

# HARD COPY

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

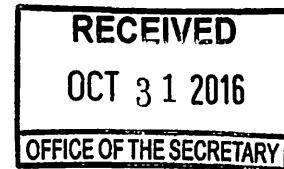
**In the Matter of**

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

**Respondents.**

Administrative Proceeding  
File No. 3-16462

Judge Carol Fox Foelak



## DECLARATION OF JONATHAN M. HOFF

Jonathan M. Hoff, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am a partner of the firm of Cadwalader, Wickersham & Taft LLP, attorneys for non-party MBIA Insurance Corporation (“MBIA”).

2. I submit this declaration in support of MBIA’s opposition to Respondents’ Motion to Compel MBIA to Produce Documents Responsive to Respondents’ Subpoenas (the “Opposition”), dated October 5, 2016.

3. The purpose of this declaration is to provide evidentiary support for the facts cited in the Opposition and describe and, insofar as may be necessary, formally make part of the record the documents that are referred to in the Opposition. I have personal knowledge of, or learned through documents or knowledge of others, the matters set forth below and, if called upon, I would competently testify thereto.

4. Attached hereto as Exhibit A is a true and correct copy of the subpoena issued at Respondents’ request and directed to MBIA on May 27, 2015 (the “2015 Subpoena”).

5. Attached hereto as Exhibit B is a true and correct copy of the Letter from Jonathan M. Hoff to Monica Loseman, dated August 19, 2016.

6. Attached hereto as Exhibit C is a true and correct copy of the Letter from Monica Loseman to Douglas H. Fischer, dated August 9, 2016.

7. Attached hereto as Exhibit D is a true and correct copy of the Memorandum of Law in Support of Respondents' Motion to Quash the Subpoena Issued by the Division to MBIA Insurance Company [*sic*], dated August 8, 2016.

8. Attached hereto as Exhibit E is a true and correct copy of the subpoena issued at Respondents' request and directed to MBIA on September 21, 2016.

9. Attached hereto as Exhibit F is a true and correct copy of the subpoena issued at Respondents' request and directed to Anthony McKiernan on September 21, 2016 (together with Exhibit E hereto, the "2016 Subpoenas").

10. Attached hereto as Exhibit G is a true and correct copy of an email from Monica K. Loseman to Jonathan M. Hoff, dated October 3, 2016.

11. Attached hereto as Exhibit H is a true and correct copy of the Certificate of Service accompanying Respondents' Motion on October 5, 2016.

12. Attached hereto as Exhibit I is a true and correct copy of the letter from Jonathan M. Hoff to the Hon. Carol Fox Foelak, dated October 20, 2016.

13. Attached hereto as Exhibit J are true and correct copies of documents produced by the Commission to the Respondents in this proceeding.

14. Attached hereto as Exhibit K are true and correct copies of subpoenas issued at the request of Respondents and directed to non-parties in this proceeding, dated May 27, 2015.

15. Attached hereto as Exhibit L is a true and correct copy of the U.S. Securities and Exchange Commission's list of potential witnesses in this proceeding.

16. Attached here as Exhibit M is a true and correct copy of the excerpted transcript of proceedings held on Sept. 20, 2016 in *Patriarch Partners XV, LLC v. U.S. Bank, Nat'l Ass'n*, No. 16-cv-7128 (JSR).

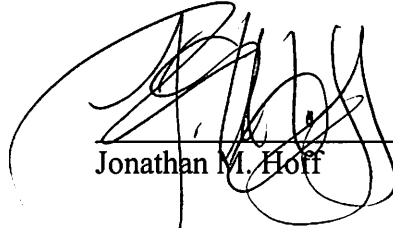
17. On September 21, 2016, I had a telephone call with Respondents' counsel, during which I agreed to accept service of the 2016 Subpoenas as of September 21, 2016.

18. On September 28, 2016, I engaged in a meet and confer call with Respondents' counsel regarding the scope of the 2016 Subpoenas and the nature of the documents sought by Respondents. During the meet and confer call, I communicated MBIA's objections to the 2016 Subpoenas as being overbroad, duplicative of the prior 2015 Subpoena, inconsistent with the parties' agreement with respect to the 2015 Subpoena and cumulative of documents already in Respondents' possession or which Respondents have sought from others, particularly the Commission. In my view, Respondents' counsel failed to articulate how the requests in the 2016 Subpoenas differed from the requests in the 2015 Subpoena or how the requests in the 2016 Subpoenas did not seek documents cumulative of documents that Respondents have obtained from the Commission. In my view, Respondents' counsel also did not explain the relevance of the documents sought in 2016 Subpoenas to any claim or defense in this proceeding and did not justify Respondents' refusal to honor the parties' prior agreement with respect to the scope of discovery from MBIA. Accordingly, I stated MBIA's position that the duplicative and overbroad discovery sought in the 2016 Subpoenas was inappropriate.

19. On Thursday, October 27, 2016, Respondents informed MBIA that they identified certain documents that MBIA had produced to Respondents and their affiliates in another litigation, but which also appeared to have been covered by the parties' agreement with respect to the 2015 Subpoena. After Respondents identified these documents, MBIA compared the production it had made in the other litigation with the production it made in response to the 2015 Subpoena and identified additional documents that should have been produced and then produced them to Respondents. As a result, in total, MBIA produced 40 documents that had not been produced previously in response to the 2015 Subpoena, as modified by agreement.

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

Dated: New York, New York  
October 28, 2016

A handwritten signature in black ink, appearing to read 'Jonathan M. Hoff', is written over a horizontal line. The signature is stylized and somewhat cursive.

Jonathan M. Hoff

CADWALADER, WICKERSHAM & TAFT LLP  
200 Liberty Street  
New York, New York 10281  
Telephone: (212) 504-6000  
Facsimile: (212) 504-6666  
jonathan.hoff@cwt.com

*Attorney for Non-Party MBIA Insurance Corp.*



**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

<p>1. TO  MBIA Insurance Corporation  113 King Street  Armonk, NY 10504</p> <p>c/o Jeffrey Q. Smith, Esq.  Morgan Lewis  101 Park Avenue  New York, NY 10178</p>	<p>This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.</p>
<p>2. PLACE OF PRODUCTION  Brune &amp; Richard LLP  One Battery Park Plaza  New York, New York 10004</p>	<p>3. DATE AND TIME PRODUCTION IS DUE  June 18, 2015 at 10:00 AM</p>
<p>4. PARTY AND COUNSEL REQUESTING  ISSUANCE OF SUBPOENA</p> <p>Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC; and Patriarch Partners Agency Services, LLC</p> <p>By: MaryAnn Sung  Brune &amp; Richard LLP  One Battery Park Plaza  New York, New York 10004</p>	<p>5. THE PRODUCTION OF DOCUMENTS OR OTHER TANGIBLE EVIDENCE IS ORDERED BY</p> <p>The Honorable Carol Fox Foelak</p> <p>Administrative Law Judge  U.S. Securities and Exchange Commission</p>
<p>6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER</p> <p><b>In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462</b></p>	
<p>7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)</p>	

See attachment.

<p>DATE SIGNED</p> <p><i>May 27, 2015</i></p>	<p>SIGNATURE OF ADMINISTRATIVE LAW JUDGE</p> <p><i>Carol Fox Foelak</i></p>
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**GENERAL INSTRUCTIONS**

**MOTION TO QUASH**

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

**ATTACHMENT TO SUBPOENA DUCES TECUM  
TO MBIA INSURANCE CORPORATION**

**DEFINITIONS AND INSTRUCTIONS**

1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

2. "And" and "or" have both the conjunctive and disjunctive meanings, and the terms "each," "any," and "all" mean "each and every."

3. "Communication" means any form of contact, documentary, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence.

4. "Defaulted Assets" means, with respect to Zohar CDO 2003-1, Limited ("Zohar I") and Zohar II 2005-1, Limited ("Zohar II"), the "Defaulted Obligation," and with respect to Zohar III, Limited ("Zohar III"), the "Defaulted Investment," as defined and used in Section 1.1 of applicable Zohar Indentures.

5. "Document" is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other

graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or "emails"), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files, electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other documents which are in your possession, custody, or control or to which you otherwise have access.

6. "Including" means including but not limited to. When the word "including" is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the documents requested.

7. "Interest Coverage Ratio" means the "Class A Interest Coverage Ratio" and the

“Class A Interest Coverage Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

8. “Overcollateralization Ratio” means the “Class A Overcollateralization Ratio” and “Class A Overcollateralization Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

9. “Loan Categories” means, with respect to Zohar I and Zohar II, the terms “Category 1”, “Category 2”, “Category 3”, and “Category 4” and, with respect to Zohar III, the terms “Collateral Investment” and “Defaulted Investment,” all as defined and used in Section 1.1 of the applicable Zohar Indentures.

10. “Related to”, “relating to”, and “in connection with”, in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

11. “Respondents” means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

12. “SEC” means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.



13. “You” or “your” means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country) and its and their present and former officers, directors, employees, partners, principals, representatives and agents..

14. “Zohar Funds” means the following collateralized loan obligations: Zohar I, Zohar II and Zohar III.

15. “Zohar Financial Statements” means the balance sheets and income statements (including all notes) and certificates as to financial statements issued quarterly for each of the Zohar Funds as described in Section 7.9 of the Zohar Indentures.

16. “Zohar Indentures” means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.

17. “Zohar Notes” means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

18. “Zohar Trustee” means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term “Zohar Trustee” includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

19. “Zohar Trustee Reports” means the “Monthly Report” and “Note Valuation Report” and any electronic data or other files that accompany such “Monthly Report” or “Note Valuation Report” prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

20. If you encounter any perceived ambiguity, vagueness, or confusion in construing

either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

21. References to any natural person shall be deemed to include that natural person's agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity's subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

22. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

23. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to

a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

24. All documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

25. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the foregoing, data files, including excel files, are to be produced in native format. Responsive documents that are not electronically stored are to be produced (i) in a single-page TIFF format, with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

26. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce documents from a prior time period to fully respond to a particular request, do so.

## DOCUMENTS TO BE PRODUCED

1. For the period January 1, 2003 through the date of your production, documents sufficient to show your current and/or prior holdings of any of the Zohar Notes, including documents sufficient to show the date(s) on which you acquired, sold, placed and/or traded any of the Zohar Notes (via cash or derivative transactions), the counterparties and the price(s) or other terms at which such transactions occurred.

2. For the period January 1, 2003 through the date of your production, all Documents comprising of, or relating to, marketing or due diligence materials relating to the Zohar Funds.

3. For the period January 1, 2003 through the date of your production, all Documents relating to any evaluation or decision by you to insure or “wrap” the Zohar Notes, including, without limitation, any credit, risk or investment committee memorandum or related Communications.

4. Documents sufficient to show the valuation assigned by you to the Zohar Notes held by you or the insurance policy you provided related to the Zohar Notes for any purpose, including but not limited to, accounting or profit/loss calculation purposes, including the dates such valuations were assigned.

5. All Documents relating to loan loss reserves, capital reserves or provisions taken on any Zohar Notes held by you or on any insurance policy you provided related to the Zohar Notes, including but limited to case loss reserve memoranda, reserve simulations, loss reserve reports, loss reserve comments, and any documents prepared for or by the loss reserve committee regarding the Zohar Funds.

6. All Documents relating to any valuation by you or a third party of any of the Zohar Notes, including, without limitation:

- a. Month-end or other periodic marks provided by your trading desk to you or any third party for any Zohar Notes;
- b. Month-end or other periodic marks obtained from any third party by you for any Zohar Notes;
- c. Bids or offers shown by or requested of you or any third party for any Zohar Notes (regardless of whether a transaction was contemplated or effected).

7. All Documents relating to:

- a. Overcollateralization Ratio as reported in the Trustee Reports;
- b. Interest Coverage Ratio as reported in the Trustee Reports;
- c. Loan Categories as reported in the Trustee Reports;
- d. Defaulted Assets as reported in the Trustee Reports
- e. Zohar Financial Statements;
- f. Ratings of the Zohar Notes issued by Moody's and Standard and Poor's.

