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UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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

**RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO COMPEL BARCLAYS TO PRODUCE A DOCUMENT RESPONSIVE TO  
A COURT-ORDERED SUBPOENA AND FOR EXPEDITED BRIEFING**

BRUNE LAW P.C.  
450 Park Avenue  
New York, NY 10022

*Counsel for Respondents*

October 17, 2016

Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Respondents"), respectfully submit this brief in support of their motion to compel Barclays PLC ("Barclays") to produce a document requested by the subpoena issued May 27, 2015 (the "Subpoena"), pursuant to Rule 111 of the SEC Rules of Practice. Respondents also respectfully request expedited briefing, with any responsive brief to be filed by October 19, 2016.

### **BACKGROUND**

Pursuant to a Subpoena ordered by Your Honor on May 27, 2015, Barclays is required to produce, among other things, "for the period January 1, 2003 through the present, any agreements (including any modifications thereof) between Barclays and MBIA Insurance Corporation [(“MBIA”)] in connection with any Zohar Notes owned by Barclays." See Declaration of Susan Brune ("Brune Decl.") Ex. A, Request 12. The parties entered into a confidentiality stipulation that covered production under the Subpoena. *Id.*, Ex. B.

Barclays has refused to produce an agreement, dated in or about January 2011, pursuant to which Barclays agreed to commute the insurance policy MBIA had issued for the Zohar I notes that Barclays held. The document is squarely responsive to the Subpoena and plainly relevant to the issues to be tried. Barclays' only stated objection to producing the document is that MBIA objects. *Id.*, Ex. C. This is not a proper objection and does not justify non-compliance with the Subpoena.

According, respondents now move to compel Barclays to produce the document pursuant to the Subpoena.

### **ARGUMENT**

Rule 232(a) states that parties, "[i]n connection with any hearing ordered by the Commission . . . may request the issuance of subpoenas . . . requiring the production of

documentary or other tangible evidence returnable at any designated time or place.”

Respondents in SEC administrative proceedings may move to compel a non-party’s production of materials pursuant to a subpoena request. *See, e.g., Neely*, Release No. 1958 (Oct. 29, 2014) (requiring the production of a non-party’s materials following the respondent’s subpoena request and motion to compel); *J.S. Oliver Capital Mgmt.*, Release No. 1134 (Dec. 31, 2013) (requiring a non-party to produce materials pursuant to subpoena request, which respondents submitted with a motion to compel); *Piper Capital Mgmt.*, Release No. 582 (Mar. 18, 1999) (granting motion to compel production of documents from non-party).

There can be no authority for the proposition that parties can contract out of their responsibility for complying with court directives such as the Subpoena via confidentiality understandings. Nonetheless, apparently out of deference to MBIA, Barclays has simply decided to defy the Subpoena. That is improper and should not be countenanced.

**CONCLUSION**

For the foregoing reasons, Respondents respectfully request that Your Honor order Barclays to produce the document pursuant to the Subpoena. Respondents also respectfully request expedited briefing, with any responsive brief to be filed by October 19, 2016.

Dated: New York, New York  
October 17, 2016

BRUNE LAW P.C.

By: 

Susan E. Brunc  
Christopher A. Hazlehurst

450 Park Avenue  
New York, NY 10022  
Telephone: 212.668.1900  
Fax: 212.668.0315

*Counsel for Respondents*