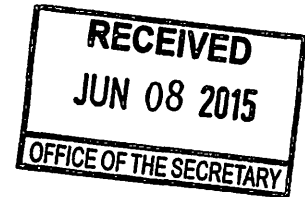


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**



In the Matter of

LYNN TILTON,
PATRIARCH PARTNERS, LLC,
PATRIARCH PARTNERS VIII, LLC,
PATRIARCH PARTNERS XIV, LLC, and
PATRIARCH PARTNERS XV, LLC,

Respondents.

Administrative Proceeding
File No. 3-16462

Hon. Judge Carol Fox Foelak

**DECLARATION OF CHRISTOPHER J. GUNTHER
IN SUPPORT OF RESPONDENTS' MOTION TO HALT THE DIVISION'S SEARCH
FOR A SUBSTITUTE CASE FOR TRIAL**

I, CHRISTOPHER J. GUNTHER, under penalty of perjury, affirm as follows:

1. I am a member of the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, attorneys for the above-referenced Respondents. I respectfully submit this declaration in support of Respondents' Motion to Halt the Division of Enforcement's Search for a Substitute Case for Trial.

2. The Division investigated Respondents for more than five years. On December 15, 2009, the Division requested documents and information dating to 2000. The Division continued to seek documents and other information regarding Respondents through March 2015.

3. The Division has produced its investigative file to Respondents. The Division collected more than 2.4 million pages of documents, took sworn testimony on twenty-one occasions from nineteen witnesses and performed dozens of informal witness interviews.

4. Based on the investigative file produced by the Division, the Division appears to have collected documents from five investors in the funds managed by the Respondents: Barclays, Goldman Sachs, MBIA, Natixis, and Tokio Marine. Only Natixis produced over 1,000 documents to the Division.

5. Based on the investigative file produced by the Division, the Division appears to have taken sworn testimony from three investors: MBIA, Barclays, and Rabobank. The Division conducted informal interviews of Natixis and Tokio Marine.

6. Attached hereto as Exhibit 1 is a true and correct copy of the transcript of the May 7, 2015 Pre-Hearing Conference held before Judge Foelak in this matter.

7. Attached hereto as Exhibit 2 is a true and correct copy of an excerpt from the transcript of the May 1, 2014 sworn testimony of Jaime Aldama of Barclays, as produced to Respondents by the SEC.


8. Attached hereto as Exhibit 3 is a true and correct copy of the Division's May 29, 2015 letter to Respondents informing Respondents that the Division had contacted nineteen investors in the week preceding the letter.

9. Based on the investigative file produced by the Division, fifteen of the nineteen investor entities listed in the Division's May 29, 2015 letter had never before been subpoenaed for testimony or documents by the Division in regards to its investigation into Respondents.

10. On March 22, 2015, Respondents provided a supplemental written submission in response to the SEC's Wells Notice explaining why any enforcement proceeding authorized by the Commission should be the U.S. District Court, rather than an administrative proceeding, which would be constitutionally infirm and prejudicial to Respondents.

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

Executed on June 5, 2015, in New York, New York.

By: 

Christopher J. Gunther
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
Four Times Square
New York, NY 10036

Exhibit 1

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. 3-16462

LYNN TILTON,)
Patriarch Partners, LLC,)
Patriarch Partners VIII, LLC,)
Patriarch Partners XIV, LLC, and)
Patriarch Partners XV, LLC)

ADMINISTRATIVE PROCEEDINGS - PRE-HEARING CONFERENCE

PAGES: 1 through 35

PLACE: Securities and Exchange Commission
1961 Stout Street
Denver, CO 80294

DATE: Thursday, May 7, 2015

The above-entitled matter came on for hearing,
pursuant to notice, at 11:57 a.m.

BEFORE (via telephone):
CAROL FOX FOELAK, ADMINISTRATIVE LAW JUDGE

Diversified Reporting Services, Inc.
(202) 467-9200

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1 APPEARANCES (CONT.)
2
3 On behalf of the Respondents (Via Telephone):
4 SUSAN E. BRUNE, ESQ.
5 MARYANN SUNG, ESQ.
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Page 2

1 APPEARANCES:
2
3 On behalf of the Securities and Exchange Commission:
4 DUGAN BLISS, ESQ.
5 AMY SUMNER, ESQ.
6 Division of Enforcement
7 Securities and Exchange Commission
8 1961 Stout Street, Suite 1700
9 Denver, Colorado 80294
10 (303) 844-1041
11
12 On behalf of the Respondents (Via Telephone):
13 CHRISTOPHER J. GUNTHER, ESQ.
14 DAVID M. ZORNOW, ESQ.
15 MATTHEW T. WARREN, ESQ.
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1 PROCEEDINGS
2 JUDGE FOELAK: Let's go on the record. This is
3 a pre-hearing conference in the matter of Lynn Tilton and
4 others, Administrative Proceeding 3-16462. And this
5 pre-hearing conference is being held by telephone on
6 May 7th, 2015, at 2:00 Eastern Time, and I am Judge
7 Foelak.
8 And can I have your appearances for the record?
9 And might I suggest also when counsel speaks during the
10 conference, since there are several of them, that he or
11 she identify himself or herself?
12 MR. BLISS: Thank you, Your Honor. This is
13 Dugan Bliss and Amy Sumner on behalf of the Division of
14 Enforcement.
15 MR. ZORNOW: This is David Zornow from Skadden,
16 Arps, Slate, Meagher & Flom, LLP, and I am joined in New
17 York by my colleagues Chris Gunther and Matthew Warren,
18 and we are appearing for the Respondents.
19 MS. BRUNE: This is Susan Brune speaking. It's
20 Susan Brune and MaryAnn Sung, also counsel for the
21 Respondent.
22 JUDGE FOELAK: Okay. Very good.
23 Okay. First question. Are there any
24 settlement negotiations I should be apprised of?
25 MS. BRUNE: No, Your Honor. This is Susan

1 Brune.

2 JUDGE FOELAK: Okay. Counsel has provided a
3 suggested schedule today that I guess was mutually agreed
4 on.

5 Can I get a guesstimate from counsel as to how
6 long they expect the hearing might last?

7 MR. BLISS: Yes, Your Honor. This is Dugan
8 Bliss on behalf the Division.

9 We view this as about a two-week trial that
10 could extend into three weeks, and so we think it makes
11 sense to allot between the two- and three-week period for
12 the hearing.