8. All Documents related to your monitoring of the performance of the Zohar Funds, including but not limited to any surveillance reviews, quarterly classified lists, watchlist reports or any other monitoring reports relating to the Zohar Funds or Zohar Notes.

9. All Documents relating to any analyses, calculations, or computations performed by you using information or data provided by the Zohar Trustees and/or in the Zohar Trustee Reports, including Documents relating to any analyses, calculations, or computation of interest paid, interest accrued, and/or interest accrued and unpaid on an aggregate fund or loan-by loan basis.

10. All Documents relating to modeling or modeling runs performed by you relating to the Zohar Funds and/or Zohar Notes using any proprietary or commercial cashflow model, data, or software tools, such as but not limited to INTEX or Moody's Analytics.

11. All Documents that were produced by you and marked as an exhibit for any deposition or admitted into evidence in the civil action captioned *MBIA Insurance Corporation v. Patriarch Partners VIII, LLC and LD Investments, LLC*, No. 09 Civ. 3255 (S.D.N.Y.) (RWS).

12. Documents sufficient to identify the individual(s) employed or retained by you who have had significant responsibilities regarding the monitoring of the performance and/or valuation of the Zohar Funds and/or the Zohar Notes held or insured by you.

13. All Communications relating to the Zohar Funds, Zohar Notes, or Respondents for custodians Anthony McKiernan and Jonathan Sloan with the exception of e-mail Communications between such custodians on the one hand and Respondents on the other hand.

14. All Documents relating to conference calls or meetings with Respondents relating to the Zohar Funds.

15. All Documents relating to a document titled "Patriarch Partners – Zohar Transactions Summary of Certain Contractual Provisions," previously produced to the SEC at Bates number MBIA-PPSEC 00000295-301, including but not limited to any communications regarding the creation or revisions of this document, documents sufficient to show the author(s), date(s) of creation and/or revision of the document, and anyone who requested, received or reviewed the document, or was otherwise shown the document.

16. All Communications and all Documents relating to all Communications with the SEC relating to the Zohar Funds and/or Respondents.

# CADWALADER

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www.cadwalader.com

New York London Charlotte Washington  
Houston Beijing Hong Kong Brussels

August 19, 2016

## VIA EMAIL

Monica K. Loseman  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, New York 10166

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

Dear Ms. Loseman:

I am writing to follow up on my letter to you of August 11, 2016, and in response to your letter of August 9, 2016, regarding the subpoena *duces tecum* served on MBIA Insurance Corporation (“MBIA”) by Respondents in the above-captioned proceeding.

In your August 9 Letter, you request that MBIA confirm “that MBIA has made a complete production, through the present, of all documents responsive to the subpoena” and that MBIA make a “complete production” to the extent it has not already done so. Additionally, you requested that MBIA confirm whether David Crowle was among the document custodians whose documents were searched in connection with MBIA’s production of documents responsive to the subpoena.

As you may be aware, following service of the subpoena, MBIA made clear to Respondents that the subpoena is objectionable on multiple grounds, including, among other reasons, it is overly broad and unduly burdensome. MBIA’s objections are particularly appropriate in light of Respondents’ responsibility to “take reasonable steps to avoid undue burden or expense when they subpoena non-parties,” and that Respondents’ right to discovery is balanced against the burden and expense of compliance imposed on the third party. *See Morgan Asset Mgmt., Inc.*, 2010 SEC LEXIS 2200, at \*2-3 (July 6, 2010). With these principles in mind, MBIA notified Respondents that it, nevertheless, was prepared to engage in discussions regarding the scope of the subpoena.

MBIA and Respondents thereafter engaged in extensive meet and confer discussions resulting in agreements with respect to the following:

## C A D W A L A D E R

Monica Loseman  
August 19, 2016

### A. Request Nos. 4, 6-10 And 13-14

- (1) MBIA would search the email files for custodians Stephen Silverman, John Hale, Joseph Sevely, Gerry Berrigan, Eric McAlley, Alexander Ng, Jason Cameron, Thomas Vandermark, Oliver North, Fred Pastore and Tom Ringel, for the period January 1, 2008 to June 18, 2015 using search terms Zohar, ZI, ZII, Z1 Z2 and Patriarch, and limiting the search to emails that that were to, from, cc or bcc Jason Cameron, Thomas Vandermark, Oliver North, Fred Pastore and Tom Ringel.
- (2) MBIA would search the email files for custodians Anthony McKiernan and Jonathan Sloan for the period January 1, 2008 to June 18, 2015 using search terms set forth in Attachment A hereto.
- (3) David Crowle was not among the thirteen custodians agreed to by Respondents. We note that, at the time MBIA and Respondents negotiated custodians for MBIA's email search, Respondents knew Mr. Crowle had provided testimony in connection with the Commission's investigation and thus potentially could be identified as a witness in this proceeding.
- (4) With respect to Request No. 4, MBIA would produce non-privileged documents sufficient to show quarterly marks made by MBIA with respect to the Zohar Notes. MBIA produced all such non-privileged documents it was able to locate.

With respect to Request Nos. 6-10 and 13-14, MBIA agreed only to review documents located pursuant to the foregoing search parameters and produce documents responsive to these Requests. MBIA, however, did not agree to produce documents that contain confidential or proprietary information relating to MBIA's loss reserves, its non-Zohar asset portfolio and certain of its internal processes. MBIA maintains its position in this regard.

### B. Request Nos. 1-3, 5, 11-12 And 15-16

- (1) Request No. 1: MBIA would not need to produce any documents if it confirmed in writing that it has not made any trades with respect to the Zohar Notes. MBIA will revert to Respondents on this issue.
- (2) Request No. 2: MBIA will produce marketing and due diligence materials, if any, relating to Zohar II created during the time period November and



# C A D W A L A D E R

Monica Loseman  
August 19, 2016

December 2004. At the time the stay order was entered, MBIA had not completed its search for these documents.

- (3) Request No. 3: MBIA would produce "Committee Memos," if any, relating to MBIA's decision to insure the Zohar Notes, which documents are located pursuant to reasonable non-electronic document searches. The parties further agreed to exclude from this request any memoranda relating to Zohar I and the memorandum addressed to the Executive Risk Committee relating to Zohar II because they were already in Respondents' possession. MBIA produced all such non-privileged documents.
- (4) Request No. 5: Respondents agreed to set this request aside pending their review of emails produced by MBIA.
- (5) Request No. 11: MBIA would not need to produce any documents because responsive documents were already in Respondents' possession. MBIA would sign an appropriate agreement necessary to allow Respondents to use such documents in connection with this proceeding.
- (6) Request No. 12: MBIA need not produce any documents if it provides Respondents with a list of employees that had significant responsibilities regarding the valuation of the Zohar Funds. At the time the stay order was entered, MBIA had not completed its compilation of this list.
- (7) Request No. 15: Following a good-faith search, MBIA did not locate non-privileged documents responsive to this request.
- (8) Request No. 16: Respondents would provide MBIA with a list of dates pursuant to which Respondents would propose that MBIA conduct a search for email communications involving the agreed-upon custodians set forth in Section A, above. At the time the stay order was entered, Respondents had not provided MBIA with the foregoing dates.

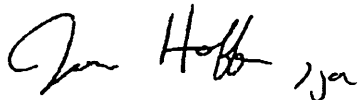
Based on the foregoing, MBIA produced more than 3,900 pages between June 25 and July 24, 2015. Discussions between MBIA and Respondents ceased in August 2015. With the exception of specific documents and information set forth above, MBIA does not agree to search for or produce additional documents in connection with the Subpoena. Nor does MBIA agree to renegotiate the agreements reached with Respondents during the meet and confer process, which was the basis on which MBIA agreed to produce documents.

C A D W A L A D E R

Monica Loseman  
August 19, 2016

Further, except as expressly set forth above, MBIA will not produce any documents created after the Order Instituting Proceedings, dated March 22, 2015 (“OIP”), and is under no continuing obligation to search for or produce documents. Documents created after the filing of the OIP are irrelevant and beyond the scope of this proceeding, and the collection, search, review and production of such documents would be unduly burdensome to MBIA. We note that Respondents themselves seek to quash the subpoena *duces tecum* served on MBIA by the Commission on the grounds that the documents sought were created after the filing of the OIP and thus “outside the scope of the OIP,” including because they are “outside its timeframe.”

Very truly yours,

A handwritten signature in black ink, appearing to read "Jonathan M. Hoff". The signature is written in a cursive, flowing style.

Jonathan M. Hoff

Attachment

**ATTACHMENT A**

(Zohar or ZI or ZII or Z1 or Z2 or Patriarch)

AND

(mark or value or valuation or price or OC or O/C or overcollateralization or over-collateralization or IC or I/C or interest or spread or coupon or categor\* or default or defaults or defaulted or defaulting or non-performing or indenture or disclosure\* or "cash flow\*" or intex or model\* or trustee or "data file\*" or SIFMA or performance or equity or control\* or distressed or unique or company\* or borrower\* or Tilton or Lynn or manager or call or meeting or notes or rating\* or downgrade\* or F/S or FS or "financial statements" or financials)

(with \* denoting extenders)

# GIBSON DUNN

Gibson, Dunn & Crutcher LLP

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MLoseman@gibsondunn.com

August 9, 2016

BY FEDERAL EXPRESS AND EMAIL

Mr. Douglas H. Fischer  
Cadwalader, Wickersham & Taft LLP  
700 Sixth Street, NE  
Washington, DC 20001  
Douglas.fischer@cwt.com

Re: *In the Matter of Lynn Tilton et al. (3-16462)*  
Compliance with May 27, 2015 Subpoena Duces Tecum

Dear Mr. Fischer:

We are writing to advise you that we represent Respondents in the above captioned matter.

The record of prior communications between MBIA and Respondents' counsel reflects that prior to the September 17, 2015 stay of the proceedings in this action, MBIA produced some documents in response to Respondents' May 27, 2015 subpoena duces tecum (the "May 2015 Subpoena"). As you may be aware, the stay has now been lifted and an administrative hearing in this matter is now scheduled for October 24, 2016. Current MBIA employee Anthony McKiernan, and former MBIA employee David Crowle, have both previously been identified as witnesses the SEC "may call" at the administrative hearing.

Consistent with your obligations to comply with the May 2015 Subpoena, we ask that you confirm by close of business this Thursday, August 10, 2016, that MBIA has made a complete production, through the present, of all documents responsive to the subpoena, including specifically Request Numbers 13 (all communications relating to the Zohar Funds, Zohar Notes, or Respondents for custodian Anthony McKiernan) and 16 (all Communications relating to Communications with the SEC concerning the Zohar Funds and/or Respondents). For example, to the extent MBIA has had any communications with the SEC, or has within its possession, custody or control, any documents reflecting its or others' communications with the SEC, including since the date of the subpoena and during the pendency of the stay, those communications and documents must be produced. (For your convenience we attach the May 2015 Subpoena.)

# GIBSON DUNN

Mr. Douglas H. Fischer  
August 9, 2016  
Page 2

Months after Respondents' May 2015 Subpoena issued, on August 7, 2015 the SEC identified David Crowle as a potential witness on its witness list. Please confirm whether you have included Mr. Crowle as a custodian in continued compliance with the subpoena.

If MBIA has not made a complete production of documents responsive to the subpoena, and particularly with respect to Request Numbers 13 and 16, Respondents demand compliance forthwith and, in any event, no later than Monday, August 15, 2016 at Noon EST. If at that time MBIA has not produced such documents, Respondents will be forced to move for immediate relief from Judge Foelak.

If you have questions or would like to discuss, please contact me.

Sincerely,



Monica K. Loseman  
Gibson, Dunn & Crutcher LLP  
Counsel for Respondents

MKL/mkl  
Attachment

cc: Jonathan Hoff, Esq.  
Susan Brune, Esq.



