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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16462

In the Matter of

LYNN TILTON;
PATRIARCH PARTNERS, LLC;
PATRIARCH PARTNERS VIII, LLC;
PATRIARCH PARTNERS XIV, LLC;
AND
PATRIARCH PARTNERS XV, LLC,

Respondents.

DIVISION OF ENFORCEMENT'S RESPONSE TO RESPONDENTS' MOTION TO PRECLUDE THE DIVISION'S WITNESS, MATTHEW MACH, FROM TESTIFYING

Introduction

The Division of Enforcement ("Division") respectfully submits this Response to Respondents' Motion to Preclude the Division's Witness, Matthew Mach, from Testifying ("Motion"). Respondents Motion rests on the faulty premise that it is unable to prepare to cross-examine Mr. Mach – an employee of Varde Partners, Inc. ("Varde"), which was one of the investors in the Zohar funds – because it lacks documents to do so. Respondents further stretch to blame the Division in an incendiary and baseless attempt to impugn the Division's conduct. Neither claim is true.

Respondents have been aware that the Division may call Varde as a witness since May of 2015. Indeed, despite Respondents' claim during the May 2015 prehearing conference that they "can't wait until August … to start subpoenaing financial institutions and investors to find out what their files show," that is precisely what Respondents did, issuing their first subpoena to Varde in mid-August 2015. And Varde has responded, producing 16,000 pages of documents related to the

issues in this case. Order, Admin. Proc. Rel. No. 4153, dated Sept. 14, 2016, *available at* https://www.sec.gov/alj/aljorders/2016/ap-4153.pdf. Whatever the remaining dispute between Respondents and Varde over the scope of the production, Respondents' lack of diligence in pursuing documents from Varde cannot be a basis for prejudicing the Division's presentation of its case.

Moreover, Respondents' claims of Division misconduct strain credulity. Essentially, Respondents claim that the Division misled them by claiming Varde produced certain documents "*voluntarily*" after the OIP in this case was issued, when in fact those documents were produced *in response to a conversation with the Division*. Such a distinction defies common sense. The documents were produced voluntarily – that is, they were produced on Varde's own free will, as opposed to in response to a subpoena or other form of legal compulsion. And the documents the Division received were promptly produced to Respondents. Respondents' unfounded attacks on the Division should be rejected, and Respondents' Motion should be denied, at least to the extent that it seeks to preclude the Division from eliciting testimony from Mr. Mach.[1]

Background

Respondents have had the opportunity to seek documents from Varde related to Varde's valuation of its Zohar investment since May of 2015. Indeed, Respondents expressly raised the issue of needing to issue third party subpoenas for this sort of information during the May 7, 2015 prehearing conference. During that conference, Respondents' counsel argued that "[t]here is going to be substantial third-party discovery here to understand the total mix of information that the

[1] The Division takes no position on the dispute between Varde and Respondents over the subpoena response, and thus takes no position on Respondents' alternate request to order Varde to produce additional documents. The Division would note, however, that Varde was not served with this Motion. The Division presumes Varde would want a chance to be heard before being ordered to produce additional documents.

investors had available and made use of," and urged Your Honor to require the Division to disclose the names of investors on which it might rely at the hearing prior to the time the Division's witness list was due. Tr. of Prehearing Conference at 11-12, attached hereto as Ex. 1. Indeed, Respondents' counsel made explicit that "we can't wait until August 7th [2015, the due date for the Division's witness list] to start subpoenaing financial institutions and investors to find out what their files show about what they had from [Patriarch] and how they analyzed it and what they understood." *Id.* at 23. In response to these arguments, Your Honor ordered the Division to disclose the investors it was contacting and considering relying on at the hearing on a rolling basis. *See id.* at 30-32.

In compliance with that order, on May 29, 2015 the Division disclosed to Respondents that it had contacted Varde. *See* Ltr. from D. Bliss to C. Gunther dated May 29, 2015 at 3, attached hereto as Ex. 2. Shortly thereafter, on June 9, 2015, the Division produced to Respondents certain documents that it had received from Varde. *See* Email from D. Bliss to C. Gunther dated June 9, 2015, attached hereto as Ex. 3. Put simply, Respondents were on notice, as of May 2015, that the Division was considering relying on Varde as part of its case in chief.

