, Section 6.2(c) of the CMA provides that, "If the Collateral Manager determines that it or any of its Affiliates have a material conflict of interest between the holders of the Notes and any other account or portfolio for which the Collateral Manager or any of its Affiliates is serving as investment advisor that relates to any action to be taken with respect to any Collateral Investment, then the Collateral Manager will perform its obligations with respect to any such conflict in accordance with the care, skill, prudence and diligence that a prudent Person acting in a like capacity and familiar with such matters would use in the resolution of such conflict. . . ." Significantly, Section 14.1 of the Indenture assigns to the Trustee the right to take legal action upon breach of the CMA by the Collateral Manager.

The Offering Memorandum for Zohar III also imposes a reasonable care standard on Patriarch that applies to resolving conflicts of interests. The Offering Memorandum states that "in rendering its services as Collateral Manager, the Collateral Manager will use reasonable care and the same degree of skill and attention (a) that the Collateral Manager (i) exercises with respect to comparable assets that it manages for itself and its Affiliates and (ii) exercises with respect to comparable assets that it manages for others and (b) 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 . . . ."<sup>3</sup>

<sup>2</sup> *MBIA Insurance Corp. v. Patriarch Partners VIII, LLC et al.*, Civil Action No. 09-3255(S.D.N.Y. June 10, 2013), Opinion at 55.

<sup>3</sup> Zohar III Offering Memorandum at 166.

Patriarch Partners XV, LLC  
Attention: Lynn Tilton  
April 9, 2015  
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We do not believe that Patriarch can comply with the foregoing provisions relating to conflicts of interest and standard care while excluding Zohar II and Zohar III noteholders from negotiations to restructure Zohar I. If Patriarch believes that it has complied with these provisions in connection with attempts to restructure Zohar I, we ask that you promptly provide us with documentation demonstrating all of Patriarch's efforts to address its conflicts of interest associated with the restructuring.

Patriarch and its affiliates may also violate the federal securities laws by restructuring Zohar I at the expense of Zohar II and Zohar III. The United States Securities and Exchange Commission ("SEC") – which already commenced enforcement proceedings against Lynn Tilton, Patriarch, and its affiliates – has repeatedly brought charges against investment advisers for engaging in transactions that benefitted one client at the expense of another. For example, in 2010, the SEC charged ICP Asset Management, LLC ("ICP") with violating Section 206 of the Investment Advisers Act of 1940, Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities and Exchange Act of 1934 for, *inter alia*, directing its CDO clients to purchase assets at detrimental prices from other ICP clients. ICP and its principal ultimately settled the enforcement action by paying over \$23 million to the SEC and ICP's principal was barred from the securities industry.<sup>4</sup> The SEC filed similar charges against another investment advisor, Commonwealth Advisors, Inc., and its principal in 2013.<sup>5</sup> These SEC actions are particularly relevant to Patriarch because Zohar III acquired \$41.2 million of Collateral Investments from Zohar I and Zohar II at 100% of par value. Zohar III similarly acquired another \$35 million of Collateral Investments from Patriarch affiliate, Ark II CLO 2001-1 Limited, in exchange for 35,000 Preference Shares. In both transactions, Patriarch advised Zohar III that the purchase price was "fair."

Finally, Patriarch's own Code of Ethics reflects its obligation to refrain from benefitting some CDO clients at the expense of others. For example, the Code of Ethics prohibits Patriarch from engaging in cross trades between CDO clients unless the trades are in the best interests of both clients. The Code of Ethics similarly requires Patriarch "to allocate investment opportunities among all CDO Clients in a manner that is fair and equitable to all such CDO clients over time . . ." <sup>6</sup> The restructuring of the Zohar Funds with overlapping collateral raises the same issues and should be addressed in a manner consistent with Patriarch's Code of Ethics. Permitting Patriarch to restructure investments to benefit some clients at the expense of others undermines the requirement in its Code of Ethics that such investments must be allocated fairly and equitably in the first place.

In short, we believe that any attempt by Patriarch to restructure Zohar I without the participation of Zohar II, Zohar III and their noteholders will likely violate the federal securities laws, and

<sup>4</sup> *SEC v. ICP Asset Management, LLC et al.*, Civil Action No. 10-4791(S.D.N.Y. June 21, 2010); SEC Litigation Release 22477 (September 10, 2012).