**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

<p>1. TO  MBIA Insurance Corporation  113 King Street  Armonk, NY 10504</p> <p>c/o Jeffrey Q. Smith, Esq.  Morgan Lewis  101 Park Avenue  New York, NY 10178</p>	<p>This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.</p>
<p>2. PLACE OF PRODUCTION  Brune &amp; Richard LLP  One Battery Park Plaza  New York, New York 10004</p>	<p>3. DATE AND TIME PRODUCTION IS DUE  June 18, 2015 at 10:00 AM</p>
<p>4. PARTY AND COUNSEL REQUESTING ISSUANCE OF SUBPOENA  Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC; and Patriarch Partners Agency Services, LLC</p> <p>By: MaryAnn Sung  Brune &amp; Richard LLP  One Battery Park Plaza  New York, New York 10004</p>	<p>5. THE PRODUCTION OF DOCUMENTS OR OTHER TANGIBLE EVIDENCE IS ORDERED BY</p> <p>The Honorable Carol Fox Foelak</p> <p>Administrative Law Judge  U.S. Securities and Exchange Commission</p>

6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER

**In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462**

7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)

See attachment.

DATE SIGNED	SIGNATURE OF ADMINISTRATIVE LAW JUDGE
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**GENERAL INSTRUCTIONS**

**MOTION TO QUASH**

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

**ATTACHMENT TO SUBPOENA DUCES TECUM  
TO MBIA INSURANCE CORPORATION**

**DEFINITIONS AND INSTRUCTIONS**

1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

2. “And” and “or” have both the conjunctive and disjunctive meanings, and the terms “each,” “any,” and “all” mean “each and every.”

3. “Communication” means any form of contact, documentary, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence.

4. “Defaulted Assets” means, with respect to Zohar CDO 2003-1, Limited (“Zohar I”) and Zohar II 2005-1, Limited (“Zohar II”), the “Defaulted Obligation,” and with respect to Zohar III, Limited (“Zohar III”), the “Defaulted Investment,” as defined and used in Section 1.1 of applicable Zohar Indentures.

5. “Document” is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other



graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or “emails”), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files, electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other documents which are in your possession, custody, or control or to which you otherwise have access.

6. “Including” means including but not limited to. When the word “including” is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the documents requested.

7. “Interest Coverage Ratio” means the “Class A Interest Coverage Ratio” and the

“Class A Interest Coverage Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

8. “Overcollateralization Ratio” means the “Class A Overcollateralization Ratio” and “Class A Overcollateralization Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

9. “Loan Categories” means, with respect to Zohar I and Zohar II, the terms “Category 1”, “Category 2”, “Category 3”, and “Category 4” and, with respect to Zohar III, the terms “Collateral Investment” and “Defaulted Investment,” all as defined and used in Section 1.1 of the applicable Zohar Indentures.

10. “Related to”, “relating to”, and “in connection with”, in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

11. “Respondents” means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

12. “SEC” means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.

13. “You” or “your” means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country) and its and their present and former officers, directors, employees, partners, principals, representatives and agents..

14. “Zohar Funds” means the following collateralized loan obligations: Zohar I, Zohar II and Zohar III.

15. “Zohar Financial Statements” means the balance sheets and income statements (including all notes) and certificates as to financial statements issued quarterly for each of the Zohar Funds as described in Section 7.9 of the Zohar Indentures.

16. “Zohar Indentures” means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.

17. “Zohar Notes” means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

18. “Zohar Trustee” means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term “Zohar Trustee” includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

19. “Zohar Trustee Reports” means the “Monthly Report” and “Note Valuation Report” and any electronic data or other files that accompany such “Monthly Report” or “Note Valuation Report” prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

20. If you encounter any perceived ambiguity, vagueness, or confusion in construing

either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

21. References to any natural person shall be deemed to include that natural person's agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity's subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

22. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

23. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to

a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

24. All documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

25. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the foregoing, data files, including excel files, are to be produced in native format. Responsive documents that are not electronically stored are to be produced (i) in a single-page TIFF format, with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

26. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce documents from a prior time period to fully respond to a particular request, do so.

## **DOCUMENTS TO BE PRODUCED**

1. For the period January 1, 2003 through the date of your production, documents sufficient to show your current and/or prior holdings of any of the Zohar Notes, including documents sufficient to show the date(s) on which you acquired, sold, placed and/or traded any of the Zohar Notes (via cash or derivative transactions), the counterparties and the price(s) or other terms at which such transactions occurred.

2. For the period January 1, 2003 through the date of your production, all Documents comprising of, or relating to, marketing or due diligence materials relating to the Zohar Funds.

3. For the period January 1, 2003 through the date of your production, all Documents relating to any evaluation or decision by you to insure or “wrap” the Zohar Notes, including, without limitation, any credit, risk or investment committee memorandum or related Communications.

4. Documents sufficient to show the valuation assigned by you to the Zohar Notes held by you or the insurance policy you provided related to the Zohar Notes for any purpose, including but not limited to, accounting or profit/loss calculation purposes, including the dates such valuations were assigned.

5. All Documents relating to loan loss reserves, capital reserves or provisions taken on any Zohar Notes held by you or on any insurance policy you provided related to the Zohar Notes, including but limited to case loss reserve memoranda, reserve simulations, loss reserve reports, loss reserve comments, and any documents prepared for or by the loss reserve committee regarding the Zohar Funds.

6. All Documents relating to any valuation by you or a third party of any of the Zohar Notes, including, without limitation:

- a. Month-end or other periodic marks provided by your trading desk to you or any third party for any Zohar Notes;
- b. Month-end or other periodic marks obtained from any third party by you for any Zohar Notes;
- c. Bids or offers shown by or requested of you or any third party for any Zohar Notes (regardless of whether a transaction was contemplated or effected).

7. All Documents relating to:

- a. Overcollateralization Ratio as reported in the Trustee Reports;
- b. Interest Coverage Ratio as reported in the Trustee Reports;
- c. Loan Categories as reported in the Trustee Reports;
- d. Defaulted Assets as reported in the Trustee Reports
- e. Zohar Financial Statements;
- f. Ratings of the Zohar Notes issued by Moody's and Standard and Poor's.

8. All Documents related to your monitoring of the performance of the Zohar Funds, including but not limited to any surveillance reviews, quarterly classified lists, watchlist reports or any other monitoring reports relating to the Zohar Funds or Zohar Notes.

9. All Documents relating to any analyses, calculations, or computations performed by you using information or data provided by the Zohar Trustees and/or in the Zohar Trustee Reports, including Documents relating to any analyses, calculations, or computation of interest paid, interest accrued, and/or interest accrued and unpaid on an aggregate fund or loan-by loan basis.

10. All Documents relating to modeling or modeling runs performed by you relating to the Zohar Funds and/or Zohar Notes using any proprietary or commercial cashflow model, data, or software tools, such as but not limited to INTEX or Moody's Analytics.

11. All Documents that were produced by you and marked as an exhibit for any deposition or admitted into evidence in the civil action captioned *MBIA Insurance Corporation v. Patriarch Partners VIII, LLC and LD Investments, LLC*, No. 09 Civ. 3255 (S.D.N.Y.) (RWS).

12. Documents sufficient to identify the individual(s) employed or retained by you who have had significant responsibilities regarding the monitoring of the performance and/or valuation of the Zohar Funds and/or the Zohar Notes held or insured by you.

13. All Communications relating to the Zohar Funds, Zohar Notes, or Respondents for custodians Anthony McKiernan and Jonathan Sloan with the exception of e-mail Communications between such custodians on the one hand and Respondents on the other hand.

14. All Documents relating to conference calls or meetings with Respondents relating to the Zohar Funds.

15. All Documents relating to a document titled "Patriarch Partners – Zohar Transactions Summary of Certain Contractual Provisions," previously produced to the SEC at Bates number MBIA-PPSEC 00000295-301, including but not limited to any communications regarding the creation or revisions of this document, documents sufficient to show the author(s), date(s) of creation and/or revision of the document, and anyone who requested, received or reviewed the document, or was otherwise shown the document.

16. All Communications and all Documents relating to all Communications with the SEC relating to the Zohar Funds and/or Respondents.



UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' MOTION TO QUASH  
THE SUBPOENA ISSUED BY THE DIVISION TO MBIA INSURANCE COMPANY**

GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
New York, NY 10166  
Telephone: 212.351.4000  
Fax: 212.351.4035

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

*Counsel for Respondents*

August 8, 2016

Respondents Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, “Patriarch” or “Respondents”), respectfully submit this brief in support of their motion to quash the subpoena issued to MBIA Insurance Corporation (“MBIA”) at the request of the Division of Enforcement (the “Division”), dated July 22, 2016 (the “Subpoena”), pursuant to Rule 232 of the U.S. Securities and Exchange Commission (the “Commission”) Rules of Practice, 17 C.F.R. § 201.100 *et seq.* (the “Rules”).

### **INTRODUCTION**

Almost a year-and-a-half after filing the Order Instituting Proceedings (“OIP”)—and weeks before trial—the Division now seeks a host of documents from an unrelated, already-concluded federal bankruptcy proceeding involving Patriarch, MBIA, and other parties. The bankruptcy proceeding to which the documents relate was initiated months after the filing of the OIP, concerns events that post-date the OIP, and does not implicate the conduct alleged in the OIP. It is well-established that the ALJ “may only admit ‘new matters of fact or law that are within the scope of the original order instituting proceedings.’” *Pierce v. SEC*, 786 F.3d 1027, 1036 (D.C. Cir. 2015) (quoting Rule 200(d)(2)) (emphasis added). This principle applies with even more force in this case, where the Division spent more than five years investigating the case before seeking to file a narrowly framed OIP, and where the Commission approved the OIP by a split vote of 3 to 2. Subpoena requests targeted at events outside the scope of the OIP—whether in time or subject matter—are regularly quashed, *see infra* Part I, and Your Honor should similarly quash the Subpoena.

Even if the materials sought by the Division were within the scope of the OIP, the Subpoena would be improper, and should be quashed, for an independent reason: the Division should not be permitted to conduct what would effectively be a new phase of its investigation

through a post-OIP subpoena, particularly where doing so would allow the Division to expand the scope of this proceeding and introduce new allegations from an unrelated dispute on the eve of trial. *See infra* Part II.A. The Division's belated effort to rescue its case will significantly prejudice Respondents, if the Subpoena is not quashed, by introducing a constellation of new and unrelated events, witnesses, experts, and technical subjects that Respondents should in fairness be permitted to take discovery on, and to which they will have to respond at trial. Yet the deadline for designation of witnesses and documents is quickly approaching, and will likely have passed by the time Respondents receive the subpoenaed materials—while Respondents' trial counsel cannot begin to prepare in the interim, because they do not have access to many documents responsive to the Subpoena, which are protected by a broad confidentiality stipulation. *See infra* Part II.B.

By rule and by right, the Division must try the case it brought. That the Division belatedly realizes it cannot establish its claims, or that the case should never have been authorized, is good reason to drop the charges; it is not justification for trying to build a new case on the eve of trial. The Subpoena should be quashed in its entirety.

### **LEGAL STANDARDS**

Pursuant to Rule 232(e)(2), "the hearing officer or the Commission shall quash or modify" a subpoena (or "order return of the subpoena only upon specified conditions") whenever compliance with the subpoena would be "unreasonable, oppressive or unduly burdensome." Rule 320 further provides that the hearing officer "shall exclude all evidence that is irrelevant, immaterial or unduly repetitious." Accordingly, any subpoena that seeks irrelevant or immaterial documents is objectively unreasonable. *See, e.g., In re Bogar*, Administrative Proceedings Release No. 740, 105 SEC Docket 2295 (ALJ Jan. 25, 2013) ("The excluded items contain confidential information that is completely irrelevant to Moran's expected testimony or any issue

in this proceeding . . .”). And any subpoena that effectively seeks to reopen the investigation in order to scrape together new theories of liability or to prop up a weak case based on post-OIP events is equally unreasonable, particularly on the eve of trial. *See In re Morgan Asset Mgmt., Inc.*, Administrative Proceedings Rulings Release No. 656, 98 SEC Docket 3136 (ALJ July 12, 2010).