Despite this, Respondents did not request a subpoena to Varde until August 13, 2015 – nearly eleven weeks after the Division disclosed Varde to Respondents. Indeed, despite Respondents' counsel's own claim that Respondents "can't wait until August 7th to start subpoenaing financial institutions and investors to find out what their files show about what they had from [Patriarch] and how they analyzed it and what they understood," that is precisely what Respondents did.

The August 2015 subpoena was served on Varde on August 18, 2015. *See* Decl. of M. Maloney in Support of Resps.' Motion ¶ 9. On September 11, 2015, Varde produced voluminous documents in response to the subpoena. *Id.* ¶ 13. Varde also received an extension of time to move

to limit or quash the subpoena until September 21, 2015, a motion that was put on hold by the Second Circuit's September 17, 2015 stay of this case. *Id.* ¶¶ 14-15. After the stay lifted, Varde filed a motion to quash the subpoena on August 4, 2016. Contrary to Respondents' claim that the motion to quash was "denied," on September 14, 2016, Your Honor ruled that "[t]he subpoena will not be quashed but remains subject to modification," and that because Varde witnesses remained on the Division's witness list,

> at least some of the information sought is directly relevant to the Division's proposed evidence and necessary for cross-examination. That being said, Respondents have not addressed whether the 16,000 pages already produced meet these needs.
>
> Varde and Respondents are encouraged to confer to narrow the scope of the documents sought so as to reduce burden, to avoid impinging on privileges, and to eliminate duplication of information sought. Varde should provide a log of general categories of documents that it proposes to withhold to facilitate further action on its motion in the event that it and Respondents cannot reach agreement. Varde and Respondents may propose the text of a protective order.

Order, Admin. Proc. Rel. No. 4153, dated Sept. 14, 2016, *available at* https://www.sec.gov/alj/aljorders/2016/ap-4153.pdf.

Separately, on August 24, 2016, Respondents requested additional subpoenas to Varde, Jeremy Hedberg, and Matthew Mach. *See* Decl. of M. Maloney in Support of Resps.' Motion ¶ 21. Respondents' Motion correctly notes that Mr. Mach[2] was on the Division's August 22, 2016 witness list with a note that he may testify about Varde's "investment in the Zohar Fund(s), communications regarding the investment, … their understanding of the investment, … and the monitoring or assessment of Varde Partners' investment." Motion at 4. However, Respondents' Motion omits to note that Mr. Mach was also listed – with the same testimony description – on the

[2] On September 15, 2016, the Division informed Respondents that it would not be calling Mr. Hedberg, but that Mr. Mach remained a may-call witness for the Division.

Division's initial witness list disclosed in August 2015. *See* Div. Witness List, filed Aug. 7, 2015, *available at* https://www.sec.gov/litigation/apdocuments/3-16462-event-47.pdf.

The newly-requested subpoenas were issued on August 30, 2016. *See* Decl. of M. Maloney in Support of Resps.' Motion ¶ 22. According to Respondents, more than two weeks went by before Respondents and Varde "met and conferred" about these new subpoenas, and they agreed to await a ruling on Varde's prior motion to quash. *Id.* ¶ 25. Although the ruling on the motion to quash came on September 14, 2016, Respondents apparently waited more than a week – until September 22, 2016 – to confer with counsel for Varde. *Id.* ¶ 27. At that point in time, according to Respondents, Varde made it clear that it "would not produce internal models, evaluations, or analysis related to the relevant investment." *Id.* ¶ 27. Respondents filed the instant Motion more than two and a half weeks later, and only nine business days before the start of the hearing. While Respondents ask Your Honor to "require that Varde immediately produce all documents responsive to Respondents subpoenas," Motion at 1, the Motion was not served on Varde. *See* Certificate of Service.

Argument

As with respondents' subpoena dispute with MBIA, *see* Div.'s Limited Response to Respts.' Mot. to Compel MBIA to Produce Documents, filed Oct. 13, 2016, the Division takes no position on whether and to what extent Varde should be further compelled to produce documents. However, and again as with Respondents' subpoena dispute with MBIA, this issue is between Respondents and a third party. The Division should not be precluded from presenting evidence related to Varde at the upcoming hearing, particularly in light of Respondents' own lack of diligence in pursuing this issue.