13 MR. ZORNOW: Your Honor, it's David Zornow for
14 the Respondents.

15 You know, we are still in the process of
16 digesting the discovery materials and, of course, we
17 don't know yet, and we will on the schedule, what the
18 SEC's witness list will look like, but I think generally
19 speaking, based on what we know now, what Mr. Bliss said
20 seems right.

21 JUDGE FOELAK: Okay. I was kind of hoping for
22 something in August or September, but I suppose counsel
23 have conflicts and stuff like that.

24 MR. ZORNOW: Yes, Your Honor. This is David
25 Zornow.

1 We have taken into consideration both conflicts
2 as well as the complexity of the case, the volume of the
3 material that we have been provided, and I believe there
4 may even be more material that we have yet to see, so I
5 think the extra time will make for a more efficient
6 presentation by both sides.

7 JUDGE FOELAK: Okay. Where should this hearing
8 take place? I suppose the people might be coming from
9 all over, so Washington might be good.

10 MR. BLISS: Your Honor, this is Dugan Bliss on
11 behalf of the Division.

12 I think that a good number of the witnesses
13 will be located in New York, as well as counsel for the
14 Respondents and the Respondents themselves.

15 We were thinking that New York would be the
16 most logical explanation -- or location. I think we had
17 that conversation with Respondents' counsel, but I would
18 welcome their thoughts on that, too.

19 MR. ZORNOW: Yeah. It's David Zornow again,
20 Your Honor.

21 If that -- if you can manage that, obviously,
22 since we are located in New York and our client is
23 located in New York, that would be most convenient, but,
24 of course, your convenience is not unimportant either,
25 so --

1 JUDGE FOELAK: Okay. Well, it sort of sounds
2 like New York.

3 Let's see. I looked at your schedule and
4 there's just one thing that I might add, is pre-hearing
5 briefs can be helpful and, you know, it also eliminates
6 the need for opening statements and speeds things up.
7 You might put those in at like October 5th or something
8 or, you know, right toward the end.

9 MS. BRUNE: Your Honor, we will certainly
10 consider that, but it's Respondents' current intention to
11 make opening statements if Your Honor is prepared to hear
12 them.

13 JUDGE FOELAK: Well, certainly. Sure, opening
14 statements would be okay, if both parties agree on it,
15 but pre-hearing briefs would be good.

16 Do you expect to reach any stipulations?
17 There's probably something you can agree on.

18 MR. BLISS: Yes, Your Honor. This is Dugan
19 Bliss on behalf of the Division.

20 First of all, we do think that a pre-trial
21 brief makes sense, even with a brief opening argument,
22 which could also make sense.

23 And typically we are able to enter into at
24 least some stipulations in advance of the hearing, so we
25 could certainly add that as a date to the scheduling

1 order. We would have no problem with that.

2 JUDGE FOELAK: Do you want to come up with a
3 date now or --

4 MR. BLISS: I think from the Division's
5 perspective, getting all of that done by October 5th, the
6 date of the pre-trial conference, probably makes sense,
7 both a pre-hearing brief and any fact stipulations.

8 MR. ZORNOW: This is David Zornow. I'm sorry,
9 Go ahead.

10 JUDGE FOELAK: I was just going to comment if
11 you had an earlier date for stipulations it might drive
12 you toward making them earlier, but -- Just a thought.

13 Yes, Mr. Zornow.

14 MR. ZORNOW: I was going to say what Mr. Dugan
15 suggested would be fine with us. And, you know, to the
16 extent that he can present us with stipulations earlier,
17 perhaps we can get them, you know, squared away even
18 earlier than that date. If we can stipulate.

19 JUDGE FOELAK: Ycs. It might help with your
20 witness and exhibit lists.

21 MR. ZORNOW: Yes.

22 JUDGE FOELAK: Okay. I notice that you have
23 put down dates for expert reports, and I gather -- it is
24 my preference to have expert testimony -- the direct
25 testimony by means of such expert reports and making the

1 experts available for cross-examination. I guess that
2 was what was in your mind?

3 MR. BLISS: Well, Your Honor -- Dugan Bliss
4 again on behalf of the Division.

5 One thing that we have found helpful, and we
6 propose to the Respondents, is to have -- their reports
7 would serve as primarily their direct testimony, but that
8 we would also have the opportunity to put on each expert
9 for up to 90 minutes. If Your Honor would find that
10 helpful, we believe it would be helpful.

11 JUDGE FOELAK: So is the 90 minutes going to
12 address new things that came up in the rest of the fact
13 testimony or --

14 MR. BLISS: No. We would view it more as a
15 type of summary testimony to hit the high points of what
16 is in the reports.

17 Given the -- you know, the nature of their
18 expert reports, we just think that could be helpful to
19 you, if you agree.

20 JUDGE FOELAK: Mr. Zornow, do you have any
21 comments on that or --

22 MR. ZORNOW: We would be okay with that, Your
23 Honor. I guess we can all revisit it once we see what
24 the reports say, but I think it might well be helpful to
25 hear some summary testimony from the expert.

1 JUDGE FOELAK: And 90 minutes does sound like a
2 lot, but --

3 MR. BLISS: The Division could certainly agree
4 to a shorter period. You know, 60 minutes or -- or less,
5 if Your Honor requests that.

6 JUDGE FOELAK: Okay. Let's see.
7 Okay. I thought I might address the
8 Respondents' motion for a more definite statement.

9 Okay. The current state of play seems to be
10 that the Division has disclosed portfolio companies or
11 entities that they would be presenting evidence about,
12 and the Respondents' only concern is that they might come
13 up with more.

14 So what I was going to suggest is that the list
15 that they disclose would become final by, let's say,
16 May 15th so that there wouldn't be any further surprises.

17 MR. BLISS: Your Honor, this is the Division.
18 We don't have a present intention of adding companies to
19 that list, so I think we would be fine with a set date on
20 that.

21 JUDGE FOELAK: Okay.

22 MS. BRUNE: This is Susan Brune. Thank you,
23 Your Honor.

24 JUDGE FOELAK: Okay. Then the other thing is
25 the Respondents, you know, request specificity as to

1 specific investors.