Although Respondents, as the movants, have the initial burden to show that compliance with the Subpoena would be “unreasonable, oppressive, or unduly burdensome,” *In re Clean Energy Capital, LLC*, Administrative Proceedings Rulings Release No. 1653, 109 SEC Docket 2285 (ALJ July 25, 2014) (citing 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”)), once that initial burden is met, the Division has the burden to show that compliance would not “be unreasonable, oppressive, or unduly burdensome,” *see id.* Respondents easily meet their initial burden for all of the reasons explained herein, while the Division fails to meet its own burden.

### ARGUMENT

#### **I. The Subpoena Should Be Quashed Because The Documents It Seeks Are Outside The Scope Of The OIP With Respect To Subject Matter And Time.**

The Division now demands—at least 79 months after initiating its investigation in or before December 2009 and with only weeks to trial—that MBIA produce before trial a host of documents from the record of a now-closed federal bankruptcy proceeding concerning the Zohar I fund, which have no connection to the allegations in the OIP. Specifically, despite Patriarch’s withdrawal in March 2016 of the involuntary bankruptcy petition at issue, the Division’s Subpoena calls for all deposition testimony and related exhibits, all expert reports, and all sworn witness statements from that proceeding.

It is well-established that the ALJ “may only admit ‘new matters of fact or law that are within the scope of the original order instituting proceedings.’” *Pierce*, 786 F.3d at 1036 (quoting Rule 200(d)(2)) (emphasis added). Therefore, it is not surprising that subpoena requests seeking documents and information outside the scope of the OIP are regularly quashed. *See, e.g., In re Bandimere*, Administrative Proceedings Rulings Release No. 746, 105 SEC Docket 2512 (ALJ Feb. 5, 2013) (granting motion to quash filed by the Division because, *inter alia*, some of the requests sought production of information regarding a prior fraud investigation into the respondent, which was a “different case[.]”); *In re Premo*, Administrative Proceedings Rulings Release No. 701, 103 SEC Docket 2208 (ALJ Apr. 27, 2012) (granting portion of motion to quash that sought to quash requests seeking information from outside the timeframe of the conduct at issue in the OIP).

Here, the bankruptcy proceeding at issue commenced in November 2015, more than seven months after the March 22, 2015 filing of the OIP; concerns events in the fall of 2015 and later that occurred well after the relevant events alleged in the OIP (which span 2003 through, at the very latest, 2014); and does not implicate the conduct alleged in the OIP.<sup>1</sup> In particular, Patriarch’s November 22, 2015 filing of involuntary bankruptcy petitions relating to the Zohar I entities followed, and relates to, a chain of actions by MBIA, the insurer of certain notes issued by the Zohar I and II funds, that compelled Patriarch to file those petitions. According to publicly available materials, the bankruptcy dispute turned in significant part on Patriarch’s

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<sup>1</sup> Your Honor has summarized the OIP as “alleg[ing] that Respondents violated the antifraud provisions of the Investment Advisers Act of 1940 (Advisers Act) in their operation of three collateral loan obligation funds by reporting misleading values for the assets held by the funds and failing to disclose a conflict of interest arising from Lynn Tilton’s undisclosed approach to categorization of assets.” Release No. 4004 (July 20, 2016).

allegations that MBIA acted unreasonably and in bad faith by refusing to renegotiate the terms of certain notes in order to intentionally push Zohar I into default. *See e.g.*, Motion of Petitioning Creditor, Patriarch Partners XV, LLC to Terminate the Debtors' Plan Exclusivity Periods ¶ 1, *In re Zohar CDO 2003-1, Limited*, et al., No. 15-23680 (Bankr. S.D.N.Y. Nov. 22, 2015), Dkt. 2. MBIA only recently met that charge with its own allegation of bad faith in a post-hoc effort to recover its attorneys' fees. *See* Amended and Supplemented Motion of Alleged Debtors Pursuant to 11 U.S.C. § 303(i) for Attorneys' Fees, Costs and Damages, *In re Zohar CDO 2003-1, Limited*, et al., No. 15-23680 (Bankr. S.D.N.Y. July 15, 2015), Dkt. 59. The bankruptcy dispute also involved, *inter alia*, the interpretation of contracts between MBIA and the Zohar I entities, including those parties' Insurance and Indemnity Agreement, and the analysis of other complex agreements. *See id.* None of that has anything to do with the charges set forth in the OIP.

The materials sought by the Subpoena, which relate solely to the bankruptcy proceeding, are, accordingly, patently not within the scope of the OIP. Indeed, in an email to the parties, read into the public record at the February 1, 2016 trial of the bankruptcy matter, Judge Robert D. Drain made clear that the trial would be "neither a fraud trial, nor an SEC enforcement trial, but rather a determination of whether the petition serves a legitimate bankruptcy purpose," and cautioned the parties not to "waste time on peripheral points" relating to this SEC proceeding. Declaration of Lisa H. Rubin, Aug. 8, 2016 ("Rubin Decl."), Ex. 1 (Tr. of Feb. 1, 2016 Hearing) at 11:19-24 (quoting Jan. 25, 2016 email from The Hon. Robert D. Drain, U.S. Bankruptcy Judge for the Southern District of New York, to the parties).

The documents the Division seeks are therefore outside the scope of the OIP in multiple respects. They are outside its timeframe. *See In re Premo*, Administrative Proceedings Rulings

Release No. 701, 103 SEC Docket 2208 (ALJ Apr. 27, 2012) (granting portion of motion to quash that sought to quash requests seeking information from outside the timeframe of the conduct at issue in the OIP); *In re Bandimere*, Administrative Proceedings Rulings Release No. 746, 105 SEC Docket 2512 (ALJ Feb. 5, 2013) (granting motion to quash filed by the Division because, *inter alia*, some of the requests sought information regarding the respondent's financial condition predating the SEC's investigation). They are beyond its subject matter. *See In re Int'l S'holders Servs. Corp.*, Exchange Act Release No. 12389A, 46 SEC Docket 378 (June 8, 1976) ("The staff having chosen to frame its case as it did, no account at all should have been taken of either Continental's bankruptcy or of the supposedly inadequate depth of respondents' inquiry into Continental's finances."). And they relate to separate proceedings. *See In re Quest Capital Strategies, Inc.*, Administrative Proceedings Rulings Release No. 515, 62 SEC Docket 1950 (ALJ Aug. 29, 1996) (denying a request to issue a subpoena seeking production of documents relating to a different investigation of the same loan program at issue). Each of these is reason enough to quash the Subpoena.

**II. The Subpoena Should Be Quashed Because The Division Is Using It To Conduct A New, Post-OIP Investigation To Expand and Attempt To Save Its Meritless Case.**

Even if the materials sought by the Division were within the scope of the OIP, the Subpoena would be improper, and should be quashed, for an independent reason: the Division should not be permitted to conduct what would effectively be a new phase of its investigation through a post-OIP subpoena that would allow the Division to expand the scope of this proceeding and introduce new allegations from an unrelated dispute on the eve of trial. The Division's belated effort to rescue its meritless case will significantly prejudice Respondents, particularly because the deadline for designation of witnesses and documents is quickly approaching, and also because Respondents' trial counsel does not have access to many

documents responsive to the Subpoena, which are protected by a broad confidentiality stipulation.

A. The OIP was filed in March 2015, following a five-year investigation by the Division. During that time, the Division developed an overwhelmingly large investigative record, including interviews and depositions of literally dozens of witnesses from both inside and outside Respondents' companies, and *more than 2.5 million pages of documents* produced by Patriarch alone. On that record, it could bring only the thinnest of cases, as reflected by the narrow charges of the OIP, the lack of substantiation in the OIP, and the slim 3-to-2 margin by which the Commission approved the OIP. *See* Matt Robinson, *SEC Split 3-2 in Vote on Case Against Tilton, Patriarch*, BLOOMBERG, Apr. 1, 2015, <http://www.bloomberg.com/news/articles/2015-04-01/sec-split-3-2-in-vote-on-case-against-tilton-patriarch> (last visited August 8, 2016).

The Division is stuck with the case it brought. That it belatedly realizes it cannot make that case is good reason to drop the charges; it is not a justification for trying to build a new case now on the eve of trial. *Cf. In re Morgan Asset Mgmt., Inc.*, et al., Administrative Proceedings Rulings Release No. 656, SEC Docket 3136 (ALJ July 12, 2010) (“[T]he Division elected to follow a high-risk strategy: it asked the Commission to issue the OIP before it had completed the relevant parts of its investigation. The Division is free to take this sort of risk, of course, but it cannot now” seek subpoenas that it should have obtained during the investigative phase “to assist itself in preparing for the upcoming hearing.”).

“[T]he SEC’s Rules of Procedure make it clear that the OIP—and not any motion, brief, or other filing by the Division—establishes the scope of the charges in SEC enforcement proceedings.” *Pierce*, 786 F.3d at 1036 (citing Rule 200(b)(3) (“The order instituting proceedings shall . . . [c]ontain a short and plain statement of the matters of fact and law to be



considered and determined[.]”)). It is well-established that “only the Commission may amend an OIP to include new matters of fact or law beyond the scope of the original OIP.” *Id.* at 1031 (citing Rule 200(d)(1)). Thus, the Division is not permitted to supplement its case with new allegations or theories, or to introduce evidence of conduct that is not alleged in, or is subsequent to, the filing of the OIP. *See In re Dearlove*, Administrative Proceedings Rulings Release No. 315, SEC Docket 1603 (ALJ July 27, 2006). Any materials it receives in response to the Subpoena will, as a result, be irrelevant and inadmissible.

This is not the first time the Division has sought to resuscitate a weak case with irrelevant bankruptcy materials. The result should be the same as in prior matters: “The staff having chosen to frame its case as it did, no account at all should [] be[] taken of . . . [the] bankruptcy.” *In re Int’l S’holders Servs. Corp.*, Exchange Act Release No. 12389A, 46 SEC Docket 378 (June 8, 1976).

B. The impropriety and inequity of the Division’s efforts to supplement its extensive investigation on the eve of trial are heightened by the fact that the materials encompassed by the Subpoena would bring into the case a range of entirely unrelated events, witnesses, experts, and technical bankruptcy issues, and in doing so, expand the scope of what is already an extensive, complex proceeding. The case already involves millions of pages of documents, and the prospective trial evidence includes nearly 1,000 trial exhibits (though new counsel are working hard with the Division to narrow that down significantly), at least 24 proposed trial witnesses (same), and 11 expert reports totaling over 400 pages that cover an array of complex, technical issues. As the days until trial dwindle to very few, Patriarch (not to mention Your Honor) should not be forced to take account of substantially the entire record of an unrelated bankruptcy proceeding—depositions, exhibits, expert reports, and witness statements.

Moreover, if the Subpoena is not quashed and the events leading up to and covered by the bankruptcy proceeding are put at issue in the Division's case in chief, Respondents will need to respond in kind to mount an appropriate defense, and in fairness should be permitted to do so. *Cf. In Re Weeks, et al.*, Administrative Proceedings Rulings Release No. 199, 2002 WL 169185 (ALJ Feb. 4, 2002) (putting to the Division the "choice" of "acquiesc[ing] in the admission" of additional portions of a document or "forego[ing] the use of the originally proffered portion."). As described above, the bankruptcy matter concerns events that arose after the OIP was issued and that are wholly unrelated to this dispute. Permitting the Division to shoehorn this unrelated, post-OIP dispute into these proceedings will only result in a protracted trial on issues having nothing to do with charges of the OIP, and thereby waste the parties' and Your Honor's limited resources.

And if the Division opens this door, Respondents will need pre-trial discovery in order to defend themselves and fairly meet the Division's newly-expanded case. Due to the broad confidentiality stipulation in the bankruptcy matter, Respondents' trial counsel in this proceeding are not familiar with, and indeed, may not review, any testimony, declarations or expert reports designated as confidential by MBIA or the Zohar I entities. *See* Rubin Decl., Ex. 2 (Stipulation and Order Governing Production and Exchange of Confidential Material) ¶ 6 ("Except as required by law, regulation or court order, or as otherwise permitted by this Stipulation and Order, Discovery Material designated Confidential may be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part only to the following persons: (a) counsel of record for a Party . . ."). Respondents' trial counsel (who were not counsel of record in the bankruptcy) may not even access many documents responsive to the Subpoena, including any expert report submitted by MBIA or the Zohar I entities—nor are

Respondents or their bankruptcy counsel even permitted to “summarize[],” “describe[],” or “characterize[]” these materials to Respondents’ trial counsel. *Id.* Indeed, in the exercise of caution, Respondents’ trial counsel have not read or learned about any materials in the bankruptcy matter other than those that are publicly available or constitute information belonging to Respondents or another Patriarch entity alone. *See id.* ¶ 12 (providing that a party to the stipulation may use its own Confidential or Highly Confidential Discovery Material “for any purpose”).