As described above, Respondents were on notice that the Division may seek to rely on Varde as of May of 2015. But despite insisting at the prehearing conference that Respondents "can't wait until August [of 2015] to start subpoenaing financial institutions and investors," that is precisely what Respondents did. Respondents' choice to wait more than two months after the Division identified and produced documents from Varde to issue their own subpoena to Varde – timing that has precipitated the present dispute – was not the Division's fault, and should not prejudice the Division's case. Similarly, even though Respondents have apparently been on notice since at least September 22, 2016 of Varde's position on production of its own proprietary models, Respondents did not file the instant Motion until October 11. The timing of Respondents' filing – along with the fact that the Motion was not even served on Varde – makes clear that Respondents' true aim is to simply keep Mr. Mach, an investor witness, off of the witness stand.

Moreover, it is not the case that "Respondents have no meaningful opportunity to prepare their cross examination" of the Varde witness. Motion at 1. As noted in the ruling on Varde's motion to quash the subpoena, Varde has produced 16,000 pages of documents "concerning, inter alia, (a) the timing, size, and counterparty for its purchases of Zohar III notes, (b) communications with the Commission concerning Zohar III notes, (c) information received from the Zohar III trustee, (d) pre-acquisition due diligence memoranda that do not reveal confidential pricing, valuation, recovery value, or proprietary model information, and (e) marks received from third-party pricing services." Order, Admin. Proc. Rel. No. 4153, dated Sept. 14, 2016, *available at* https://www.sec.gov/alj/aljorders/2016/ap-4153.pdf. Whatever the dispute may be between Respondents and Varde over additional documents that Respondents are seeking, it is simply not true that Respondents have nothing from Varde.

Finally, there is nothing about Respondents hyperbolic – and baseless – accusations about the Division's conduct that should lead Your Honor to grant Respondents' Motion, or to preclude Mr. Mach from testifying as a sanction to the Division. *See* Motion at 13. Respondents attempt to sully the Division because the Division had not contacted Varde during the investigation, and because the Division received documents from Varde after the OIP was filed. *See, e.g.*, Motion at 2-3, 11-13. Neither charge withstands even the most basic scrutiny.

As to the former charge, there is nothing surprising about the fact that the Division did not gather documents or take testimony from Varde, which was one of many investors in the Zohar funds, during the investigation. Indeed, Respondents have already been heard – twice – on this issue, and Your Honor has both times found that there was nothing improper in such contact. During the prehearing conference, the Division made clear that it would be reaching out to investors that it had not contacted during the investigation. *See, e.g.*, Tr. of Prehearing Conf. at 22, attached hereto as Ex. 1.[3] Your Honor did not prohibit these contacts, but rather ordered the Division to disclose additional investors that it was contacting on a rolling basis. *See id.* at 31.[4] Respondents then filed a motion styled as a "Motion to Halt the Division's Substitute Case for

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[3] Specifically, counsel for the Division stated: "[D]uring the investigation we took the testimony of and interviewed certain investors. You know, that information is being provided or has been provided to Respondents. We're also going through the process of talking to additional investors to determine who would make, you know, the best witnesses at trial, as we all do in preparation for a hearing."

[4] Specifically, Your Honor stated: "[T]hey're continuing to talk to more, although hopefully -- well, certainly without investigative subpoenas, which would be not allowed by the Commission's rules at this point. So they were going to inform you of these potential witnesses before they actually finalized their witness list. In other words, let's say there was a total of 200 investors in this fund and they've talked to 10, and maybe they're going to talk to -- you know, test out 20 more, at least you'd know about the 20 more.... They're going to start the rolling disclosure that will keep rolling until July 10th, and then they finalize their witness list, which would be the set of people that you already know about, on August 7th."

Trial," in which they argued that the Division was engaging in improper and unfair conduct by interviewing potential witnesses it had not contacted during the investigation. *See* Order, Admin. Proc. Rel. No. 2892, dated July 1, 2015, *available at* https://www.sec.gov/alj/aljorders/2015/ap-2892.pdf. That motion was denied, since "[t]he Division's actions are in accord with rulings at the May 7, 2015, prehearing conference: that the Division would disclose the identity of investor witnesses on a rolling basis." *Id.* Put simply, Respondents claim that the Division should be penalized for not contacting Varde during the investigation is not only baseless, it has previously been litigated and explicitly rejected.