2 I sort of got the impression from reading the
3 OIP that the Division wasn't really focusing on specific
4 investors but focusing on the disclosures or
5 nondisclosures that the Respondents allegedly made rather
6 than, you know, some -- that they were focusing on all
7 investors rather than some subclass, but maybe I'm wrong
8 there.

9 MR. BLISS: Your Honor, this is Dugan Bliss
10 again on behalf of the Division, and you're exactly
11 right. The allegations of the OIP indicate that all
12 investors were defrauded in the same way by disclosures
13 that were made in exactly the same manner to all of the
14 investors, and so on that basis we do view that this is a
15 case where simply all investors were defrauded in the
16 same way, without some subset being defrauded in any
17 particularly different way than anyone else.

18 JUDGE FOELAK: Okay.

19 MS. BRUNE: Your Honor, this is Susan Brune.
20 Given the very tight time constraints on this
21 sort of proceeding, we need to proceed very efficiently.

22 There is going to be substantial third-party
23 discovery here to understand the total mix of information
24 that the investors had available and made use of, and I'd
25 really rather not burden investors or burden the Court or

1 burden the Respondents, frankly, by trying to get that
2 kind of discovery from every conceivable investor.

3 What we need to know is what are the specific
4 investors upon which the Division is going to place
5 reliance.

6 I note that the Division has said that it will
7 produce certain handwritten notes of interviews, I
8 believe, including interviews with investors. I don't
9 believe we've received those yet, but what we were
10 thinking is maybe that what the Division is saying, given
11 the fact that, really, trial is nigh upon us, is that
12 that's the data set, meaning the transcripts that we've
13 already received and the handwritten notes that can give
14 us guidance about which investors they're talking about.

15 And if we could get the Division to give us
16 some clarity on that point, then I think the -- this part
17 of the motion would be pretty much settled and moot.

18 MR. BLISS: Your Honor, if I may respond to
19 that. Again, Dugan Bliss on behalf of the Division.

20 We have already turned over all transcripts of
21 testimony involving investors. We are in the process of
22 finalizing our review of handwritten notes and other
23 notes of interviews with investors, which even though
24 those can be and have been viewed as work product
25 protected in other cases, we are going to produce in this

1 case.
2 So the Respondents will have a list of the
3 investors who we talked to during the investigation, and
4 so we will know that.

5 We're not limited by that subset of investors,
6 because all investors were defrauded in the same way, and
7 so should we determine that there are additional
8 investors as we're preparing for the hearing, we will
9 identify those investors in our witness list, and what
10 Respondents are asking for is an impermissible
11 identification of evidence, and specifically of our
12 witness list before that is due, and so that will come in
13 due course.

14 MS. BRUNE: Your Honor --
15 JUDGE FOELAK: So I gather you're planning to
16 put on investors -- some investors as witnesses.

17 MR. BLISS: Yes, Your Honor. That's certainly
18 part of the plan.

19 MS. BRUNE: Your Honor, Susan Brune for the
20 Respondents.

21 This part of the motion, I think, is a lot like
22 the first part, which is given the tight time
23 constraints, given the fact that the Division has had
24 over five years to investigate this case and given the
25 case -- the fact that our trial is only months away, we

1 really need to get some specificity not as to the actual
2 testifying witnesses, but, rather, as to the investors so
3 that we can take appropriate steps to do the third-party
4 discovery that we need to do responsibly to represent our
5 clients and adequately to prepare our defense.

6 And, you know, it might be that in some kind of
7 other case here in this forum, proceeding the way that
8 Mr. Bliss proposes might be fair, but here, given the
9 complexity of this case, given the large number of
10 potential investor testimony that we might see, it's
11 important that we are able to know what we're dealing
12 with here and to investigate the defense.

13 I mean, they've had, of course, subpoena power
14 for over five years and we're just now being in a
15 position in this very short time frame to investigate our
16 defenses.

17 And so what I would ask Your Honor is that you
18 impose a deadline, and one that's very near, about which
19 investors we're really going to be talking about in the
20 same way that we've already agreed upon a deadline about
21 which portfolio companies we're going to be talking
22 about.

23 JUDGE FOELAK: Let me ask you something.
24 Don't -- don't the Respondents know who their
25 investors -- or have records of who their investors were

1 or are?

2 MS. BRUNE: It's actually more complicated than
3 that, Your Honor. It's not always clear at any given
4 moment who the investors holding the notes are, and so I
5 think there -- it's not at all clear.

6 Moreover, though we don't know exactly who at
7 what given moment held what, of course we have a sense of
8 who some of the investors or maybe even most of the
9 investors are, and what we know is it's a substantial
10 number and that we've got to be able adequately to
11 prepare to examine the representatives of those
12 investors.

13 I'm not asking for the specific witnesses, but
14 I think in fairness we need to know so that we don't
15 waste everybody's time, including the investors, by
16 sending out a bunch of subpoenas and making people gather
17 a bunch of material that needn't be gathered.

18 We really do need to work smart, respectfully,
19 Your Honor, and I think that narrowing down what
20 investors are actually going to be in play at the trial
21 will be efficient and appropriate.

22 MR. BLISS: Your Honor, if I may respond to
23 that.

24 Dugan Bliss on behalf of the Division again.
25 What Respondents are asking for is an early

1 copy of our witness list, bottom line.

2 We are similarly in the process of preparing
3 for the hearing. Anything that we know about the
4 identity of these investors is based almost entirely on
5 what has been produced to us by Respondents. The
6 identity of the investors is within, you know,
7 Respondents' control and, you know, as we prepare for the
8 hearing we are going to be identifying who we're going to
9 be relying on the hearing, we don't -- at the hearing.
10 We don't have those answers right now and we're not
11 required to until we produce our witness list.

12 Again, we are producing and have produced at
13 least the transcripts of investors we talked to, we are
14 producing the notes of investors we've talked to, but
15 otherwise, you know, what's being asked for is an early
16 copy of our witness list and so we don't view that as
17 appropriate.

18 JUDGE FOELAK: Well, I --

19 MS. BRUNE: Your Honor --

20 JUDGE FOELAK: Yeah, go ahead.

21 MS. BRUNE: We're not asking for an early
22 production of the witness list. We're asking for which
23 investors are in play in the same way that we were able
24 to determine which portfolio companies are in play.