Therefore, should Your Honor decline to quash the Subpoena, Respondents’ trial counsel will first encounter any materials designated as confidential by MBIA or the Zohar I entities in the bankruptcy proceeding upon their production to Respondents in this matter. They will then need to evaluate the materials and react accordingly on the eve of trial, with the deadline for submission of final witness and exhibit lists imminent or, more likely, already in the past.<sup>2</sup> This is fundamentally unfair, and thus inconsistent with the directive of Rule 300 that “[a]ll hearings shall be conducted in a fair, impartial, expeditious and orderly manner.”<sup>3</sup>

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<sup>2</sup> Under the Rules of Practice, the Division’s opposition to this motion to quash will be due on August 15, 2016, and Respondents’ reply will be due August 18. *See* Rule 232(e)(1). Your Honor will then need to review the submissions and issue a ruling, after which MBIA will need time to comply. The deadline for submission of final witness and exhibit lists is August 22, 2016. *See* Release No. 4046 (Aug. 5, 2016).

<sup>3</sup> If the Subpoena is not quashed, Respondents respectfully request that Your Honor issue an order directing MBIA to produce copies of responsive documents simultaneously to the Division and to Respondents’ trial counsel. Without such an order, MBIA may take the position under the bankruptcy stipulation that it is not permitted to produce copies of the documents to Respondents’ trial counsel, as the stipulation requires a “court order” directing production. Respondents should not be put in the position of receiving the materials only after the Division obtains them, and possibly only by compelling their production from the Division.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the subpoena issued to MBIA be quashed.

Dated: New York, New York  
August 8, 2016

GIBSON, DUNN & CRUTCHER LLP

By:  \_\_\_\_\_

Randy M. Mastro  
Reed Brodsky  
Barry Goldsmith  
Caitlin J. Halligan  
Mark A. Kirsch  
Monica Loseman  
Lawrence J. Zweifach  
Lisa H. Rubin

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Telephone: 212.351.4000  
Fax: 212.351.4035

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

*Counsel for Respondents*



**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

1. TO  
MBIA Insurance Corporation  
1 Manhattanville Road, Suite 301, Purchase, NY 10577  
  
c/o Mr. Jonathan Hoff, Cadwalader, Wickersham & Taft  
LLP  
200 Liberty Street, New York, NY 10281

This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.

2. PLACE OF PRODUCTION  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166-0193

3. DATE AND TIME PRODUCTION IS DUE  
September 21, 2016 at 10:00am

4. PARTY AND COUNSEL REQUESTING  
ISSUANCE OF SUBPOENA  
  
Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC,  
Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC  
  
By: Randy Mastro, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166-0193

5. THE PRODUCTION OF DOCUMENTS OR OTHER  
TANGIBLE EVIDENCE IS ORDERED BY  
  
The Honorable Carol Fox Foelak  
  
Administrative Law Judge  
U.S. Securities and Exchange Commission

6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER

**In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462**

7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)

See attachment.

DATE SIGNED	SIGNATURE OF ADMINISTRATIVE LAW JUDGE
<i>Sept 16, 2016</i>	<i>Carol Fox Foelak</i>

**GENERAL INSTRUCTIONS**

**MOTION TO QUASH**

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

**ATTACHMENT TO SUBPOENA DUCES TECUM  
TO MBIA INSURANCE CORPORATION**

**DEFINITIONS AND INSTRUCTIONS**

1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

2. “And” and “or” have both the conjunctive and disjunctive meanings, and the terms “each,” “any,” and “all” mean “each and every.”

3. “A&M” means Alvarez & Marsal and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys

4. “Barclays” means Barclays Capital, Inc. and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

5. “Common Interest Agreement” or “Joint Defense Agreement” means any written and/or oral agreement pursuant to which confidential information is exchanged and protected.

6. "Communication" means any form of contact, documentary, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence.

7. "Document" is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or "emails"), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files,

electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other Documents which are in your possession, custody, or control or to which you otherwise have access.

8. "Including" means including but not limited to. When the word "including" is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the Documents requested.

9. "MBIA" means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys

10. "Moody's" means Moody's Investor Service and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives, agents, and its and their present and former attorneys.

11. "Nord" means Norddeutsche Landesbank Girozentrale and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives, agents, and its and their present and former attorneys.



12. “Order Instituting Proceedings” means the United States Securities and Exchange Commission’s Order Instituting Proceedings in *In the Matter of Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; and Patriarch Partners XV, LLC*, Administrative Proceeding, File No. 3-16462, dated March 30, 2015

13. “Rabobank” means Rabobank International and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

14. “Related to”, “relating to”, and “in connection with”, in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

15. “Respondents” means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

16. “SEC” means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.

17. "SEI" means SEI Investments Company and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

18. "Standard & Poor's" means Standard & Poor's Financial Services LLC and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

19. "Varde Partners" means Varde Partners, Inc. and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys

20. "You" or "your" or "MBIA" means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

21. "Zohar Funds" means the following collateralized loan obligations: Zohar I,

Zohar II and Zohar III.

22. “Zohar Indentures” means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.

23. “Zohar Notes” means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

24. “Zohar Trustee” means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term “Zohar Trustee” includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

25. “Zohar Trustee Reports” means the “Monthly Report” and “Note Valuation Report” and any electronic data or other files that accompany such “Monthly Report” or “Note Valuation Report” prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

26. If you encounter any perceived ambiguity, vagueness, or confusion in construing either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

27. References to any natural person shall be deemed to include that natural person’s agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity’s subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former

employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

28. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the Document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

29. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

30. All Documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

31. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored Documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the

foregoing, data files, including excel files, are to be produced in native format. Responsive Documents that are not electronically stored are to be produced (i) in a single-page TIFF format, with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

32. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce Documents from a prior time period to fully respond to a particular request, do so.

## DOCUMENTS TO BE PRODUCED

1. All Documents reflecting any Communications, including but not limited to, interviews, telephone calls and other meetings or discussions, with the SEC relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings, including, but not limited to, communications which on information and belief occurred between the week of May 25, 2015 and present;

2. All Documents reflecting any Communications, including but not limited to interviews, telephone calls and other meetings or discussions with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds, any ratings agencies, including but not limited to Standard & Poor's and/or Moody's, any of the Zohar Trustees, and/or A&M, relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings;

3. Any Common Interest Agreement or Joint Defense Agreement with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds related in any way to Respondents or the Zohar Funds.

4. Documents related to MBIA's evaluation, assessment and/or negotiation of its investment and/or its disposition of its investment in the Zohar Funds, including Documents reflecting any evaluation of the indentures and collateral management agreements for the Zohar Funds;

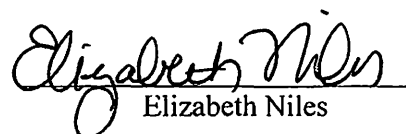
5. All Documents reflecting any evaluation or analysis of, or Communications regarding the Zohar Trustee Reports or other information available from the Zohar Trustees regarding MBIA's investment in the Zohar Funds;

6. All Communications and Documents related to the Zohar Funds, Zohar Notes, Patriarch, or Respondents for custodians Anthony McKiernan and David Crowle, and any other individual whom the SEC has notified MBIA it may call to testify, or MBIA has reason to believe may be called to testify, in connection with the hearing ordered in the Order Instituting Proceedings, to commence before the Honorable Carol Fox Foelak, Administrative Law Judge, on October 24, 2016 (including, but not limited to, e-mails between, on the one hand, McKiernan and/or Crowle, and, on the other, Respondents and/or the Zohar Trustee, to the extent not already produced to the SEC in this investigation and/or administrative proceeding).

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of a Subpoena to Produce Documents directed at MBIA Insurance Corporation and issued by Judge Carol Fox Foelak on September 16, 2016 upon counsel, Jonathan Hoff, Esq., on this 16<sup>th</sup> day of September, 2016, in the manner indicated below:

Jonathan Hoff, Esq.  
Cadwalader, Wickersham & Taft LLP  
200 Liberty Street  
New York, NY 10281  
(By Express Mail)

  
Elizabeth Niles





**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

1. TO  
Anthony McKiernan  
c/o Mr. Jonathan Hoff, Cadwalader,  
Wickersham & Taft LLP  
200 Liberty Street, New York, NY 10281

This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.

2. PLACE OF PRODUCTION  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166-0193

3. DATE AND TIME PRODUCTION IS DUE  
September 21, 2016 at 10:00am

4. PARTY AND COUNSEL REQUESTING  
ISSUANCE OF SUBPOENA  
Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC,  
Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC

5. THE PRODUCTION OF DOCUMENTS OR OTHER  
TANGIBLE EVIDENCE IS ORDERED BY

By: Randy Mastro, Esq.  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166-0193

The Honorable Carol Fox Foelak  
  
Administrative Law Judge  
U.S. Securities and Exchange Commission

6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER

In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462

7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)

See attachment.

DATE SIGNED	SIGNATURE OF ADMINISTRATIVE LAW JUDGE
<i>Sept. 16, 2016</i>	<i>Carol Fox Foelak</i>

**GENERAL INSTRUCTIONS**

**MOTION TO QUASH**

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

**ATTACHMENT TO SUBPOENA DUCES TECUM  
TO ANTHONY MCKIERNAN**

**DEFINITIONS AND INSTRUCTIONS**

1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

2. “And” and “or” have both the conjunctive and disjunctive meanings, and the terms “each,” “any,” and “all” mean “each and every.”

3. “A&M” means Alvarez & Marsal and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

4. “Barclays” means Barclays Capital, Inc. and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

5. “Common Interest Agreement” or “Joint Defense Agreement” means any written and/or oral agreement pursuant to which confidential information is exchanged and protected.

6. "Communication" means any form of contact, documentary, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence.

7. "Document" is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or "emails"), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files,

electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other Documents which are in your possession, custody, or control or to which you otherwise have access.

8. “Including” means including but not limited to. When the word “including” is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the Documents requested.

9. “MBIA” means MBIA Insurance Corporation and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

10. “Moody’s” means Moody’s Investor Service and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives, agents, and its and their present and former attorneys.

11. “Nord” means Norddeutsche Landesbank Girozentrale and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

12. “Order Instituting Proceedings” means the United States Securities and Exchange Commission’s Order Instituting Proceedings in In the Matter of Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; and Patriarch Partners XV, LLC, Administrative Proceeding, File No. 3-16462, dated March 30, 2015.

13. “Rabobank” means Rabobank International and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

14. “Related to”, “relating to”, and “in connection with”, in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

15. “Respondents” means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

16. “SEC” means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.

17. "SEI" means SEI Investments Company and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

18. "Standard & Poor's" means Standard & Poor's Financial Services LLC and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

19. "Varde Partners" means Varde Partners, Inc. and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country), its and their present and former officers, directors, employees, partners, principals, representatives and agents, and its and their present and former attorneys.

20. "You" or "your" means Anthony McKiernan, and all of your representatives, agents, and present and former attorneys.

21. "Zohar Funds" means the following collateralized loan obligations: Zohar I, Zohar II and Zohar III.

22. "Zohar Indentures" means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.

23. "Zohar Notes" means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

24. "Zohar Trustee" means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term "Zohar Trustee" includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

25. "Zohar Trustee Reports" means the "Monthly Report" and "Note Valuation Report" and any electronic data or other files that accompany such "Monthly Report" or "Note Valuation Report" prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

26. If you encounter any perceived ambiguity, vagueness, or confusion in construing either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

27. References to any natural person shall be deemed to include that natural person's agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity's subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

28. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the Document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

29. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

30. All Documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

31. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored Documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the foregoing, data files, including excel files, are to be produced in native format. Responsive Documents that are not electronically stored are to be produced (i) in a single-page TIFF format,



with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

32. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce Documents from a prior time period to fully respond to a particular request, do so.