As to the latter charge, Respondents' argument that Varde's production of documents was not "voluntary" strains credulity. Varde provided certain documents to the Division after a phone call between Division counsel and Varde's counsel. Those documents – which were promptly disclosed to Respondents[5] – were not produced in response to a subpoena or other form of legal process. They were produced "without compulsion or obligation." *See, e.g.*, Dictionary.com (defining "voluntary" to mean, in the context of the law, "acting or done without compulsion or obligation"), *available at* http://www.dictionary.com/browse/voluntary?s=t. The production was not "forced," "obligatory," or "unwilling." *See* Thesaurus.com (noting that the antonyms for "voluntary" include "forced," "obligatory," and "unwilling"), *available at* *http://www.thesaurus.com/browse/voluntary?s=t.* Under any common understanding of the word, the documents were produced voluntarily.

Respondents' related attempt to cast aspersion on the Division because it did not produce the production cover letter is similarly strained. That cover letter is a standard FOIA cover letter; it

[5] The documents are correspondence between Varde and Patriarch Partners XV from April 2015. Respondents were, presumably, in possession of those documents even before the Division provided them in June 2015.

contains no substantive information related to this matter. *See* Ltr. from D. Marple to A. Sumner dated June 5, 2015, attached hereto as Ex. 4. The cover letter has no relevance to the matters at issue in this hearing, other than being fodder for Respondents' unfounded claim that documents produced "[p]ursuant to [the Division's] request" are somehow not documents that were produced "voluntarily."

Finally, Respondents' claim that the Division's receipt of the Varde documents after the institution of the OIP was "impermissible" defies both logic and law. As a threshold matter, Respondents have had the Varde documents from the Division since June of 2015, and have made no claim (until now) that these documents were impermissibly obtained. In any event, it cannot come as a surprise that the Division was going to talk to additional investor witnesses that it had not contacted during the OIP (and that those investor witnesses might share information with the Division) – that topic was discussed during the May 2015 prehearing conference. Indeed, in early June 2015, the Division agreed with Respondents to produce "documents that have been or are voluntarily provided to the staff subsequent to the OIP." *See* Email from D. Bliss to M. Sung, dated June 3, 2015, attached hereto as Ex. 5. In short, Respondents cannot credibly claim they were unaware that the Division might obtain documents from third parties after the institution of the OIP.

Respondents' arguments that the documents were obtained in violation of the law fare no better. Respondents argue that these documents were obtained in "direct[ ]" violation of Rule 230(g). Motion at 13. But on its face – indeed in its title – Rule 230(g) prohibits the "*[i]ssuance of [i]nvestigatory [s]ubpoenas* [a]fter [i]institution of [p]roceedings." (Emphasis added). As Respondents themselves concede, these documents were not obtained pursuant to a subpoena. Respondents also claim the documents were obtained in violation of Administrative Law Judge

Kelly's ruling in *Morgan Asset Management, Inc.* Motion at 13-14. But as Your Honor has already made clear in ruling on Respondents' "Motion to Halt the Division's Substitute Case for Trial," in that case ALJ Kelly "found to be improper the Division's institution of a new investigation after an OIP to collect additional evidence for the previously initiated proceeding." There was no new investigation here; simply an investor voluntarily providing documents to the Division that were then promptly disclosed to Respondents.

In sum, Respondents' should not be permitted to prejudice the Division's case by precluding one of the Division's witnesses on the basis of a dispute over a subpoena that Respondents did not diligently pursue and trumped-up claims of Division misconduct. Respondents' motion should be denied, at least to the extent that it seeks to preclude the Division from presenting testimony from Varde witness Matthew Mach.

Conclusion

For the foregoing reasons, Respondents' motion should be denied, at least to the extent that it seeks to preclude the Division from presenting testimony from Varde witness Matthew Mach.

Dated: October 18, 2016

Respectfully Submitted,

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Division of Enforcement
Securities and Exchange Commission
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **DIVISION OF ENFORCEMENT'S RESPONSE TO RESPONDENTS' MOTION TO PRECLUDE THE DIVISION'S WITNESS, MATTHEW MACH, FROM TESTIFYING** was served on the following on this 18th day of October, 2016, in the manner indicated below:

Securities and Exchange Commission
Brent Fields, Secretary
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
(By Facsimile and original and three copies by UPS)

Hon. Judge Carol Fox Foelak
100 F Street, N.E.
Mail Stop 2557
Washington, D.C. 20549
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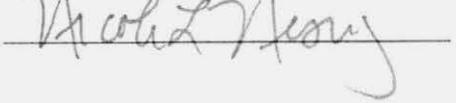

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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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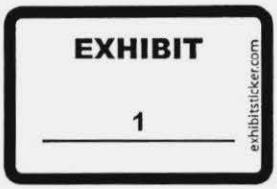

PROCEEDINGS

JUDGE FOELAK: Let's go on the record. This is a pre-hearing conference in the matter of Lynn Tilton and others, Administrative Proceeding 3-16462. And this pre-hearing conference is being held by telephone on May 7th, 2015, at 2:00 Eastern Time, and I am Judge Foelak.