<sup>5</sup> *SEC v. Commonwealth Advisors, Inc. et al.* Civil Action No. 12-700 (M.D. La. Nov. 8, 2012).

<sup>6</sup> Patriarch Partners March 2014 Form ADV, Part 2 A at 31.

Patriarch Partners XV, LLC  
Attention: Lynn Tilton  
April 9, 2015  
Page 4

constitutes a material breach of the Transaction Documents as well as Patriarch's Code of Ethics. Moreover, the failure to include Värde and other noteholders of Zohar III in Patriarch's attempts to restructure other Zohar Funds is a breach of the CMA and, along with other breaches of that agreement, constitutes Cause for termination of Patriarch as Collateral Manager.

#### **Patriarch's Material Breach of Transaction Documents**

Värde, based on the limited information made available to it under the CMA, related Zohar III Indenture, and other Transaction Documents and publicly available information, believes that Patriarch is in material breach of its obligations under the Transaction Documents. For example, Patriarch has failed to compute important financial tests in accordance with the terms of the Transaction Documents. In particular, the calculation of the numerator of the Class A Overcollateralization Test requires that Defaulted Investments be included only to the extent of the lesser of market value and rating agency recovery amounts. Breach of this key test would, among other things, result in an Event of Default and preclude deposits into the Preference Share Distribution Account and payment of the Subordinated Collateral Management Fee to Patriarch. Because its compensation and economic returns depend upon compliance with the Class A Overcollateralization Test, Patriarch is incentivized to manipulate the computational components of the test in a fashion that appears to show compliance and has a conflict of interest with Noteholders.

We note that the computation of this test set forth in the Monthly Report is performed incorrectly because, among other things:

1. Obligors on Collateral Investments known by the Holder to be in bankruptcy and that are not "Current Pay Investments" are not properly reported as Defaulted Investments. Similarly, other Collateral Investments that are not Current Pay Investments and appear to have been downgraded to "D" by Standard & Poor's or "C" by Moody's are not treated as Defaulted Investments.
2. Where Market Value is obtainable through the relevant market, Defaulted Investments are required to be included in the numerator at the lesser of (a) Market Value or (b) the rating agency formula recovery amount. In the Monthly Report As of January 31, 2015, we note the designation "N/A" on page 45 beneath the heading "Market Value" for each Defaulted Investment. This means that Patriarch believes that either (a) no Market Value is available in the relevant market or (b) in the case of each and every Defaulted Investment, the Market Value is greater than the rating agency formula recovery amount. Neither of these outcomes is feasible or realistic.
3. Every single Defaulted Investment (but one) is classified in the most favorable "senior secured loan" category for purposes of calculating the rating agency formula recovery amount. According to the report, only one Defaulted Investment is either unsecured or a second lien Collateral Investment. Yet the definition of Senior Secured Collateral Investment requires

VPI0000004

Patriarch Partners XV, LLC  
Attention: Lynn Tilton  
April 9, 2015  
Page 5

that the collateral security for the loan have a value not less than the outstanding principal balance of the loan. Based on publicly available information, we believe that Collateral Investments that are undersecured are improperly classified as Senior Secured Collateral Investments and therefore not subject to the stricter haircuts applicable to unsecured and second lien debt. In order to perform a correct calculation of the Class A Overcollateralization Test, Värde hereby requests:

1. The total amount of previously deferred or capitalized interest that was excluded from the Principal Balance for purposes of computing whether the Class A Overcollateralization Ratio Test under clause (K)(2) of the Priority of Payments was satisfied in order to allow payments of Subordinated Collateral Management Fees and deposits into the Preference Share Distribution Account.

2. All Supplemental Noteholder Information provided by Patriarch to the Trustee concurrently with the delivery of each Monthly Report setting out information regarding Obligors and issuers of the Collateral Investments and that Patriarch promptly provide written notice to the Trustee of its consent to delivery of such information.