25 Obviously, we are aware of who at least some of

1 the investors are, although I would respectfully disagree
2 with Mr. Bliss that the SEC's information about who the
3 investors are was largely supplied by Patriarch.

4 We, of course, did our best to comply with
5 their requests during the investigation, but the fact
6 remains that there can be no dispute that there are a
7 large number of potential investors and that we've got a
8 short time to prepare for trial, and so I'd really like
9 to see if we can't put some discipline on this out of
10 really fairness and practicality.

11 We were able to reach a practical resolution on
12 the first part about the portfolio companies and I really
13 think that we should be able to reach a practical
14 resolution on the investors as well.

15 And so, respectfully, since the Division seems
16 unprepared to limit itself to those investors who've been
17 talked to via interviews and, therefore, I suppose are
18 reflected in these handwritten notes and those few that
19 were put on the record, I think we've really got to make
20 a deadline and one that's relatively near so that we can
21 embark on the third-party discovery that we need to
22 embark on and we won't have to waste effort and waste
23 everybody's time.

24 The Division's been at this for really almost
25 forever, and, you know, really, in fairness, we need to

1 institutional investors who are very, very serious
2 entities and serious people, but that they genuinely did
3 not have the understanding that supposedly follows from
4 the contract.

5 I mean, I think what we've got here is a notion
6 on the part of those at the Division who are urging this
7 case about what the contract means, and then we have the
8 participants in these deals that have been around for a
9 long, long time and month after month are communicating
10 and providing very detailed information about how the
11 contract is being complied with and also about, you know,
12 how the deals are performing.

13 And I think it would present a false state of
14 reality if we were to simply say, Oh, well, it -- this is
15 exactly what the contract means and we weren't able to
16 explore how the parties understood the contract to be
17 constructed and how they were being applied.

18 And so really it's understanding at some level
19 of granularity what's actually going on as opposed to
20 what the Division, I think, is going to argue, you know,
21 surely must have gone on.

22 We've got to be real and practical, and that
23 requires defense investigation. I really do not want to
24 be in the position of having to present, you know, many
25 dozens of subpoenas to investors when far fewer would be

1 be able to do our work in the short time efficiently. So
2 I'd like a very short deadline by which the staff --

3 JUDGE FOELAK: Okay. I --

4 MS. BRUNE: -- is going to identify which
5 investors.

6 JUDGE FOELAK: Okay. Certainly.

7 Maybe I'm missing something, but you were
8 talking as if the total mix of information available to
9 an individual investor -- or investors as individuals was
10 at issue, but it doesn't really matter. If you've got
11 the most knowledgeable and sophisticated investor in the
12 world that really knows the true facts, it's still no
13 good for the industry participant to tell them false
14 things.

15 MS. BRUNE: Well, obviously not, Your Honor. I
16 think we can agree on that. But here, what the Division
17 is doing is it's taking the indenture, the contract, and
18 it is saying, essentially, you know, any fool would
19 understand that this is how the indenture actually
20 worked.

21 And our contention is, first of all, you know,
22 it's not the case that any fool would have that
23 understanding, and that second, the investors did not
24 have that understanding. And, you know, far from
25 foolish, they're obviously very sophisticated

1 necessary to prepare this case.

2 JUDGE FOELAK: Okay. Maybe -- again, maybe I'm
3 still missing something, but -- and maybe these
4 allegations are totally false, but they're allegations
5 along the lines of the loans were really impaired under
6 GAAP but were carried on the books at the original face
7 value and may be a little different.

8 MR. ZORNOW: Your Honor, it's David Zornow. If
9 I can just jump in here.

10 When Ms. Brune refers to third-party discovery,
11 I mean, part of what we will be presenting is that there
12 was a ton of information that was provided to the
13 investors, and one of the reasons that we will be seeking
14 subpoenas is to obtain material showing that the
15 investors, A, received it, B, understood it, and C,
16 analyzed it, and I think that that's going to be a
17 critical part of the defense here.

18 And so I do think to the extent that we can,
19 you know, hone in on a subgroup of investors, that's just
20 going to be very helpful, I think, for everybody.

21 JUDGE FOELAK: Could I ask you something? Are
22 the investors in this matter, are they individuals or are
23 they, you know, hedge funds or institutional entities or
24 what?

25 MR. ZORNOW: They are --

1 MS. BRUNE: Your Honor --
 2 MR. ZORNOW: Go ahead, Susan.
 3 MS. BRUNE: I was going to say -- sorry.
 4 Your Honor, they're institutional investors,
 5 and by that I mean not pension funds, as far as we're
 6 aware. They are insurance companies, hedge funds, banks.
 7 You know, very, very big players in the market.

8 JUDGE FOELAK: And were there a great number of
 9 them?

10 MS. BRUNE: We're not sure, Your Honor. We --
 11 I would say many dozens would be the right way to
 12 describe it.

13 JUDGE FOELAK: It does sound like a lot.

14 MR. BLISS: Your Honor, from the Division's
 15 perspective, we don't believe there are a, you know, what
 16 you would call a huge number of investors, although we
 17 certainly don't know the exact number of investors
 18 ourselves.

19 JUDGE FOELAK: Okay. When are you going to --
 20 I'm beginning to see, you know, what their work plan is,
 21 that they don't want to gather information from 200
 22 insurance companies when, you know, 20 would be enough.

23 MR. BLISS: Your Honor, it's for sure less than
 24 a hundred total, from what I'm being told from our --
 25 from Amy Sumner, who was involved in the investigation.

1 which requires ongoing work on our behalf as well.

2 MS. BRUNE: Respectfully, Your Honor, the
 3 Division is not doing the same thing that we're doing,
 4 because they've been at this with -- or at least the
 5 staff has been at this for over five years.

6 Surely by now, or surely within a relatively
 7 reasonable time frame they can identify for us which
 8 investors are truly going to be in play here so that we
 9 can, in an efficient way, investigate our defenses.

10 MR. BLISS: And, again, Your Honor, on behalf
 11 of the Division, this, again, sounds like a request for
 12 an early copy of our witness list.