And can I have your appearances for the record? And might I suggest also when counsel speaks during the conference, since there are several of them, that he or she identify himself or herself?

MR. BLISS: Thank you, Your Honor. This is Dugan Bliss and Amy Sumner on behalf of the Division of Enforcement.

MR. ZORNOW: This is David Zornow from Skadden, Arps, Slate, Meagher & Flom, LLP, and I am joined in New York by my colleagues Chris Gunther and Matthew Warren, and we are appearing for the Respondents.

MS. BRUNE: This is Susan Brune speaking. It's Susan Brune and MaryAnn Sung, also counsel for the Respondent.

JUDGE FOELAK: Okay. Very good.

Okay. First question. Are there any settlement negotiations I should be apprised of?

MS. BRUNE: No, Your Honor. This is Susan

Brune.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

order. We would have no problem with that.

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

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

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

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

Yes, Mr. Zornow.

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

JUDGE FOELAK: Yes. It might help with your witness and exhibit lists.

MR. ZORNOW: Yes.

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

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

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

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

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

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

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

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

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

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

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

JUDGE FOELAK: Okay. Let's see.

Okay. I thought I might address the Respondents' motion for a more definite statement.

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

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

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

JUDGE FOELAK: Okay.

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

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

specific investors.

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

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

JUDGE FOELAK: Okay.

MS. BRUNE: Your Honor, this is Susan Brune.

Given the very tight time constraints on this sort of proceeding, we need to proceed very efficiently.

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

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

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

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

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

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

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

case.

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

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

MS. BRUNE: Your Honor --

JUDGE FOELAK: So I gather you're planning to put on investors -- some investors as witnesses.

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

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

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

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

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

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

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

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

or are?

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

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

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

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

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

Dugan Bliss on behalf of the Division again.

What Respondents are asking for is an early

copy of our witness list, bottom line.

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

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

JUDGE FOELAK: Well, I --

MS. BRUNE: Your Honor --

JUDGE FOELAK: Yeah, go ahead.

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

Obviously, we are aware of who at least some of

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

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

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

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

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

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

JUDGE FOELAK: Okay. I --

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

JUDGE FOELAK: Okay. Certainly.

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

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

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

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

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

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

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

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

necessary to prepare this case.

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

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

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

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

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

MR. ZORNOW: They are --

MS. BRUNE: Your Honor --
MR. ZORNOW: Go ahead, Susan.
MS. BRUNE: I was going to say -- sorry.
Your Honor, they're institutional investors, and by that I mean not pension funds, as far as we're aware. They are insurance companies, hedge funds, banks. You know, very, very big players in the market.
JUDGE FOELAK: And were there a great number of them?
MS. BRUNE: We're not sure, Your Honor. We -- I would say many dozens would be the right way to describe it.
JUDGE FOELAK: It does sound like a lot.
MR. BLISS: Your Honor, from the Division's perspective, we don't believe there are a, you know, what you would call a huge number of investors, although we certainly don't know the exact number of investors ourselves.
JUDGE FOELAK: Okay. When are you going to -- I'm beginning to see, you know, what their work plan is, that they don't want to gather information from 200 insurance companies when, you know, 20 would be enough.
MR. BLISS: Your Honor, it's for sure less than a hundred total, from what I'm being told from our -- from Amy Sumner, who was involved in the investigation,

and it may be less than 50.
JUDGE FOELAK: Well, is there any potential for you to inform them of the ones that are more key at a sooner date than your witness list?
MR. BLISS: Well, Your Honor, we're -- we're doing the same thing that we're -- that they are doing. We are preparing for the hearing, and so during the investigation we took the testimony of and interviewed certain investors. You know, that information is being provided or has been provided to Respondents.
We're also going through the process of talking to additional investors to determine who would make, you know, the best witnesses at trial, as we all do in preparation for a hearing.
But that said, it's an ongoing process, and the fundamental point here is that our contention is that all investors were deceived in the same way, and so identification of the individual investors, unlike the other cases like the Bandimere case, where investors were told different things, you know, here we have the same misrepresentative disclosures made to everyone.
So our intention would be to -- by the time we're required to submit a witness list, to have identified those investors who we think would be most suitable as witnesses for trial. And that's our plan