3. For each Collateral Investment identified by its "Security I.D." as set out in the Monthly Report, the following information not set forth in the Monthly Report:

- (a) Name of the Obligor;
- (b) Whether Obligor was the subject of a bankruptcy or similar proceeding;
- (c) Whether a default as to payment of principal or interest has occurred;
- (d) Whether the Collateral Investment has been amended, modified or otherwise restructured in connection with a default or otherwise, and the amount of any deferred or capitalized interest included in the Principal Balance set forth in the Monthly Report;
- (e) The Moody's and Standard & Poor's "Rating";
- (f) Whether such Collateral Investment would be a Defaulted Investment but for its classification as a "Current Pay Investment" and the Market Value of each such Collateral Investment;
- (g) For each Defaulted Investment, the Market Value if obtainable through the relevant market;
- (h) Whether the Collateral Investment was acquired by Zohar III from Zohar I, Zohar II, or another entity managed by Patriarch; and
- (i) Whether the Obligor is also an obligor on a collateral investment held by Zohar I or Zohar II or any other investment vehicle managed or advised by Patriarch.

Patriarch's failure to provide the foregoing information will constitute an additional material breach of the Transaction Documents and constitute Cause for termination of Patriarch as Collateral Manager.

VPI0000005

Patriarch Partners XV, LLC  
Attention: Lynn Tilton  
April 9, 2015  
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For the reasons stated above, Värde requests that Patriarch immediately cease all attempts to restructure Zohar I independently from Zohar II and Zohar III, promptly inform all noteholders of the Zohar Funds of any additional restructuring efforts relating to any of those funds, provide all noteholders of the Zohar Funds with an opportunity to participate in all restructurings of any Zohar Funds, stop collecting the Subordinated Collateral Management Fee and making deposits into the Preference Share Distribution Account in connection with Zohar III, provide all of the information requested in this letter to correctly calculate the Class A Overcollateralization Test and return to Zohar III all monies wrongfully received with respect to Subordinated Collateral Management Fees or Preference Share distributions.

Please contact me if you wish to discuss these matters further.

Sincerely,



Matthew A. Rossi

cc: U.S. Bank Global Corporate Trust Services, Mr. Lou Maruchau





## PATRIARCH PARTNERS

One Broadway, 5<sup>th</sup> Floor  
New York, NY 10004

### **PATRIARCH PARTNERS XV, LLC**

April 24, 2015

Via Email and Federal Express

Matthew A. Rossi, Esq.  
Mayer Brown LLP  
1999 K Street NW  
Washington, D.C. 20006

Re: Zohar III, Limited ("Zohar III")

Dear Mr. Rossi:

We write in response to your April 9, 2015 letter to Lynn Tilton (the "Letter") as Manager of Patriarch Partners XV, LLC ("Patriarch XV" and together with Patriarch Partners, LLC, "Patriarch"), the collateral manager for Zohar III, in which you make a number of demands predicated upon the incorrect assertion that (i) Patriarch is attempting to restructure Zohar I CDO 2003-1, Limited ("Zohar I") without a restructuring of Zohar II and Zohar III, and (ii) Patriarch has calculated the Zohar III Class A Overcollateralization Test incorrectly. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Letter.

First, you wrongly contend that Patriarch is attempting to restructure Zohar I without a restructuring of Zohar II and Zohar III.<sup>1</sup> Quite to the contrary, as stated in our Letter to Noteholders of February 6, 2015, we have called upon the noteholders to come together for a restructuring of all three Zohar Funds. Our financial advisor in this regard is Moelis & Company LLC. If your client is interested in discussing such

<sup>1</sup> We note for the record that Patriarch Partners XV, LLC, to whom your Letter is addressed, is not the collateral manager for either the Zohar I or Zohar II funds. Each of those funds has its own collateral management entity. Any restructure of any Zohar fund would involve its respective collateral manager, together with Patriarch Partners, LLC.

VPI0000007



restructuring, please direct your client to Steve Panagos and Yadin Rozov of Moelis. Their contact information is provided herein for your convenience:

Steven G. Panagos  
+1.212.883.3802 office  
+ [REDACTED]  
[steve.panagos@moelis.com](mailto:steve.panagos@moelis.com)

Yadin Rozov  
212.883.4551 office  
[REDACTED]  
[yadin.rozov@moelis.com](mailto:yadin.rozov@moelis.com)

Mssrs. Panagos and Rozov can update your client on the status of any discussions regarding a restructuring of the Zohar Funds.

