



October 27, 2016

VIA HAND DELIVERY

The Honorable Carol Fox Foelak
100 F Street, N.E.
Washington, D.C. 20549

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

Dear Judge Foelak:

I write on behalf of Respondents concerning the failure of Varde Partners, Inc. (“Varde”)—the employer of the Division’s witness Matthew Mach—to produce documents responsive to subpoenas that Your Honor permitted us to serve and then rejected Varde’s motion to quash. Respondents have now moved to compel the production of documents, Varde appeared in opposition, and Your Honor directed us to state our position in writing, which we now do. We respectfully request that Your Honor require Varde to immediately produce responsive documents, as described below.

On September 14, 2016, Your Honor denied Varde’s motion to quash and held that the Varde documents Respondents seek are “directly relevant to the Division’s proposed evidence and necessary for cross-examination.” Order of Sept. 14, 2016 at 2. Yet Varde has continued to refuse to produce plainly relevant documents that it has been ordered to disclose, based entirely on its alleged concern over revealing its “proprietary model”—a concern that could readily be addressed by the kind of protective order that has been entered to protect the confidences of other non-party witnesses from public disclosure. *See* October 11, 2016 Motion to Preclude Mach as a Witness Maloney Declaration Ex. 16 (email of September 22, 2016, from counsel for Patriarch to counsel for Varde attaching protective order as adopted by Your Honor for the production of Rabobank’s proprietary information as exemplar for Varde). Moreover, despite Varde’s willful noncompliance with the subpoenas, the Division offered Mr. Mach as a witness in its case yesterday and said it took “no position” on our motion to compel further document production.

During our co-counsel’s cross-examination of Mr. Mach, he acknowledged that Varde declined to produce multiple categories of contemporaneous documents that would reveal one way or the other whether he was telling the truth in his carefully-crafted testimony to try to tow the SEC’s line. *See, e.g.*, Oct. 26, 2016 Hr’g Tr. at 644:19-23; 645:15-22 (the categories of documents withheld are reflected on Varde’s October 10, 2016 categorical

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privilege log, *see* RX 1769 at 2, including investment committee updates, meeting minutes, memoranda, and presentations, and trade tickets, confirmations, and counterparty risk reports for transactions in the Zohar III notes). Mr. Mach also was forced to admit that Respondents “have been unable to know at what price the Zohar III notes were acquired [by Varde],” “at what price the notes were sold,” and “the methods [Varde] employs to price, value, analyze and monitor [its Zohar] investments.” *Id.* at 644:24-645:7; 645:15-22; *see also id.* at 720:3-22 (refusing to disclose Varde’s acquisition price for Zohar III Class A-1 notes as “confidential” information); *id.* at 721:14-17 (same for A-2 notes); *id.* at 726:11-15 (declining to disclose the level at which Varde chose to mark its Zohar notes). This would enable us to confirm whether Varde actually made a profit on its sales of Zohar notes since the OIP, as Mr. Mach admitted on cross-examination that Varde was not “the victim of a fraud.” *Id.* at 742:10-12.

Mr. Mach’s hearing testimony is replete with statements that Respondents want and deserve to test, but cannot dissect, given Varde’s outright refusal to produce documents responsive to our subpoenas, in willful violation of this Court’s order denying its motion to quash. For example, Mr. Mach testified that, prior to his recommendation to Varde to invest in Zohar III notes, he “looked at the cash flows coming in off of amortization payments [and] looked at the cash flows going out for revolver draws,” but, “for interest payments, we looked at the expected interest payments,” not the actual payments available from the trustee reports. *Id.* at 650:4-12. Indeed, he expressly testified that he “did not look at” the interest payments that had been made “until the SEC’s lawsuit.” *Id.* at 650:25-651:8. Similarly, Mr. Mach admitted that his strategy was to buy Zohar III notes “on the cheap,” but would not reveal what he paid for the notes. *Id.* at 720:3-9. When asked what corroborated that testimony, he repeatedly said “you can . . . rely on the statements that I am making under oath” or words to that effect. *See, e.g., id.* at 680:2-5; 680:12-15; 742:1-6.