which requires ongoing work on our behalf as well.
MS. BRUNE: Respectfully, Your Honor, the Division is not doing the same thing that we're doing, because they've been at this with -- or at least the staff has been at this for over five years.
Surely by now, or surely within a relatively reasonable time frame they can identify for us which investors are truly going to be in play here so that we can, in an efficient way, investigate our defenses.
MR. BLISS: And, again, Your Honor, on behalf of the Division, this, again, sounds like a request for an early copy of our witness list.
You know, as we talk to -- you know, we're preparing for the hearing, and so we -- we would request -- or object to that early evidence disclosure.
MR. ZORNOW: The difficulty, Your Honor, is we're going -- if that's going to be the program, we're going to have to ask for many more subpoenas in -- you know, because we're going to have to cast the net broadly, and as Ms. Brune says, we're going to end up putting a lot of people to unnecessary work, and so to the -- we can't wait until August 7th to start subpoenaing financial institutions and investors to find out what their files show about what they had from our client and how they analyzed it and what they understood.

JUDGE FOELAK: Okay. Mr. -- can the Division provide its witness list maybe somewhat earlier? Maybe that would resolve it.
MR. BLISS: Well, I mean, we're -- you know, we're open to being cooperative, but at this point our witness list is due already two months before trial, which we view as, you know, quite early relative to other, you know, hearings I've been involved with.
So I hesitate to commit to that, because, you know, we're going through work, too. We're contacting a substantial number of investors as well, and so I'm hesitant to agree to something earlier than that date at this point.
JUDGE FOELAK: Which is three months from now.
MR. BLISS: Right. Yeah. And we definitely feel like we have three months' of work ahead of us in terms of talking to investors.
JUDGE FOELAK: But, you know, you could give them a witness list and chop some off as time goes by.
MR. BLISS: I --
JUDGE FOELAK: You have a universe of potential witnesses that you're narrowing down.
MR. BLISS: Yeah. Honestly, Your Honor, we could do something like that, but the way that would proceed practically is, you know, we have tried and we're

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

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

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

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

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

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

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

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

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

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

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

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

JUDGE FOELAK: Okay. I was going to suggest,

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

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

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

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

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

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

JUDGE FOELAK: Okay. What about two months?

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

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

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

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

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

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

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

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

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

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

Honor.
MR. GUNTHER: We don't either, Your Honor.
JUDGE FOELAK: Okay. In that case, the pre-hearing conference is closed, and thank you for your participation.
MR. BLISS: Thank you, Your Honor.
MS. BRUNE: Thank you very much, Your Honor.
(Whereupon, at 12:38 p.m., the pre-hearing conference was concluded.)
* * * * *

PROOFREADER'S CERTIFICATE

In the Matter of: LYNN TILTON,
PATRIARCH PARTNERS, LLC,
PATRIARCH PARTNERS VIII, LLC,
PATRIARCH PARTNERS XIV, LLC, and
PATRIARCH PARTNERS XV, LLC,
ADMINISTRATIVE PROCEEDING - PRE-HEARING CONFERENCE
File Number: 3-16462
Date: Thursday, May 7, 2015
Location: Denver, CO

This is to certify that I, Donna S. Raya, (the undersigned), do hereby swear and affirm that the attached proceedings before the U.S. Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

_____ _____
(Proofreader's Name) (Date)

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SECURITIES AND EXCHANGE COMMISSION
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DIVISION OF
ENFORCEMENT

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,

Dugan Bliss
Senior Trial Counsel

Enclosure
Cc: Nicholas Heinke
Amy Sumner

From: Bliss, Dugan <BlissD@SEC.GOV>
Sent: Tuesday, June 9, 2015 6:23 PM
To: Christopher.Gunther@skadden.com; Zornow, David M <David.Zornow@skadden.com> (David.Zornow@skadden.com); Susan Brune; MaryAnn Sung
Cc: Heinke, Nicholas; Sumner, Amy A.
Subject: In the Matter of Patriarch
Attachments: 2015-04-09 Letter from Mayer Brown to Patriarch (3).pdf; 2015-04-24 Letter from Patriarch to Mayer Brown (3).pdf

Counsel:

Please see the attached documents, which were voluntarily provided to us by Värde Partners, Inc.