## **DOCUMENTS TO BE PRODUCED**

1. All Documents reflecting any Communications, including but not limited to, interviews, telephone calls and other meetings or discussions, with the SEC relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings, including, but not limited to, communications which on information and belief occurred between the week of May 25, 2015 and present;

2. All Documents reflecting any Communications, including but not limited to interviews, telephone calls and other meetings or discussions with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds, any ratings agencies, including but not limited to Standard & Poor's and/or Moody's, any of the Zohar Trustees, and/or A&M, relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings;

3. Any Common Interest Agreement or Joint Defense Agreement with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds related in any way to Respondents or the Zohar Funds;

4. Documents related to MBIA's evaluation, assessment and/or negotiation of its investment and/or its disposition of its investment in the Zohar Funds, including Documents reflecting any evaluation of the indentures and collateral management agreements for the Zohar Funds;

5. All Documents reflecting any evaluation or analysis of, or Communications relating to the Zohar Trustee Reports or other information available from the Zohar Trustees relating to MBIA's investment in the Zohar Funds;

6. All Communications and Documents related to the Zohar Funds, Zohar Notes, Patriarch, or Respondents (including, but not limited to, e-mails between You, on the one hand, and Respondents and/or the Zohar Trustee, on the other, to the extent not already produced to the SEC in this investigation and/or administrative proceeding).

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of a Subpoena to Produce Documents directed at Anthony McKiernan and issued by Judge Carol Fox Foelak on September 16, 2016 upon his counsel, Jonathan Hoff, Esq., on this 16<sup>th</sup> day of September, 2016, in the manner indicated below:

Jonathan Hoff, Esq.  
Cadwalader, Wickersham & Taft LLP  
200 Liberty Street  
New York, NY 10281  
(By Express Mail)

  
Elizabeth Niles

**From:** [Loseman, Monica K.](#)  
**To:** [Hoff \[PARTNER\], Jonathan M.](#)  
**Cc:** [Maloney, Mary Beth](#); [Niles, Elizabeth M.](#)  
**Subject:** RE: Subpoena to MBIA Corp. In re Tilton et al. (AP No. 3-16462)  
**Date:** Tuesday, October 4, 2016 12:22:25 PM

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Thank you; I appreciate the prompt response. We intend to move to compel Wednesday afternoon but will amend the motion to the extent MBIA agrees to produce anything on Thursday. Based on our last meet and confer call, it seemed highly unlikely MBIA would be inclined to produce anything at all; indeed, you noted MBIA is not inclined to produce any document in response to the second subpoena. Given the impending hearing date, I am not inclined to wait to bring this to the ALJ's attention even one more day. But we will note for the ALJ the short timetable confronted by both MBIA and Respondents and the intervening holidays.

Monica

Monica K. Loseman

## GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1801 California Street, Denver, CO 80202-2642  
Tel +1 303.298.5784 • Fax +1 303.313.2828  
[MLoseman@gibsondunn.com](mailto:MLoseman@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

**From:** Hoff [PARTNER], Jonathan M. [<mailto:jonathan.hoff@cwt.com>]  
**Sent:** Tuesday, October 4, 2016 9:54 AM  
**To:** Loseman, Monica K. <[MLoseman@gibsondunn.com](mailto:MLoseman@gibsondunn.com)>  
**Cc:** Maloney, Mary Beth <[MMaloney@gibsondunn.com](mailto:MMaloney@gibsondunn.com)>; Niles, Elizabeth M. <[ENiles@gibsondunn.com](mailto:ENiles@gibsondunn.com)>  
**Subject:** RE: Subpoena to MBIA Corp. In re Tilton et al. (AP No. 3-16462)

I was out yesterday for Rosh Hashanah and the person at the client responsible for this was out yesterday and again today. Thus, it's highly unlikely that we'll be able to respond by tomorrow. Probably Thursday.

Jonathan M. Hoff  
Partner  
Cadwalader, Wickersham & Taft LLP  
One World Financial Center  
New York, NY 10281  
Tel: +1 212.504.6474  
[REDACTED]  
Fax: +1 212.504.6666  
[jonathan.hoff@cwt.com](mailto:jonathan.hoff@cwt.com)  
[www.cadwalader.com](http://www.cadwalader.com)

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**From:** Loseman, Monica K. [<mailto:MLoseman@gibsondunn.com>]  
**Sent:** Monday, October 03, 2016 3:41 PM  
**To:** Hoff [PARTNER], Jonathan M.  
**Cc:** Maloney, Mary Beth; Niles, Elizabeth M.

**Subject:** Subpoena to MBIA Corp. In re Tilton et al. (AP No. 3-16462)

Mr. Hoff,

Thank you for the call last Wednesday regarding Respondents' subpoena to MBIA Corp. in the *In re Tilton et al. Administrative Proceeding* (No. 3-16462). We understand that you are not inclined to produce documents in response to the subpoena given MBIA's prior production. However, as noted on our call, because both Mr. McKiernan and Mr. Crowle were listed on the Division's witness list, we continue to believe that these communications and documents are directly relevant to the Division's case and necessary for cross-examination (indeed, these documents may be relevant to other witness' testimony as well). In the interest of avoiding undue burden, we endeavored to develop an even narrower set of requests for your consideration, set forth below. The October 24 hearing is fast approaching, and Respondents need to procure these documents sufficiently in advance to afford them an opportunity to prepare. Respondents therefore intend to move to compel on Wednesday afternoon unless MBIA agrees to produce the narrow set of documents requested below before that time.

- All Documents reflecting any Communications, including but not limited to interviews, telephone calls and other meetings or discussions, with the SEC relating to the SEC's investigation of the Zohar Funds, Patriarch, and/or Respondents prior to and subsequent to the Order Instituting Proceedings. This would include communications between January 3, 2011 (the first day we believe the Division contacted MBIA) and the present between You, on the one hand, and any member of the Division of Enforcement or any other employee, agents or representative of the SEC (including, for example, any communications with Charles River & Associates), on the other hand, relating to the investigation or this proceeding. (September 16, 2016 Subpoena Request No. 1.) As we noted on our meet and confer call, no other subpoena recipient objected to this request.
- Any and all communications concerning or relating to the Division of Enforcement's provision of documents to you on or about December 18, 2014 and January 30, 2014, or any other documents provided to you by the Division in connection with the investigation or this proceeding, including but not limited to internal communication, and communications with others on the Division's list, the Trustee or the subsequent collateral manager. (September 16, 2016 Subpoena Request Nos. 1, 2, 5, 6.)
- All communications between January 3, 2011 and the present with those entities listed in Request No. 2 concerning or relating to the effect of the SEC investigation or the Administrative Proceeding on a) Your rights and responsibilities as Credit Enhancer or the Controlling Party for Zohar I and Zohar II, b) any potential restructuring or extension of maturity of Zohar I and Zohar II, and c) the sale of any Zohar I or Zohar II obligors or Collateral. (September 16, 2016 Subpoena Request No. 2.)
- Any and all recordings of communications between You and Ms. Tilton or any other employee or representative of Respondents. (September 16, 2016 Subpoena Request No. 6.)
- Any common interest or joint defense agreement with Barclays, Nord, Rabobank, Varde, SEI, and/or any other investors in the Zohar Funds related in any way to Respondents or the Zohar Funds. (September 16, 2016 Subpoena Request No. 3)

- All Communications and Documents related to the Zohar Funds, Zohar Notes, Patriarch, or Respondents for custodian David Crowle. (September 16, 2016 Subpoena Request No. 6.) We understand that such documents for Mr. McKiernan have already been produced. MBIA may no longer possess such documents for Mr. Crowle given his employment with MBIA terminated some time ago. If that is the case, please confirm.

If helpful, I would be happy to discuss at your convenience.

Thank you,

Monica  
Monica K. Loseman

## GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1801 California Street, Denver, CO 80202-2642  
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[MLoseman@gibsondunn.com](mailto:MLoseman@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copies of 1) Respondents' Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, 2) Respondents' Memorandum of Law in Support of Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, and 3) the Declaration of Mary Beth Maloney in Support of Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, on this 5<sup>th</sup> day of October, 2016, in the manner indicated below:

United States Securities and Exchange Commission  
Office of the Secretary  
Attn: Secretary of the Commission Brent J. Fields  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
Fax: (202) 772-9324  
(By Facsimile and original and three copies by Federal Express)

Hon. Judge Carol Fox Foelak  
100 F. Street N.E.  
Mail Stop 2557  
Washington, D.C. 20549  
(By Federal Express)

Dugan Bliss, Esq.  
Division of Enforcement  
Securities and Exchange Commission  
Denver Regional Office  
1961 Stout Street, Ste. 1700  
Denver, CO 80294  
(By Email pursuant to parties' agreement)

  
Ariel Santamaria



# CADWALADER

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Tel +1 212 504 6000 Fax +1 212 504 6666  
www.cadwalader.com

New York London Charlotte Washington  
Houston Beijing Hong Kong Brussels

October 20, 2016

## VIA FACSIMILE AND EXPRESS MAIL

The Honorable Carol Fox Foelak  
101 F Street, N.E.  
Mail Stop 2557  
Washington, D.C. 20549

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

Dear Judge Foelak,

I am writing on behalf of non-party MBIA Insurance Corporation (“MBIA”) in response to the letter to the Court from Randy Mastro, Respondents’ counsel, dated October 19, 2016, regarding Respondents’ Motion to Compel MBIA to Produce Documents Responsive to Respondents’ Subpoenas (the “Motion”). We are puzzled by Mr. Mastro’s letter and seek clarification from the Court.

Mr. Mastro’s letter purports to attach a “Certificate of Service,” which states that Respondents’ Motion papers were delivered to me by email on October 5, 2016 and by personal delivery on October 19, 2016. The statements in the so-called “Certificate of Service,” however, do not establish that Respondents properly effected service of the Motion in accordance with the U.S. Securities and Exchange Commission’s Rules of Practice, which require that service be made “to the person required to be served” by personal delivery, U.S. mail, commercial courier, express mail or, subject to certain conditions, facsimile. *See* Rule 150. Respondents have not served MBIA in accordance with the prescribed methods of service.

Nor has Cadwalader agreed—indeed, Respondents have not even asked—to accept service of Respondents’ Motion on behalf of MBIA. Indeed, Respondents acknowledged that they did not serve the Motion on MBIA because the Certificate of Service attached to their Motion (a copy of which is attached) represented that service was made only on counsel for the Securities and Exchange Commission.<sup>1</sup>

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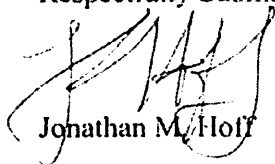
<sup>1</sup> Respondents’ omit from their letter to Your Honor reference to the Certificate of Service attached to their Motion, which contains no reference to MBIA whatsoever and demonstrates that MBIA in fact

C A D W A L A D E R

The Honorable Carol Fox Foleak  
October 20, 2016

As a non-party, MBIA is not privy to discussions between the parties and the Court regarding Respondents' Motion or the Subpoena. If the Court has ordered that the delivery of Respondents' Motion to MBIA's counsel shall be deemed effective service, MBIA requests confirmation of that order. In the event that the Court intends to entertain Respondents' Motion, MBIA respectfully requests an opportunity to be heard and a reasonable time to serve its opposition to the Motion.

Respectfully Submitted,



Jonathan M. Hoff

cc: Randy M. Mastro, Counsel for Respondents  
Dugan Bliss, U.S. Securities and Exchange Commission

---

was not properly served with Respondents' Motion. A copy of the Certificate of Service accompanying Respondents' Motion is attached hereto as Exhibit A.

