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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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DIVISION OF
ENFORCEMENT

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October 30, 2016

Via Email and Overnight Delivery

Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
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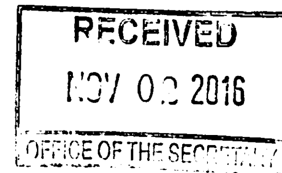

Susan E. Brune, Esq.
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Re: *In the Matter of Lynn Tilton, et al. (File No. 3-16462)*

Dear Judge Foelak and Counsel:

On October 27, 2016, the Division of Enforcement ("Division") called Peter Berlant, a partner at Anchin Block and Anchin ("Anchin"), as a percipient witness. It was only following Mr. Berlant's testimony, on October 29, 2016, that undersigned counsel realized that a disclosure regarding Anchin's work on a different matter may be warranted. Thus, the Division hereby informs the Court and Respondents' Counsel that the Securities and Exchange Commission ("Commission") previously retained individuals in the Litigation, Forensic and Valuation Services group at Anchin to perform forensic accounting services in a separate unrelated district court case currently pending in the United States District Court for the District of Connecticut (the "Connecticut Matter").

On or about May 23, 2016, the Commission retained individuals in the Litigation, Forensic and Valuation Services group at Anchin to perform forensic accounting services in

connection with the Connecticut Matter. Undersigned counsel have undertaken efforts to confirm – and, to the best of their abilities, have confirmed that: (i) Mr. Berlant has performed no work on the Connecticut Matter, (ii) although Mr. Berlant has performed engagements in the past with the Litigation, Forensic and Valuation Services group at Anchin, he is currently performing no work with that group, (iii) although it is possible that Mr. Berlant may be generally aware that the Litigation, Forensic and Valuation Services group at Anchin was retained by the Commission, he has not signed a nondisclosure agreement with the Commission and therefore is not permitted to be made aware of any details of the Connecticut Matter, and (iv) Mr. Berlant has not received and will not receive any direct compensation for the Connecticut Matter.

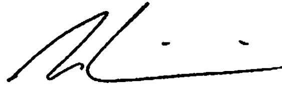
We note that it is possible Mr. Berlant could receive some indirect compensation from the Connecticut Matter. Specifically, it is undersigned counsel's understanding that the distribution of revenue between Anchin partners is based on Anchin's executive committee's evaluation of the partner's contribution to the firm. Anchin generates over $100 million in annual revenue and has approximately 55 partners. The contract in the Connecticut Matter is for approximately $366,000, of which Anchin expects less than $100,000 to be profit to the firm. Thus, Mr. Berlant may indirectly receive a modest amount of money from the Connecticut Matter.

We leave it to the Court to determine whether Mr. Berlant should be recalled for the purpose of inquiring into whether he was aware of the Connecticut Matter, and if so, to what extent it affected or influenced his testimony. To be clear, given the timing of this disclosure, the Division does not object to recalling Mr. Berlant so Respondents may pursue a line of questioning on this topic. However, the Division notes that even in criminal cases implicating the Confrontation Clause of the Sixth Amendment, a court would be well within its discretion to preclude questioning on such slight bias. *District of Columbia v. Clawans*, 300 U.S. 617, 632 (1937) ("The extent of cross-examination rests in the sound discretion of the trial judge. Reasonable restriction of undue cross-examination, and the more rigorous exclusion of questions irrelevant to the substantial issues of the case, and of slight bearing on the bias and credibility of the witnesses, are not reversible errors.").

Further, even absent disclosure, this information would almost certainly be immaterial under *Brady* and its progeny given that Mr. Berlant provided similar – if not virtually identical – investigative testimony on June 8, 2014, almost two years before his firm was engaged on the Connecticut Matter. *See, e.g., United States v. Jacobs*, 650 F. Supp. 2d 160, 166 (D. Conn. 2009) ("A particular piece of information—or a collection of seemingly unimportant pieces of information—becomes subject to *Brady's* requirements only if it should appear that, after a full trial, the information *would have been* "material" to the defense, meaning that the failure to disclose the information can reasonably be said to have deprived the defendant of a fair trial. The test is necessarily backward-looking; and the uncertainty created by a backward-looking test is part of the motivation for uncertain prosecutors to err on the side of caution.") (emphasis in original). In fact, if Respondents choose to question Mr. Berlant on this topic, the Division will seek "to rebut a charge of recent fabrication or improper influence or motive," *Tome v. United States*, 513 U.S. 150, 157 (1995) (internal quotations omitted), by offering into evidence his 96

pages of investigative testimony that occurred well before Anchin was asked or engaged to perform services in connection with the Connecticut Matter. *See, e.g., Grisanti v. Cioffi*, 38 Fed. Appx. 653, 655 (2d Cir. 2002) ("According to the Supreme Court's decision in *Tome v. United States*, 513 U.S. 150, 115 S.Ct. 696, 130 L.Ed.2d 574 (1995), a prior consistent statement is admissible non-hearsay under Fed.R.Evid. 801(d)(1)(B) if 'offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive,' and if the statement was made before the motive to fabricate arose.") (quoting *Tome*, 513 U.S. at 157).

Sincerely,



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