Thank you,
Dugan

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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.[1] 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.

[1] Capitalized terms not otherwise defined herein, are used as defined in the Zohar III Transaction Documents.

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]."[2] 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 . . . ."[3]

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[2] *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.

[3] Zohar III Offering Memorandum at 166.

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.[4] The SEC filed similar charges against another investment advisor, Commonwealth Advisors, Inc., and its principal in 2013.[5] 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 . . ."[6] 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

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[4] *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).
[5] *SEC v. Commonwealth Advisors, Inc. et al.* Civil Action No. 12-700 (M.D. La. Nov. 8, 2012).
[6] Patriarch Partners March 2014 Form ADV, Part 2 A at 31.

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

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.

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 Marucheau

PATRIARCH PARTNERS

One Broadway, 5th 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.[1] 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

[1] 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.

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

Steven G. Panagos
+1.212.883.3802 office
+1.917.328.3560 mobile
steve.panagos@moelis.com

Yadin Rozov
212.883.4551 office
917.224.1807 mobile
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 Marucheau (via federal express)

Värde
PARTNERS

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.

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)

From:	Bliss, Dugan
To:	MaryAnn Sung
Cc:	Sumner, Amy A.; Heinke, Nicholas; David.Zornow@skadden.com; Christopher.Gunther@skadden.com; Susan Brune; Martin Auerbach
Subject:	RE: In the Matter of Lynn Tilton, et al. (File No. 3-16462)
Date:	Wednesday, June 03, 2015 5:54:54 PM
Attachments:	image001.gif

MaryAnn:

We are in agreement and will provide any documents that are voluntarily provided to us subsequent to the OIP.

Thanks,
Dugan

From: MaryAnn Sung [mailto:msung@bruneandrichard.com]
Sent: Wednesday, June 03, 2015 3:28 PM
To: Bliss, Dugan
Cc: Sumner, Amy A.; Heinke, Nicholas; David.Zornow@skadden.com; Christopher.Gunther@skadden.com; Susan Brune; Martin Auerbach
Subject: RE: In the Matter of Lynn Tilton, et al. (File No. 3-16462)

Hi Dugan, Attached are copies of the signed subpoenas. We are willing to agree to provide you copies of documents that we receive in response to subpoenas if you agree to provide copies of documents that have been or are voluntarily provided to the staff subsequent to the OIP.

Thanks,
MaryAnn

MaryAnn Sung

Brune & Richard LLP
One Battery Park Plaza
New York, New York 10004
+1 212 668 1900
msung@bruneandrichard.com
www.bruneandrichard.com

From: Bliss, Dugan [mailto:BlissD@SEC.GOV]
Sent: Wednesday, June 03, 2015 12:19 PM

To: MaryAnn Sung
Cc: Sumner, Amy A.; Heinke, Nicholas; David.Zornow@skadden.com; Christopher.Gunther@skadden.com; Susan Brune; Martin Auerbach
Subject: RE: In the Matter of Lynn Tilton, et al. (File No. 3-16462)

MaryAnn:

Have you received signed copies of the subpoenas you requested yet? If so, will you please send us a copy of the signed subpoenas, as we have not received them yet. Also, please confirm that you will provide us with any documents you receive in response to the subpoenas.

Thanks,
Dugan

Dugan Bliss
Senior Trial Counsel, Division of Enforcement
U.S. Securities and Exchange Commission
Byron G. Rogers Federal Building
1961 Stout Street, Suite 1700
Denver, CO 80294-1961
blissd@sec.gov
303-844-1041

From: MaryAnn Sung [mailto:msung@bruneandrichard.com]
Sent: Tuesday, May 26, 2015 5:36 PM
To: Bliss, Dugan
Cc: Sumner, Amy A.; Heinke, Nicholas; Bruno, Anthony; ALJ; David.Zornow@skadden.com; Christopher.Gunther@skadden.com; Susan Brune; Martin Auerbach
Subject: In the Matter of Lynn Tilton, et al. (File No. 3-16462)

Counsel,

Please see the attached request for issuance of document subpoenas submitted today.

Regards,

MaryAnn

MaryAnn Sung

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