Patriarch Partners, LLC does, however, want to extend the maturity of the Zohar I Fund. As has been reported in the media, Patriarch recently acquired almost two-thirds of the outstanding Zohar I Notes. Such acquisition was made, in part, to facilitate the extension of the Zohar I maturity, which would in turn, facilitate a restructure of all three Zohar Funds. It is our belief that the extension of the Zohar I maturity is in the best interests of all three Zohar Funds as it will allow more time for the parties to negotiate a restructure of those Funds and avoid the requirement under the Zohar I indenture of placing the Zohar I loans up for sale in May 2015 as required under the Zohar I indenture. It should be noted, however, that while such loans must be put up for sale, they need only be sold if, in the good faith business judgment of the Zohar I collateral manager, they can be sold for a commercially reasonable price.

As to your concern regarding potential conflicts of interest in connection with a restructuring, such concern is misplaced. We are fully aware of our obligations and responsibilities under the CMA, Offering Memorandum and other deal documents and Patriarch's Code of Ethics with respect to potential conflicts of interest and have, at all times, acted in accordance with such obligations and responsibilities. In any event, it is not our intention to restructure any one of the Zohar Funds at the expense of any one of the others.

Second, in your letter you, again incorrectly, contend that Patriarch XV is in material breach under the Zohar III Indenture and other Transaction Documents because it allegedly has mis-calculated the Class A Overcollateralization test. Based upon this incorrect contention you have demanded that Patriarch XV stop collecting the Subordinated Collateral Management Fee and making deposits into the Preference Share Distribution account, and have also demanded that Patriarch XV provide you with certain information regarding the calculation of the O/C test beyond that which you are entitled to receive under the Zohar III Indenture.

Patriarch strongly denies that it has, at any time, calculated the O/C test improperly. In response to the specific grounds upon which you claim that the test was computed incorrectly, Patriarch responds as follows:

- 1) You contend that Obligors in bankruptcy have not been properly reported as Defaulted Investments, and that there are Collateral Investments that have been downgraded to D by S&P or C by Moody's that are not treated as Defaulted Investments. While we do not know what specific Obligors or Collateral Investments you are referring to, there are currently no Collateral Investments in bankruptcy that are not reported as Defaulted Investments. We note that the most recent Trustee report has one asset showing a public rating of 'D' by S&P. This asset should not be listed as having a public rating of D and is a mistake that we believe was made inadvertently by the Trustee. The Trustee is correcting it in the next report. In any event, this inadvertent error on a \$40,000 loan would not materially affect the O/C test calculation.
- 2) You take issue with Patriarch's designation of the Market Value for Defaulted Investments as "N/A" and use of the rating agency formula for recovery amount. Contrary to your assertion, our practice is entirely in accordance with the Zohar III indenture (*see e.g.* definition of "Net Portfolio Collateral Balance" in Section 1.1 of the Zohar III Indenture.) Because our loans are to distressed private companies that are in the process of rebuilding and restructuring no Market Value can be obtained.
- 3) You take issue with Patriarch's classification of Defaulted Investments in the "senior secured loan" category for purposes of calculating the rating agency formula recovery amount. Contrary to your assertion, Patriarch has properly classified these Defaulted Investments. As is made clear in the last sentence of the definition set forth in Section 1.1 of the Zohar III indenture, the classification of a loan as a "Senior Secured Collateral Investment" is made at the time of acquisition or origination.

Finally, as to your lengthy information request, such materials and information are not available to Zohar III noteholders under the terms of the Indenture, the CMA or other deal documents.

Given that there has been no default under the Zohar III Indenture, CMA or any other Transaction document and that the O/C test has been properly calculated, Varde's demand that Patriarch XV stop collecting the Subordinated Collateral Management Fee and making deposits into the Preference Share Distribution Account in connection

with Zohar III, and provide the exhaustive information set forth in your Letter is misplaced and Patriarch declines to accede to any such demand. If your client is truly interested in discussing a restructure of the Zohar Funds we hope that it will contact Moelis as soon as practicable.