13 You know, as we talk to -- you know, we're
 14 preparing for the hearing, and so we -- we would
 15 request -- or object to that early evidence disclosure.

16 MR. ZORNOW: The difficulty, Your Honor, is
 17 we're going -- if that's going to be the program, we're
 18 going to have to ask for many more subpoenas in -- you
 19 know, because we're going to have to cast the net
 20 broadly, and as Ms. Brune says, we're going to end up
 21 putting a lot of people to unnecessary work, and so to
 22 the -- we can't wait until August 7th to start
 23 subpoenaing financial institutions and investors to find
 24 out what their files show about what they had from our
 25 client and how they analyzed it and what they understood.

1 and it may be less than 50.

2 JUDGE FOELAK: Well, is there any potential for
 3 you to inform them of the ones that are more key at a
 4 sooner date than your witness list?

5 MR. BLISS: Well, Your Honor, we're -- we're
 6 doing the same thing that we're -- that they are doing.
 7 We are preparing for the hearing, and so during the
 8 investigation we took the testimony of and interviewed
 9 certain investors. You know, that information is being
 10 provided or has been provided to Respondents.

11 We're also going through the process of talking
 12 to additional investors to determine who would make, you
 13 know, the best witnesses at trial, as we all do in
 14 preparation for a hearing.

15 But that said, it's an ongoing process, and the
 16 fundamental point here is that our contention is that all
 17 investors were deceived in the same way, and so
 18 identification of the individual investors, unlike the
 19 other cases like the Bandimere case, where investors were
 20 told different things, you know, here we have the same
 21 misrepresentative disclosures made to everyone.

22 So our intention would be to -- by the time
 23 we're required to submit a witness list, to have
 24 identified those investors who we think would be most
 25 suitable as witnesses for trial. And that's our plan

1 JUDGE FOELAK: Okay. Mr. -- can the Division
 2 provide its witness list maybe somewhat earlier? Maybe
 3 that would resolve it.

4 MR. BLISS: Well, I mean, we're -- you know,
 5 we're open to being cooperative, but at this point our
 6 witness list is due already two months before trial,
 7 which we view as, you know, quite early relative to
 8 other, you know, hearings I've been involved with.

9 So I hesitate to commit to that, because, you
 10 know, we're going through work, too. We're contacting a
 11 substantial number of investors as well, and so I'm
 12 hesitant to agree to something earlier than that date at
 13 this point.

14 JUDGE FOELAK: Which is three months from now.

15 MR. BLISS: Right. Yeah. And we definitely
 16 feel like we have three months' of work ahead of us in
 17 terms of talking to investors.

18 JUDGE FOELAK: But, you know, you could give
 19 them a witness list and chop some off as time goes by.

20 MR. BLISS: I --

21 JUDGE FOELAK: You have a universe of potential
 22 witnesses that you're narrowing down.

23 MR. BLISS: Yeah. Honestly, Your Honor, we
 24 could do something like that, but the way that would
 25 proceed practically is, you know, we have tried and we're

1 in the process of trying to assemble a list as best as
2 possible of all of the investors that we could
3 potentially talk to, and, you know, we're going to be in
4 the process of talking to them, so I don't know how
5 helpful it would be to provide now a list of all of the
6 investors that we've identified.

7 We could attempt to do that and narrow it by
8 the time our witness list is due, but at this point we
9 are going to contact as many investors as we can.

10 MR. ZORNOW: I'm perplexed, Your Honor. I
11 don't know what they were doing for the last five years.

12 You know, we've got to defend these charges now
13 and we've got to -- we've got to do it by finding out
14 what these people have in their file so that when they
15 put them up on the witness stand they have to be
16 confronted with what they had in their file.

17 MR. GUNTHER: And just one -- Your Honor, this
18 is Chris Gunther.

19 You know, one thing to know and to make note in
20 the mix here is from the testimony we've already gotten
21 from the Division, there are witnesses who acknowledge
22 that they were told by Ms. Tilton exactly how she
23 categorized the loans consistent with the way that you'll
24 hear that she did it and the way that's key to the
25 defense in this case, so it's kind of remarkable that at

1 Counsel, surely at some point you're going to stop -- I
2 mean, you mentioned you're, you know, talking to more
3 investors. At some point you're going to close the
4 universe of potential witnesses way before drawing up
5 your witness list.

6 Could you provide them with a list of the
7 investors in that universe like a month from now?

8 MS. BRUNE: Your Honor, that would be a very
9 good resolution of this.

10 I note that if what they're doing is they're
11 now roaming around looking for investors they didn't find
12 in their 5-1/2 year investigation -- and I agree with Mr.
13 Gunther's thoughts that the transcripts we've seen so far
14 don't really support the Division's allegations -- then
15 we -- we may well not end up with transcripts of even
16 what they say, which means that they'll be kind of
17 surprising and so, therefore, it's important for us to do
18 that third-party file work that we've talked about to get
19 ready. So I would really appreciate it if this one-month
20 deadline were imposed.

21 MR. BLISS: And, Your Honor, on behalf of the
22 Division, honestly, one month seems like an incredibly
23 fast amount of time given the realities of the fact that,
24 you know, this case will require time. Everyone on our
25 trial team has substantial other commitments as well, and

1 this stage the Division is saying we're going to try to
2 find some other witnesses who might say they were misled
3 by her rather than directly told exactly how she did it.

4 And if that is the mix we're dealing with,
5 where we're trying to figure out if there are people who
6 are going to say something different from what we've
7 already seen in the testimony we've already gotten, we
8 have to be prepared to address it.

9 MR. BLISS: Your Honor, this is Dugan Bliss on
10 behalf of the Division.

11 We totally disagree with that characterization
12 of witness testimony that has occurred up to this point.
13 We -- I'm certainly not aware of the testimony of any
14 witness who was told of Ms. Tilton's secret method of
15 categorization.

16 And I would also point out that as we speak to
17 investors, you know, obviously we're under ongoing Brady
18 obligations that I'm well aware of, and when we speak to
19 investors, if there is Brady information that comes up,
20 that will be required to be disclosed as the case goes
21 along. So we're certainly going to comply with those
22 obligations, which addresses at least some of those
23 concerns that Respondents have raised.

24 MS. BRUNE: Your Honor, to -- I'm sorry.

25 JUDGE FOELAK: Okay. I was going to suggest,

1 so I just don't think that that will be done in a month.