**Exhibit A**

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copies of 1) Respondents' Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, 2) Respondents' Memorandum of Law in Support of Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, and 3) the Declaration of Mary Beth Maloney in Support of Motion to Compel MBIA to produce Documents Responsive to Respondents' Subpoenas, on this 5<sup>th</sup> day of October, 2016, in the manner indicated below:

United States Securities and Exchange Commission  
Office of the Secretary  
Attn: Secretary of the Commission Brent J. Fields  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
Fax: (202) 772-9324  
(By Facsimile and original and three copies by Federal Express)

Hon. Judge Carol Fox Foelak  
100 F. Street N.E.  
Mail Stop 2557  
Washington, D.C. 20549  
(By Federal Express)

Dugan Bliss, Esq.  
Division of Enforcement  
Securities and Exchange Commission  
Denver Regional Office  
1961 Stout Street, Ste. 1700  
Denver, CO 80294  
(By Email pursuant to parties' agreement)

  
Ariel Santamaria

---

**From:** Smith, John B.  
**Sent:** Thursday, December 19, 2013 6:07 PM  
**To:** 'DiCicco, Susan F.'  
**Cc:** Biron, Kevin J.; Goff, Bryan P.; Sumner, Amy A.  
**Subject:** RE: In re Patriarch Partners -- MBIA

We have not confirmed these meanings with Patriarch but believe them to mean Principal, Interest payment made, Reversal of interest payment, and Waiver of interest payment. We have spot-checked some of these entries against entries in the trustee reports to confirm our understanding. I can go over our analyses of these entries in more detail when we talk.

John

---

**From:** DiCicco, Susan F. [<mailto:Susan.DiCicco@bingham.com>]  
**Sent:** Thursday, December 19, 2013 3:54 PM  
**To:** Smith, John B.  
**Cc:** Biron, Kevin J.; Goff, Bryan P.; Sumner, Amy A.  
**Subject:** RE: In re Patriarch Partners -- MBIA

Ok, thanks. For now, we just have a quick question to verify the meaning of the heading types: "P", "INT\_PAY", "REV\_INT\_PAY", and "WAIVE\_INT\_PAY".  
Susan

---

**From:** Smith, John B. [<mailto:SmithJB@SEC.GOV>]  
**Sent:** Thursday, December 19, 2013 5:51 PM  
**To:** DiCicco, Susan F.; Sumner, Amy A.  
**Subject:** RE: In re Patriarch Partners -- MBIA

My phone number is 303-844-1025. I will be out of the office for the rest of today and tomorrow, but I will be in Monday and Tuesday. If you are ready to talk by then, I would suggest Monday after 1 pm MT = 3 pm ET or Tuesday after 9 am MT = 11 am ET. I also plan to be in the office next Thursday and Friday.

I look forward to talking with you.

John

---

**From:** DiCicco, Susan F. [<mailto:Susan.DiCicco@bingham.com>]  
**Sent:** Thursday, December 19, 2013 9:32 AM  
**To:** Sumner, Amy A.  
**Cc:** Smith, John B.  
**Subject:** RE: In re Patriarch Partners -- MBIA

Thanks. John, what is your phone number?  
Susan

---

**From:** Sumner, Amy A. [<mailto:SumnerA@SEC.GOV>]  
**Sent:** Wednesday, December 18, 2013 12:01 PM  
**To:** DiCicco, Susan F.

**Cc:** Smith, John B.

**Subject:** [WARNING: MESSAGE ENCRYPTED]RE: In re Patriarch Partners -- MBIA

Susan,

I am attaching the documents in an encrypted zip file. I will forward the password in a separate email.

I will be out of the office beginning Friday and will return on January 2. John is generally around, other than December 31. I would appreciate it if you could determine the availability of your team and work on scheduling a follow up call with John.

Best Regards,  
Amy

---

**From:** DiCicco, Susan F. [<mailto:Susan.DiCicco@bingham.com>]

**Sent:** Tuesday, December 17, 2013 11:57 AM

**To:** Sumner, Amy A.; Lee, Allison H.

**Cc:** Smith, Jeffrey Q. (ny); Biron, Kevin J.; DiCicco, Susan F.

**Subject:** In re Patriarch Partners -- MBIA

Allison and Amy,

Based on our prior discussions, we understand that you have certain documents you plan to share with MBIA and its counsel in furtherance of having additional off the record discussions with MBIA concerning the Zohar I and Zohar II transactions. We appreciate the opportunity to review these documents in advance of meeting with the Staff so that we can review and digest the material and then have a more efficient and productive meeting.

As discussed, MBIA agrees to receive these documents on the following terms proposed by the SEC:

1. The documents provided are confidential material and will be treated confidentially by MBIA and its counsel.
2. MBIA and its counsel will not use the documents provided for any purposes other than cooperating with the SEC's investigation of Patriarch.
3. You have stressed that MBIA cannot create any documents that reference or summarize any of the confidential documents provided and that the SEC would consider that an impermissible use of the documents.
4. Notwithstanding the foregoing, based on information MBIA learns in the documents, MBIA may discuss the documents or information with Ms. Tilton or other representatives of Patriarch or reference it in correspondence to Patriarch.
5. Notwithstanding the foregoing, based on information MBIA learns in the documents or otherwise, MBIA may freely commence litigation against Ms. Tilton, Patriarch or their related entities. MBIA will not cite or attach any of the documents received from the SEC to any complaint while those documents remain confidential and non-public. MBIA is free to use other copies of the documents if MBIA obtains them through means other than the SEC.

In addition, MBIA requests that the SEC not inform Ms. Tilton, Patriarch or their representatives that the documents and information have been provided to MBIA and its counsel without first apprising MBIA and its counsel of that fact. We appreciate the Staff's willingness to accommodate this request.

Please advise if this email accurately summarizes the arrangement for the delivery of the documents.

Please send the documents to my attention. We had also contemplated a follow up call among my Bingham team with John Smith to walk through certain data. Assuming we receive the documents this week, we should be able to schedule that call promptly.

Regards,

Susan

Susan F. DiCicco  
T +1.212.705.7421  
F +1.212.752.5378  
[susan.dicicco@bingham.com](mailto:susan.dicicco@bingham.com)

**B I N G H A M**  
Bingham McCutchen LLP  
399 Park Avenue  
24<sup>th</sup> Floor  
New York, NY 10022-4689

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---

**From:** Sumner, Amy A.  
**Sent:** Thursday, January 30, 2014 10:39 AM  
**To:** 'DiCicco, Susan F.'  
**Cc:** Smith, John B.  
**Subject:** Patriarch (HO-11665; D-3350)

Susan,

I'm attaching the documents relating to Global that I inadvertently omitted when I sent you documents in December. I will send the password in a separate email.

Can we set a time to speak about next steps? I am fairly open Monday and Tuesday of next week.



fib:xxjfo

Regards,

**Amy A. Sumner**  
Division of Enforcement ||  
U.S. Securities and Exchange Commission ||  
Denver Regional Office ||  
1801 California St., Suite 1500, Denver CO 80202 ||  
tel: 303.844.1089 || email: [sumnera@sec.gov](mailto:sumnera@sec.gov)



---

**From:** Sumner, Amy A.  
**Sent:** Thursday, January 30, 2014 10:39 AM  
**To:** 'DiCicco, Susan F.'  
**Subject:** Patriarch (HO-11665; D-3350)

Password: #Sec!801



**Amy A. Sumner**  
Division of Enforcement ||  
U.S. Securities and Exchange Commission ||  
Denver Regional Office ||  
1801 California St., Suite 1500, Denver CO 80202 ||  
tel: 303.844.1089 || email: [sumnera@sec.gov](mailto:sumnera@sec.gov)

**To:** Sumner, Amy A.[SumnerA@SEC.GOV]  
**Cc:** Bliss, Dugan[BlissD@SEC.GOV]  
**From:** Tompkins, Anne  
**Sent:** Mon 6/1/2015 10:30:52 AM  
**Importance:** Normal  
**Subject:** RE: Update

great

**From:** Sumner, Amy A. [mailto:SumnerA@SEC.GOV]  
**Sent:** Monday, June 01, 2015 10:17 AM  
**To:** Tompkins, Anne  
**Cc:** Bliss, Dugan  
**Subject:** RE: Update

Thanks, we will call you then.

**From:** Tompkins, Anne [mailto:Anne.Tompkins@cwt.com]  
**Sent:** Monday, June 01, 2015 8:09 AM  
**To:** Sumner, Amy A.  
**Cc:** Bliss, Dugan  
**Subject:** RE: Update

perfect. Thanks – is it more convenient for you to call me? I'm at 704-348-5222 (direct line). Or, if you all are in different places, I can send a call-in number.

**From:** Sumner, Amy A. [mailto:SumnerA@SEC.GOV]  
**Sent:** Monday, June 01, 2015 10:08 AM  
**To:** Tompkins, Anne  
**Cc:** Bliss, Dugan  
**Subject:** RE: Update

Hi Anne—How about 4:30 EST today?

**From:** Tompkins, Anne [<mailto:Anne.Tompkins@cwt.com>]

**Sent:** Monday, June 01, 2015 7:35 AM

**To:** Sumner, Amy A.

**Subject:** Update

Hi Amy –

I wanted to check in with you and see if you have time for an update call this afternoon or tomorrow? As you know, MBIA received a third party subpoena last Friday and we have also been working on the issues in the Indenture regarding the May 20<sup>th</sup> sale date. I'm free today from around 3:30 EST on – so if you have time today or tomorrow, let me know.

Thanks,

Anne

Anne M. Tompkins

Cadwalader, Wickersham & Taft LLP

227 West Trade Street

Charlotte, NC 28202

Tel: +1 704.348-5222

Fax: +1 704.348.5200

[anne.tompkins@cwt.com](mailto:anne.tompkins@cwt.com)

[www.cadwalader.com](http://www.cadwalader.com)

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NOTE: The information in this email is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information; please advise the sender immediately by reply email and delete this message and any attachments without retaining a copy. Although this email and any attachments are believed to be free of any virus or other defect that may affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Cadwalader, Wickersham & Taft LLP for any loss or damage arising in any way from its use.

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To: Sumner, Amy A.[SumnerA@SEC.GOV]  
Cc: Avergun, Jodi[Jodi.Avergun@cwt.com]  
From: Tompkins, Anne  
Sent: Thur 4/23/2015 6:11:15 PM  
Importance: Normal  
Subject: MBIA

Hi Amy –

I just left you a voicemail and wanted to also send you an email to introduce myself and Jodi Avergun. We represent MBIA and asked Susan DiCicco to reach out to you to let you know of this transition. Susan told us that you all had spoken today.

Jodi and I wanted to introduce ourselves to you. Please give me a call at your convenience. We look forward to meeting you and getting a sense of what you all might need from MBIA in the Patriarch litigation.

Thanks so much,

Anne

Anne M. Tompkins

Cadwalader, Wickersham & Taft LLP

227 West Trade Street

Charlotte, NC 28202

Tel: +1 704.348-5222

Fax: +1 704.348.5200

[anne.tompkins@cwt.com](mailto:anne.tompkins@cwt.com)

[www.cadwalader.com](http://www.cadwalader.com)

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NOTE: The information in this email is confidential and may be legally privileged. If you

are not the intended recipient, you must not read, use or disseminate the information; please advise the sender immediately by reply email and delete this message and any attachments without retaining a copy. Although this email and any attachments are believed to be free of any virus or other defect that may affect any computer system into which it is received and opened, it is the responsibility of the recipient to ensure that it is virus free and no responsibility is accepted by Cadwalader, Wickersham & Taft LLP for any loss or damage arising in any way from its use.

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**To:** 'Hoff [PARTNER], Jonathan M.'[jonathan.hoff@cwt.com]  
**From:** Sumner, Amy A.  
**Sent:** Mon 9/19/2016 1:24:17 PM  
**Importance:** Normal  
**Subject:** RE:

303 844 1089.

Talk to you then. Thanks.

**From:** Hoff [PARTNER], Jonathan M. [mailto:jonathan.hoff@cwt.com]  
**Sent:** Monday, September 19, 2016 11:23 AM  
**To:** Sumner, Amy A.  
**Subject:** RE:

That works. Should I call you? If so, what number?

