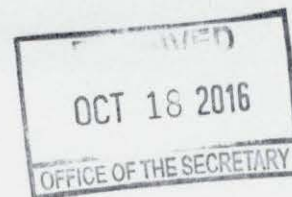


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



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

**DECLARATION OF GOUTAM U. JOIS IN SUPPORT OF RESPONDENTS'
OPPOSITION TO THE DIVISION'S MOTION TO PARTIALLY STRIKE
RESPONDENTS' STATEMENTS OF MESSRS. LUNDELIUS, VINELLA, AND
SCHWARCZ**

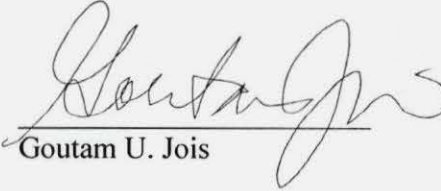
I, Goutam U. Jois, under penalty of perjury, affirm as follows:

1. I am an associate in the law firm of Gibson, Dunn & Crutcher LLP, attorneys for the above-referenced Respondents. I submit this declaration in support of Respondents' Opposition to the Division's Motion to Partially Strike Respondents' Statements of Messrs. Lundelius, Vinella, and Swarcz.
2. Attached hereto as Exhibit A is a true and correct copy of a letter from Randy M. Mastro, Esq. to Dugan Bliss, Esq., Division of Enforcement, Securities and Exchange Commission, dated October 3, 2016.
3. Attached hereto as Exhibit B is a true and correct copy of the Statement of Charles R. Lundelius, Jr., dated October 3, 2016.
4. Attached hereto as Exhibit C is a true and correct copy of the Statement of Pietro (Peter) Vinella, dated October 3, 2016.

5. Attached hereto as Exhibit D is a true and correct copy of the Statement of Steven L. Schwarcz, dated October 3, 2016.

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

Dated: New York, NY
October 17, 2016


Goutam U. Jois

GIBSON DUNN

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RMastro@gibsondunn.com

Client: 73958-00001

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.

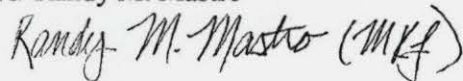
GIBSON DUNN

Dugan Bliss, Esq.
October 3, 2016
Page 2

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

RMM
Enclosure

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

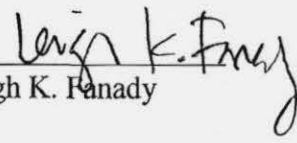
CERTIFICATE OF SERVICE

I hereby certify that I served true and correct copies of a letter and enclosures from Randy Mastro to Dugan Bliss, on this 3rd 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.
Nicholas Heinke, Esq.
Amy Sumner, Esq.
Mark L. Williams, Esq.
Division of Enforcement
Securities and Exchange Commission
Denver Regional Office
1961 Stout Street, Ste. 1700
Denver, CO 80294
(By Email pursuant to parties' agreement)



Leigh K. Fanady

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.

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.

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