Because Respondents simply cannot “test [his] statement[s]” on the current record, *id.* at 142:7-9, we implore Your Honor to order Varde to produce all responsive documents in compliance with Respondents’ subpoenas but, in any event, before Thursday, November 3, 2016. At a minimum, Your Honor should order Varde to produce all documents responsive to these specific requests as identified on Varde’s withheld document list (attached):

- Trade tickets, confirmations, and counterparty risk reports for transactions in Zohar III Notes (Oct. 26, 2016 Hr’g Tr. at 644:19-645:2, 721:11-20; Ex. 1769 (Category 5));
- Client holding statements, profit & loss statements, and custody statements reflecting all client holdings including Zohar III Notes as well as the prices and values of those holdings (Oct. 26, 2016 Hr’g Tr. at 721:11-20; Ex. 1769 (Category 6));

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- Investment committee updates/meeting minutes, quarterly memoranda, and presentations containing confidential and proprietary business information reflecting the prices and values Varde placed on Zohar III Notes, as well as the methods it employs to price, value, analyze, and monitor those investments (Oct. 26, 2016 Hr’g Tr. at 645:3-22; 646:14-24; 679:16-680:11; 686:13-25; Ex. 1769 (Category 7));
- Emails among Varde personnel and internal reports titled “Zohar III Update,” “Zohar III Opportunity Overview,” and “Zohar III Portfolio Exposures” reflecting Varde’s internal valuation and analysis of Zohar III Notes, including the prices and values Varde placed on investments, as well as the methods it employs to price, value, analyze, and monitor those investments (Oct. 26, 2016 Hr’g Tr. at 645:3-22; 646:14-24; 679:16-680:11; 686:13-25; Ex. 1769 (Category 8));
- Internal spreadsheets and analyses reflecting Varde’s proprietary models and internal analyses concerning Zohar III Notes (Oct. 26, 2016 Hr’g Tr. at 653:10-15; 679:16-680:11; 726:16-22; Ex. 1769 (Category 11));
- Any documents Mr. Mach prepared, sent, or received concerning recommendations to invest, or deliberations by, his firm’s investment committee or his firm’s portfolio manager concerning the potential purchase or sale of any Zohar Notes (Oct. 26, 2016 Hr’g Tr. at 591:3-12; 645:15-22; 646:4-24; 650:25-651:18; 697:20-698:2).

Accordingly, Varde should be compelled to produce responsive documents forthwith. Any other result would deprive Respondents of their critical right to test the credibility of the Division’s witnesses through review of contemporaneous documents—a right Your Honor recognized in denying Varde’s motion to quash, and we have thus far been denied by the concerted conduct of non-party witnesses working with the SEC.

We would also like to remind Your Honor that SEI Investments Company, whose representative David Aniloff testified in this hearing on October 24-25, 2016 in this action, fully complied with Respondents’ identical subpoena dated August 30, 2016. As such, Respondents were able to fully cross examine Mr. Aniloff regarding SEI’s investment decisions and analysis of the Zohar Funds.

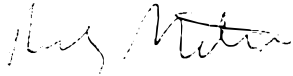
We thank Your Honor in advance for promptly addressing our application.¹

¹ Varde’s counsel suggested, falsely, that we had not pressed hard enough and fast enough for these documents. Of course, as Your Honor knows, that is not the case. We opposed Varde’s motion to quash, and Your Honor agreed with us, denying Varde’s motion on September 14, 2016. Then, over a period of weeks, we “met and conferred” with Varde’s counsel to try to resolve the issue and got stonewalled, so in early October 2016, we moved to preclude the Varde witness, Mr. Mach, from testifying at trial or,

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Respectfully,



Randy M. Mastro

Attachment

cc: Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.
Mark Williams, Esq.
Matt Rossi, Esq.

alternatively, to compel the SEC to intervene with Varde. On the eve of trial, at the October 19 pre-trial conference, Your Honor denied our motion. And then, when trial began and before Mr. Mach took the witness stand, we moved to compel Varde to produce documents, and Varde's counsel appeared on the record here to oppose. Given that record, our application is obviously timely, appropriate, and amply supported. Earlier today, Your Honor suggested, in considering document production issues concerning other witnesses who have now testified at trial, that it may no longer serve any purpose to require production, but that is not so. (Oct. 27, 2016 Hr'g Tr. (Rough) at 3,9:10:46-57.) Having the documents available to us even after the witness's testimony allows us—and Your Honor—to see whether the contemporaneous documents corroborate or contradict the witness's testimony so that we can effectively cross examine the witness. Moreover, a review of documents responsive to the subpoena may even warrant one side or the other recalling the witness, which is not uncommon during a federal trial. So we continue to have a compelling need for these documents and other documents, the production of which we continue to seek, and time is of the essence now that we are well into the trial.