2 JUDGE FOELAK: Okay. What about two months?

3 MR. BLISS: I think if we're talking about two
4 months we could make our best efforts to talk to as many
5 of the investors as we feel necessary within two months.

6 JUDGE FOELAK: All you have to do is provide
7 them with the list of the universe of investors. At
8 least that would narrow it down and that their -- you
9 know, your witnesses would be a subset of that.

10 MR. BLISS: We would be happy to do that, Your
11 Honor.

12 MR. ZORNOW: Can we compromise at six weeks?
13 Because they've got to know pretty well. I mean, they
14 brought an action. It was based on evidence that they
15 took. They've got to have a pretty good idea. Maybe
16 they can supplement it two weeks after that if they have
17 to, but --

18 MR. BLISS: Your Honor, I do think that we're
19 going to need, you know, the two months to compile it.

20 And, look, what we anticipate is that we have
21 talked to a number of investors either through testimony
22 or through interviews and we've gotten very similar
23 information. We anticipate we'll get similar information
24 from the additional investors, but a two-month window is
25 something that we would certainly agree to.

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1 JUDGE FOELAK: How about a rolling relief?
 2 MR. ZORNOW: We would support that concept.
 3 MR. BLISS: Starting when, Your Honor? What
 4 are you thinking?
 5 JUDGE FOELAK: I don't know. Starting -- well,
 6 I mean, it could be starting now, but -- you know, if
 7 it's rolling. I mean, the idea is that they would know
 8 the universe from which your witnesses would be selected
 9 or something like that.
 10 MR. BLISS: If --
 11 JUDGE FOELAK: Start a month from now.
 12 MR. BLISS: Yeah, if what you're suggesting is
 13 that, you know, starting a month from now once we -- you
 14 know, when we talk to an investor, then, you know, within
 15 a reasonable period of time after that we e-mail
 16 Respondents' counsel and let them know that we did that,
 17 I'm happy to do that.
 18 MS. BRUNE: I think we're asking for something
 19 a little more, although that's certainly a fine offer and
 20 we accept, and that is that we want to know which
 21 investors are truly going to be in play at the trial, and
 22 I would imagine that the Division right now could rattle
 23 off a list of such investors, but surely we could get
 24 some specificity.
 25 It's not so helpful to get an e-mail saying,

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1 Oh, I spoke to thus and so investor and then send me down
 2 a wild goose chase and also the investor on a wild goose
 3 chase if the person -- or not the person but, rather, the
 4 investor is not actually going to be in play.
 5 JUDGE FOELAK: Well, actually --
 6 MS. BRUNE: I think that we're close.
 7 JUDGE FOELAK: Well, I mean, actually, their
 8 witness list was going to be finalized on August 7th, and
 9 it was going to be a small -- certainly a smaller number
 10 than the potential witnesses, but this is like a
 11 compromise rather than finalizing their witness list, you
 12 know, a month from now.
 13 MS. BRUNE: Sure. Maybe it would be helpful to
 14 understand what it is that Your Honor is -- is directing
 15 the Division to do.
 16 JUDGE FOELAK: Okay. As I understand both
 17 sides to say, there is some enormous quantity of
 18 investors and you -- Respondent counsel doesn't know
 19 which ones -- doesn't even know which ones are possibly
 20 affected by the alleged improper disclosures.
 21 And the Division -- you already know the ones
 22 they've talked to, but the Division is looking for, I
 23 guess, better witnesses.
 24 MS. BRUNE: That's what I'm hearing, Your
 25 Honor.

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1 JUDGE FOELAK: And they're continuing to talk
 2 to more, although hopefully -- well, certainly without
 3 investigative subpoenas, which would be not allowed by
 4 the Commission's rules at this point.
 5 So they were going to inform you of these
 6 potential witnesses before they actually finalized their
 7 witness list.
 8 In other words, let's say there was a total of
 9 200 investors in this fund and they've talked to 10, and
 10 maybe they're going to talk to -- you know, test out 20
 11 more, at least you'd know about the 20 more.
 12 MS. BRUNE: If we could fix a deadline, Your
 13 Honor, relatively soon so that we can start sending our
 14 subpoenas to the appropriate place, that would --
 15 JUDGE FOELAK: Okay. They're going to start
 16 the rolling disclosure that will keep rolling until
 17 July 10th, and then they finalize their witness list,
 18 which would be the set of people that you already know
 19 about, on August 7th.
 20 I think that's what counsel -- Division counsel
 21 understood.
 22 MR. BLISS: Yeah. This is Dugan Bliss on
 23 behalf of the Division.
 24 That is certainly the proposal.
 25 We disagree with the factual contention that

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1 there were an enormous number of investors and would
 2 point out, again, that they were defrauded in an
 3 identical way.
 4 But, yes, rolling disclosures until July 10th
 5 is a reasonable compromise and agreement from our
 6 perspective.
 7 JUDGE FOELAK: Okay. I don't think you have
 8 any more pending motions.
 9 I was wondering whether Respondent counsel
 10 would want to comment on this. In reference to your
 11 injunction proceeding in the Southern District, and you
 12 mentioned, you know, the hearing, do you expect the Judge
 13 is going to rule orally or take the matter under
 14 advisement? I'm just curious.
 15 MR. GUNTHER: Your Honor, this is Chris
 16 Gunther. I -- we have not even appeared before Judge
 17 Abrams yet in the case. I expect, but this is really
 18 speculation, that the judge is going to hear arguments
 19 and is probably not going to rule. There's enough
 20 complexity to the arguments, and I would guess that she
 21 takes it under advisement, but I don't know that.
 22 JUDGE FOELAK: Okay. I just wondered. That
 23 sounds like the most likely thing to me, but --
 24 Okay. Does anyone have anything else?
 25 MR. BLISS: Not on behalf of the Division, Your