Sincerely,

PATRIARCH PARTNERS XV, LLC

By: 

Name: Lynn Tilton

Title: Manager

cc: U.S. Bank Global Corporate Trust Services,  
Mr. Lou Marucheu (via federal express)

**From:** [Heinke, Nicholas](#)  
**To:** [Loseman, Monica K.](#); [Dunning, Mary Kay](#); [Mastro, Randy M.](#); [Zweifach, Lawrence J.](#); [Goldsmith, Barry](#); [Halligan, Caitlin J.](#); "[sbrune@brunelaw.com](mailto:sbrune@brunelaw.com)"; [Kirsch, Mark A.](#); [Kravat, Zachary](#)  
**Cc:** [Bliss, Dugan](#); [Sumner, Amy A.](#); [Williams, Mark L](#)  
**Subject:** In the Matter of Lynn Tilton et al.  
**Date:** Tuesday, September 20, 2016 7:14:49 PM

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Counsel – the Division has determined to produce certain information it has learned from one of the investors in the Zohar funds that may not be in Respondents' possession. Specifically, David Anlioff of SEI has informed the Division of the following:

- Beginning sometime in the last few years, Mr. Anlioff noted that in certain cases interest rates of loans reflected on monthly trustee reports were lowered and maturity was extended. These interest changes should have been considered an amendment and default, but were not.
- Beginning sometime in the last few years, Mr. Anlioff received information from others that showed that certain loans were not paying current interest but were still carried as performing loans. This failure to pay interest should have been considered a default, but was not. Mr. Anlioff did not generate this information himself.
- Mr. Anlioff hopes that this proceeding against Respondents results in financial recovery for his fund and the fund's clients.
- The representations that financial statements were GAAP compliant were not important to him, but representations that loans were carried at fair value were important to him.

The Division takes no position as to whether this information constitutes material exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1967) and Commission Rule of Practice 230(b)(2), but rather is producing this information pursuant to Commission Rule of Practice 230(a)(2). By disclosing such information, the Division does not waive its right to object to the admission of such information on relevance grounds or otherwise.

Best regards,

Nicholas P. Heinke  
Trial Counsel  
U.S. Securities & Exchange Commission  
Byron G. Rogers Federal Building  
1961 Stout Street, Suite 1700  
Denver, CO 80294-1961  
(303) 844-1071  
[HeinkeN@sec.gov](mailto:HeinkeN@sec.gov)

**From:** Heinke, Nicholas  
**To:** Loseman, Monica K.; Dunning, Mary Kay; Mastro, Randy M.; Zweifach, Lawrence J.; Goldsmith, Barry; Halligan, Caitlin J.; "sbrune@brunelaw.com"; Kirsch, Mark A.; Kravat, Zachary  
**Cc:** Bliss, Dugan; Sumner, Amy A.; Williams, Mark L  
**Subject:** In the Matter of Lynn Tilton et al.  
**Date:** Monday, October 3, 2016 10:55:53 PM

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Counsel – the Division has determined to produce certain information it has learned from one of the investors in the Zohar funds that may not be in Respondents' possession. Specifically, Omar Bolli of Nord LB has informed the Division of the following:

- Generally, categorization of loans for purposes of the overcollateralization ratio was based on whether the interest and principal were being repaid as scheduled. The collateral manager does have some ability to defer an interest payment in the short term. This does not eliminate the requirement to categorize loans based on whether the loan was expected to continue paying in full.
- At the time Nord initially invested in the Zohar funds, Mr. Bolli had the perception that Ms. Tilton was reputable.
- Mr. Bolli viewed Ms. Tilton as an expert on the subject of the loans the Zohar CLOs made.
- Mr. Bolli noted from time to time from the trustee reports that certain loans were not up to date on their interest payments.
- Mr. Bolli hopes that testimony he gives in this proceeding is helpful to his legacy at Nord. Very few of his investment recommendations resulted in losses (as the Zohar investments did).

The Division takes no position as to whether this information constitutes material exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1967) and Commission Rule of Practice 230(b)(2), but rather is producing this information pursuant to Commission Rule of Practice 230(a)(2). By disclosing such information, the Division does not waive its right to object to the admission of such information on relevance grounds or otherwise.

Best regards,

Nicholas P. Heinke  
Trial Counsel  
U.S. Securities & Exchange Commission  
Byron G. Rogers Federal Building  
1961 Stout Street, Suite 1700  
Denver, CO 80294-1961  
(303) 844-1071  
HeinkeN@sec.gov

**CERTIFICATE OF SERVICE**

I hereby certify that I served true and correct copies of 1) Respondents' Motion to Compel the production of Brady material and Jencks Act witness statements and a memorandum of law in support thereof, and 2) the Declaration of Monica Loseman in Support of Motion to Compel the production of Brady material and Jencks Act witness statements and its exhibits on this 12th 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 R. Santamaria