From: Rossi, Matthew A. <MRossi@mayerbrown.com>
Sent: Monday, October 10, 2016 8:02 PM
To: Maloney, Mary Beth
Cc: Loseman, Monica K.; Niles, Elizabeth M.
Subject: In the Matter of Lynn Tilton, et al. (File No. 3-16462)
Attachments: 2010-10-10 Log.pdf

Mary Beth – Attached is a log of general categories of documents currently withheld from Värde Partners Inc.'s production of documents in response to the two subpoenas, dated August 17, 2015 and August 30, 2016, served by Respondents in the above-referenced matter.

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

Regards,

Matt

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In the Matter of Lynn Tilton, et al. (File No. 3-16462)
 General Categories of Documents Withheld from Värde Partners Inc.'s Response to
 Two Subpoenas Served by Respondents Dated August 17, 2015 and August 30, 2016.

October 10, 2016

1	Communications between Värde personnel and Värde's outside counsel concerning the pursuit and defense of legal rights in connection with: (1) Zohar III, Limited, Zohar III, Corp., Zohar III, LLC, any of their affiliates or associated persons or entities, and/or any entity involved in the Zohar III CDO (collectively "Zohar Entities"); (2) any indenture agreement and related documents concerning the Zohar Entities, (3) any potential restructuring of the Zohar CDOs; and (4) the above-referenced Securities and Exchange Commission administrative proceeding ("Proceeding")
2	Communications among Värde personnel and Värde's in-house counsel concerning the pursuit and defense of legal rights in connection with: (1) the Zohar Entities; (2) any indenture agreement and related documents concerning the Zohar Entities; (3) any potential restructuring of the Zohar CDOs; and (4) the Proceeding
3	Communications among Värde and other holders of notes issued by Zohar III, Limited ("Zohar III Notes") on the one hand and the note holders common counsel on the other hand concerning the pursuit and defense of legal rights in connection with: (1) the Zohar Entities; (2) any indenture agreement and related documents concerning the Zohar Entities; and (3) any potential restructuring of the Zohar CDOs
4	Documents prepared by Värde's counsel in anticipation of litigation and reflecting the mental impressions of counsel concerning the pursuit and defense of legal rights in connection with: (1) the Zohar Entities; (2) any indenture agreement and related documents concerning the Zohar Entities; (3) any potential restructuring of the Zohar CDOs; and (4) the Proceeding
5	Trade tickets, confirmations, and counterparty risk reports for transactions in Zohar III Notes
6	Client holding statements, profit & loss statements, and custody statements reflecting all client holdings including Zohar III Notes as well as the prices and values of those holdings
7	Investment committee updates/meeting minutes, quarterly memoranda, and presentations containing confidential and proprietary business information reflecting the prices and values Värde placed on Zohar III Notes as well as the methods it employs to price, value, analyze, and monitor those investments
8	Emails among Värde personnel and internal reports titled "Zohar III Update," "Zohar III Opportunity Overview," and "Zohar III Portfolio Exposures" reflecting Värde's internal valuation and analysis of Zohar III Notes including the prices and values Värde placed on investments as well as the methods it employs to price, value, analyze, and monitor those investments
9	Emails among Värde personnel evaluating bids, offers and marks for Zohar III Notes
10	Emails between Värde personnel on the one hand and brokers and other third parties on the other relating to bids, offers and marks for Zohar III Notes
11	Internal spreadsheets and analyses reflecting Värde's proprietary models and internal analyses concerning Zohar III Notes
12	Emails among Värde personnel concerning its strategy for negotiating a restructuring of the Zohar CDOs