1 Honor.
 2 MR. GUNTHER: We don't either, Your Honor.
 3 JUDGE FOELAK: Okay. In that case, the
 4 pre-hearing conference is closed, and thank you for your
 5 participation.
 6 MR. BLISS: Thank you, Your Honor.
 7 MS. BRUNE: Thank you very much, Your Honor
 8 (Whereupon, at 12:38 p.m., the pre-hearing
 9 conference was concluded.)
 10 * * * * *
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1 PROOFREADER'S CERTIFICATE
 2
 3 In the Matter of: LYNN TILTON,
 4 PATRIARCH PARTNERS, LLC,
 5 PATRIARCH PARTNERS VIII, L.L.C.,
 6 PATRIARCH PARTNERS XIV, L.L.C, and
 7 PATRIARCH PARTNERS XV, LLC,
 8 ADMINISTRATIVE PROCEEDING - PRE-HEARING CONFERENCE
 9 File Number: 3-16462
 10 Date: Thursday, May 7, 2015
 11 Location: Denver, CO
 12 This is to certify that I, Donna S. Raya,
 13 (the undersigned), do hereby swear and affirm that the
 14 attached proceedings before the U.S. Securities and
 15 Exchange Commission were held according to the record and
 16 that this is the original, complete, true and accurate
 17 transcript that has been compared to the reporting or
 18 recording accomplished at the hearing.
 19
 20 _____
 21 (Proofreader's Name) (Date)
 22
 23
 24
 25

Exhibit 2

<p style="text-align: right;">Page 1</p> <p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION In the Matter of:)) File No. Patriarch Partners LLC) HO-11665)</p> <p>WITNESS: JAIME ALDAMA</p> <p>PAGES: 1-84</p> <p>PLACE: 200 Vesey Street, New York, New York</p> <p>DATE: Thursday, May 1, 2014</p> <p>The above entitled matter came on for hearing at 2:05 p.m.</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX EXHIBITS</p> <table border="1"> <thead> <tr> <th style="text-align: left;">NUMBER</th> <th style="text-align: left;">DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr><td>33</td><td>Form 1662</td><td style="text-align: right;">5</td></tr> <tr><td>177</td><td>Subpoena</td><td style="text-align: right;">6</td></tr> <tr><td>178</td><td>Background questionnaire</td><td style="text-align: right;">8</td></tr> <tr><td>1</td><td>Zohar indenture</td><td style="text-align: right;">55</td></tr> <tr><td>160</td><td>Patriarch loans</td><td style="text-align: right;">58</td></tr> <tr><td>161</td><td>Interest on loans</td><td style="text-align: right;">58</td></tr> <tr><td>175</td><td>Zohar quarterly financial statement</td><td style="text-align: right;">60</td></tr> <tr><td>179</td><td>Bates # PAT 0001 - 0006</td><td style="text-align: right;">60</td></tr> <tr><td>176</td><td>Term sheet</td><td style="text-align: right;">69</td></tr> <tr><td>180</td><td>Bates # PAT 00028 - 00036</td><td style="text-align: right;">70</td></tr> </tbody> </table>	NUMBER	DESCRIPTION	PAGE	33	Form 1662	5	177	Subpoena	6	178	Background questionnaire	8	1	Zohar indenture	55	160	Patriarch loans	58	161	Interest on loans	58	175	Zohar quarterly financial statement	60	179	Bates # PAT 0001 - 0006	60	176	Term sheet	69	180	Bates # PAT 00028 - 00036	70
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 For the SEC:</p> <p>4 AMY A. SUMNER United States Securities and Exchange Commission 5 1801 California Street, Suite 1500 Denver, Colorado 80202</p> <p>6</p> <p>7</p> <p>8 For Mr. Chaku:</p> <p>9 ANDREW Z. MICHAELSON MICHAEL S. GRISOLIA 10 Boles, Schliler & Flexner, LLP 575 Lexington Avenue, 7th Floor 11 New York, New York 10022</p> <p>12</p> <p>13</p> <p>14 ALLAN BORKOW Barclays Capital Inc. 745 Seventh Avenue 15 New York, New York 10019</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p style="text-align: center;">PROCEEDINGS</p> <p>1 MS. SUMNER: We're on the record at 2:05 on 2 May 1st, 2014.</p> <p>3</p> <p>4 Would you please raise your right hand? 5 (The witness complied.) 6 Do you swear to tell the truth, the whole 7 truth, and nothing but the truth? 8 THE WITNESS: I do.</p> <p>9 EXAMINATION BY MS. SUMNER:</p> <p>10 Q. Please state and spell full name for the record. 11 A. Jaime Royero Aldama; J-A-I-M-E, R-E-Y-E-R-O, 12 A-L-D-A-M-A.</p> <p>13 Q. Mr. Aldama, my name is Amy Sumner. I'm a member 14 of the staff of the Enforcement Division of the Denver 15 regional office of the United States Securities and 16 Exchange Commission. I'm also an officer of the 17 Commission for the purposes of this proceeding. 18 This is an investigation by the United States 19 Securities and Exchange Commission in the matter of 20 Patriarch Partners, to determine whether there have been 21 violations of certain provisions of the federal 22 securities laws. However, the facts developed in this 23 investigation may constitute violations of other federal 24 or state, civil or criminal laws. 25 Prior to the opening of the record, you were</p>																																	

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1 again is the standard in every structured transaction
 2 and for investors to have that and rely on that
 3 information.
 4 Q. Do you have an understanding of when an asset is
 5 considered a category 4?
 6 A. My understanding is from what the indenture says
 7 what a category 4 should be. My understanding is that
 8 Lynne can decide what is a category 4 and she has some
 9 discretion to what to call 4 whatever she wants.
 10 Q. Why do you think she has full discretion?
 11 A. I don't think -- my understanding, my belief that
 12 it is Lynne and Patriarch that assign the internal
 13 ratings to the facility's reference on the portfolio.
 14 And there is no mechanic to dispute the categorization.
 15 So a defaulted security that has been publicly labelled
 16 defaulted she can call that 4 if she wants to. It would
 17 be hard for her to justify herself but there is no -- as
 18 the manager of the portfolio she has a lot of discretion
 19 to use and call whatever she wants. She shouldn't,
 20 but --
 21 Q. Do you believe that under the terms of the
 22 indenture she has the right to label something 4 at her
 23 own discretion?
 24 A. I don't think so. I just feel that that's what
 25 she has been doing for the past few years.

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1 Q. You don't think she has the right to do that
 2 necessarily but you think she --
 3 (Talking over each other.)
 4 A. Let me clarify. The indenture clearly defines
 5 what a 4 is, a 3, a 2 and a 1. These are clear
 6 definitions of what a 4 is and a clear definition what a
 7 1 is. I don't think she is using that to classify. It
 8 is my belief based on how some of the company's gone
 9 from a 4 to 1 from trustee report from November to
 10 December there is a jump from 4 to 1. I don't think
 11 she's using the internal categories that she's meant to
 12 use. I think she's using a lot of discretion. I don't
 13 she has the discretion she's just --
 14 Q. What companies are you specifically thinking of?
 15 A. There are companies like -- the one that comes to
 16 mind is American LaFrance and that was labeled as a
 17 category 4 shortly before we had to read in the paper
 18 that she has shut down the entire company and news
 19 reports seem to imply that a company was doing very bad
 20 much earlier and that went from a 4 to a 1.
 21 And I don't believe that one day the company is a
 22 4 and in good standing and the following day you have to
 23 shut down the entire plan. It just seems to me
 24 unrealistic. I don't remember specific names, but when
 25 you track the recharacterization I don't think I have

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1 seen the number 3 or the number 2. In fact, I don't
 2 think I've ever seen the number 3 or number 2 in the
 3 trustee reports. I know there is 4 and there is 1 but
 4 in between seems to be always a jump.
 5 Q. I think that's right.
 6 What does that say to you?
 7 A. She didn't know that the companies were going to
 8 file the day before and she only found out that day or
 9 she is not performing her duties as stated in the
 10 collateral management agreement.
 11 MS. SUMNER: Let's go off the record at
 12 3:27. Let's take a short break.
 13 (Recess taken.)
 14 MS. SUMNER: We are back on the record at
 15 3:45.
 16 BY MS. SUMNER:
 17 Q. During the break, Mr. Aldama, did you have any
 18 substantive conversations with the SEC staff about this
 19 investigation?
 20 A. No.
 21 Q. Have you reviewed the indenture for Zohar 1?
 22 A. I have at some point reviewed and read some
 23 sections on indenture, yes.
 24 Q. What parts have you reviewed?
 25 A. Basically related to the rights that we would

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1 have under the indenture upon an event of default of the
 2 deal and then around the portfolio management. The
 3 section that talks about characterization of assets, the
 4 section that talks about the rights that Lynne has to
 5 extend maturities and so on and so forth.
 6 Q. And you testified earlier that you received the
 7 trustee reports. Why is that something that you look
 8 at? Why do you look at the trustee reports?
 9 A. Any structured vehicle that we own, that Barclays
 10 or any of the clients that we work owns, the trustee
 11 report is the means that the manager has to distribute
 12 information on the portfolio to all investors. As
 13 opposed to bilateral discussion with the manager, asset
 14 managers use the trustee reports as a distribution
 15 platform to all investors of the security around the
 16 performance of the portfolio, the current levels on the
 17 coverage ratios and how the deal is performing.
 18 Q. Have you had any discussions with anyone at
 19 Natixis about restructuring the Zohar 1 deal?
 20 A. We have had over time different discussions at
 21 different points in time.
 22 Q. Who have you dealt with at Natixis?
 23 A. So, mostly Kevin Alexander. But I have had calls
 24 and proposals from people at Natixis and over the years
 25 that I believe worked for Kevin Alexander, but they're

Exhibit 3



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
1961 STOUT STREET
SUITE 1700
DENVER, COLORADO 80294-1961

Direct Number: (303) 844.1041
Facsimile Number: (303) 297.3529

May 29, 2015

Via E-mail and Overnight Delivery

Christopher J. Gunther
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522

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

Dear Mr. Gunther:

I write in response to your May 21, 2015 letter concerning the discovery provided by the Division of Enforcement (the "Division"). In that letter you identified certain documents that you do not believe have been produced. I will address each set of documents in turn, as italicized below:

- Any documents produced to the SEC by Bank of America in response to the SEC's May 24, 2011 informal request for documents.
 - *No documents were produced in response to that informal request.*
- The November 2, 2012 subpoena for documents served by the SEC on Bank of America.
 - *That subpoena does not exist in the Division's files.*
- Documents produced by Bank of America with the following Bates numbers: BAC00002317 - BAC0002321, BAC00008674 - BAC00008675, and BAC00008912.
 - *The gaps in those Bates ranges exist in Bank of America's production.*
- The October 27, 2011 letter from Goldman Sachs to the SEC enclosing a production of documents.
 - *That letter does not exist in the Division's files.*

- Documentation of the SEC request(s) that initiated the October 27, 2011 Goldman Sachs production.
 - *That documentation does not exist in the Division's files.*
- The documents provided to MBIA by the SEC on December 18, 2013 and January 30, 2014.
 - *These documents were present in the Division's prior production to Respondents, and were originally produced to the Division by Respondents. Attached to this letter please find a disc containing another copy of those documents. The password for that disc is Patriarch-2015.*
- Production letters or emails accompanying S&P's August 24, 2011 and December 5, 2011 productions to the SEC.
 - *Those letters or e-mails do not exist in the Division's files.*
- Documents produced by the JFSA regarding Tokio Marine with the following Bates numbers: JFSA-0000001 - JFSA-0000004 and JFSA-E-000001 - JFSA-E-000002.
 - *Those documents are being withheld. Two of those pages include an internal memorandum that constitutes attorney work product, while the remaining pages are privileged pursuant to Exchange Act Section 24(f).*
- Documents produced by US Bank with the following Bates numbers: USB0029355 - USB0030000.
 - *The gaps in those Bates ranges exist in US Bank's production.*

As to the remaining points in your letter, the Division will provide a withheld document log. Additionally, this week the Division contacted the following investors:

Natixis
 Apollo
 Nord/LB
 RBS
 Radian
 Assured Guaranty
 Goldman Sachs
 Tokio Marine
 King Street
 Panning Capital Management
 Petra Capital Management
 Manulife Asset Management
 Lloyd's Bank

SEI Structured Credit Fund
The Seaport Group
Wells Fargo
Varde Partners
Deer Park Road
Guggenheim Partners

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dugan Bliss', with a stylized flourish at the end.

Dugan Bliss
Senior Trial Counsel

Enclosure
Cc: Nicholas Heinke
Amy Sumner