Jonathan M. Hoff

Partner

Cadwalader, Wickersham & Taft LLP

One World Financial Center

New York, NY 10281

Tel: +1 212.504.6474

Cell Phone: [REDACTED]

Fax: +1 212.504.6666

[jonathan.hoff@cwt.com](mailto:jonathan.hoff@cwt.com)

[www.cadwalader.com](http://www.cadwalader.com)

**From:** Sumner, Amy A. [mailto:SumnerA@SEC.GOV]

**Sent:** Monday, September 19, 2016 1:22 PM  
**To:** Hoff [PARTNER], Jonathan M.  
**Subject:** RE:

10:30 Eastern tomorrow?

**From:** Hoff [PARTNER], Jonathan M. [<mailto:jonathan.hoff@cwt.com>]  
**Sent:** Monday, September 19, 2016 11:06 AM  
**To:** Sumner, Amy A.  
**Subject:**

Can we set up a time to talk? I'm available today until 2 pm, Eastern, and between 4 and 5 pm, Eastern, and tomorrow between 10:30 am and 4:30 pm, Eastern.

Jonathan M. Hoff

Partner

Cadwalader, Wickersham & Taft LLP

One World Financial Center

New York, NY 10281

Tel: +1 212.504.6474

Cell Phone: [REDACTED]

Fax: +1 212.504.6666

[jonathan.hoff@cwt.com](mailto:jonathan.hoff@cwt.com)

[www.cadwalader.com](http://www.cadwalader.com)



CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2016, I served true and correct copies of (1) Non-Party MBIA's Non-Party MBIA Insurance Corporation's Memorandum Of Law In Opposition To Respondents' Motion To Compel MBIA To Produce Documents Responsive To Respondents' Subpoena and (2) the Declaration of Jonathan M. Hoff, on the persons and in the manner indicated below:

United States Securities and Exchange Commission  
Office of the Secretary  
Attn: Secretary of the Commission, Brent J. Fields  
100 F Street NE  
Mail Stop 1090  
Washington, DC 20549  
Fax Number: 703-813-9793  
(By Facsimile and original and three copies by Federal Express)

Hon. Judge Carol Fox Foelak  
100 F Street NE  
Mail Stop 2557  
Washington DC 20549  
(By Federal Express)

Dugan Bliss, Esq.  
Division of Enforcement  
Securities and Exchange Commission  
1961 Stout Street, Suite 1700  
Denver, CO 80294  
(By Federal Express)

Randy M. Mastro  
Gibson Dunn Crutcher LLP  
200 Park Ave  
New York, NY 10166  
(By Federal Express)



Aaron Buchman



**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

**1. TO**

Rabobank International  
245 Park Avenue  
New York, NY 10167

c/o Jantra Van Roy, Esq.  
Zeichner Eilman & Krause LLP  
1211 Avenue of the Americas, 40th Floor  
New York, NY 10036

This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.

**2. PLACE OF PRODUCTION**

Brune & Richard LLP  
One Battery Park Plaza  
New York, New York 10004

**3. DATE AND TIME PRODUCTION IS DUE**  
June 18, 2015 at 10:00 AM

**4. PARTY AND COUNSEL REQUESTING ISSUANCE OF SUBPOENA**

Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC; and Patriarch Partners Agency Services, LLC

By: MaryAnn Sung  
Brune & Richard LLP  
One Battery Park Plaza  
New York, New York 10004

**5. THE PRODUCTION OF DOCUMENTS OR OTHER TANGIBLE EVIDENCE IS ORDERED BY**

The Honorable Carol Fox Foelak

Administrative Law Judge  
U.S. Securities and Exchange Commission

**6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER**

In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462

**7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)**

See attachment.

DATE SIGNED

May 27, 2015

SIGNATURE OF ADMINISTRATIVE LAW JUDGE

Carol Fox Foelak

**GENERAL INSTRUCTIONS**

**MOTION TO QUASH**

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

**ATTACHMENT TO SUBPOENA DUCES TECUM  
TO RABOBANK INTERNATIONAL**

**DEFINITIONS AND INSTRUCTIONS**

1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

2. "And" and "or" have both the conjunctive and disjunctive meanings, and the terms "each," "any," and "all" mean "each and every."

3. "Communication" means any form of contact, documentary, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence.

4. "Defaulted Assets" means, with respect to Zohar CDO 2003-1, Limited ("Zohar I") and Zohar II 2005-1, Limited ("Zohar II"), the "Defaulted Obligation," and with respect to Zohar III, Limited ("Zohar III"), the "Defaulted Investment," as defined and used in Section 1.1 of applicable Zohar Indentures.

5. "Document" is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other

graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or "emails"), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files, electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other documents which are in your possession, custody, or control or to which you otherwise have access.

6. "Including" means including but not limited to. When the word "including" is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the documents requested.

7. "Interest Coverage Ratio" means the "Class A Interest Coverage Ratio" and the

“Class A Interest Coverage Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

8. “Overcollateralization Ratio” means the “Class A Overcollateralization Ratio” and “Class A Overcollateralization Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

9. “Loan Categories” means, with respect to Zohar I and Zohar II, the terms “Category 1”, “Category 2”, “Category 3”, and “Category 4” and, with respect to Zohar III, the terms “Collateral Investment” and “Defaulted Investment,” all as defined and used in Section 1.1 of the applicable Zohar Indentures.

10. “Related to”, “relating to”, and “in connection with”, in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

11. “Respondents” means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

12. “SEC” means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.

13. “You” or “your” means Rabobank International, and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country) and its and their present and former officers, directors, employees, partners, principals, representatives and agents..

14. “Zohar Funds” means the following collateralized loan obligations: Zohar I, Zohar II and Zohar III.

15. “Zohar Financial Statements” means the balance sheets and income statements (including all notes) and certificates as to financial statements issued quarterly for each of the Zohar Funds as described in Section 7.9 of the Zohar Indentures.

16. “Zohar Indentures” means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.

17. “Zohar Notes” means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

18. “Zohar Trustee” means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term “Zohar Trustee” includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

19. “Zohar Trustee Reports” means the “Monthly Report” and “Note Valuation Report” and any electronic data or other files that accompany such “Monthly Report” or “Note Valuation Report” prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

20. If you encounter any perceived ambiguity, vagueness, or confusion in construing

either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

21. References to any natural person shall be deemed to include that natural person's agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity's subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

22. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

23. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to

a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

24. All documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

25. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the foregoing, data files, including excel files, are to be produced in native format. Responsive documents that are not electronically stored are to be produced (i) in a single-page TIFF format, with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

26. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce documents from a prior time period to fully respond to a particular request, do so.



## DOCUMENTS TO BE PRODUCED

1. For the period April 6, 2007 through the date of your production, documents sufficient to show your current and/or prior holdings of any of the Zohar Notes, including documents sufficient to show the date(s) on which you acquired, sold, and/or traded any of the Zohar Notes, the counterparties and the price(s) or other terms at which such transactions occurred.

2. For the period June 1, 2006 through the date of your production, all Documents comprising of, or relating to, marketing or due diligence materials relating to the Zohar Funds.

3. For the period June 1, 2006 through the date of your production, all Documents relating to any evaluation or decision by you to purchase, sell, trade, or hold any of the Zohar Notes, including, without limitation, any credit, risk or investment committee memorandum or related Communications.

4. Documents sufficient to show the valuation assigned by you to the Zohar Notes held by you for any purpose, including but not limited to, accounting or profit/loss calculation purposes, including the dates such valuations were assigned.

5. Documents sufficient to show any amount of capital reserves or provisions taken on Zohar Notes held by you, including the dates such reserves or provisions were taken.

6. All Documents relating to any valuation by you or a third party of any of the Zohar Notes, including without limitation:

- a. Month-end or other periodic marks provided by your trading desk to you or any third party for any Zohar Notes;
- b. Month-end or other periodic marks obtained from any third party by you for any Zohar Notes;
- c. Bids or offers shown by or requested of you or any third party for any Zohar Notes (regardless of whether a transaction was contemplated or effected).

7. All Documents relating to:
  - a. Overcollateralization Ratio as reported in the Trustee Reports;
  - b. Interest Coverage Ratio as reported in the Trustee Reports;
  - c. Loan Categories as reported in the Trustee Reports;
  - d. Defaulted Assets as reported in the Trustee Reports;
  - e. Zohar Financial Statements;
  - f. Ratings of the Zohar Notes issued by Moody's and Standard and Poor's.
8. All Documents related to your monitoring of the performance of the Zohar Funds, including but not limited to any surveillance reviews, watchlist reports or any other monitoring reports relating to the Zohar Funds or Zohar Notes.
9. All Documents relating to any analyses, calculations, or computations performed by you using information or data provided by the Zohar Trustees and/or in the Zohar Trustee Reports, including Documents relating to any analyses, calculations, or computation of interest paid, interest accrued, and/or interest accrued and unpaid on an aggregate fund or loan-by loan basis.
10. All Documents relating to modeling or modeling runs performed by you relating to the Zohar Funds and/or Zohar Notes using any proprietary or commercial cashflow model, data, or software tools, such as but not limited to INTEX or Moody's Analytics.
11. Documents sufficient to identify the individual(s) employed or retained by you who have had significant responsibilities regarding the monitoring of the performance and/or valuation of the Zohar Funds and/or the Zohar Notes held by you.
12. All Communications relating to the Zohar Funds, Zohar Notes, or Respondents for custodians Wendy Ruttle, Raymond Dizon, and George Lyons, with the exception of e-mail Communications between such custodians on the one hand and Respondents on the other hand.

13. All Documents, including any recordings, relating to conference calls or meetings with Respondents relating to the Zohar Funds.

14. All Communications and all Documents relating to all Communications with the SEC relating to the Zohar Funds and/or Respondents.



**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

1. TO  
Barclays PLC  
745 7th Avenue  
New York, NY 10019

c/o Andrew Michaelson, Esq.  
Bois, Schiller & Flexner LLP  
575 Lexington Avenue, 7th Floor  
New York, NY 10022

This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.

2. PLACE OF PRODUCTION  
Law Firm of Martin J. Auerbach, Esq.  
1330 Avenue of the Americas  
Suite 1100  
New York, New York 10019

3. DATE AND TIME PRODUCTION IS DUE  
June 18, 2015 at 10:00 AM

4. PARTY AND COUNSEL REQUESTING  
ISSUANCE OF SUBPOENA  
Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC;  
Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC; and Patriarch  
Partners Agency Services, LLC  
  
By: Martin J. Auerbach, Esq.  
Law Firm of Martin J. Auerbach, Esq.  
1330 Avenue of the Americas, Suite 1100  
New York, New York 10019

5. THE PRODUCTION OF DOCUMENTS OR OTHER  
TANGIBLE EVIDENCE IS ORDERED BY  
  
The Honorable Carol Fox Foelak  
  
Administrative Law Judge  
U.S. Securities and Exchange Commission

6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER

In the Matter of Lynn Tilton, et al., Respondents, File No. 3-16462

7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)

See attachment.

DATE SIGNED <i>May 27, 2015</i>	SIGNATURE OF ADMINISTRATIVE LAW JUDGE <i>Carol Fox Foelak</i>
<b>GENERAL INSTRUCTIONS</b>	

**MOTION TO QUASH**

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

**ATTACHMENT TO SUBPOENA DUCES TECUM  
TO BARCLAYS PLC**

**DEFINITIONS AND INSTRUCTIONS**

1. Produce the Documents described below that are within your possession, custody, or control, including all Documents held by third parties such as agents, accountants, attorneys, or others. Produce responsive Documents as they are kept in the usual course of business, or produce the Documents organized and labeled to correspond with the specific Request(s) to which they are responsive. Documents are to be produced in full and complete form, including all drafts and all copies of Documents that bear any notes, marks, or notations not existing in the original or other copies.

2. "And" and "or" have both the conjunctive and disjunctive meanings, and the terms "each," "any," and "all" mean "each and every."

3. "Communication" means any form of contact, documentary, written, or oral, formal or informal, at any time or place and under any circumstances whatsoever whereby information of any nature is transmitted or transferred by any means, including, but not limited to letters, memoranda, reports, emails, text messages, telegrams, invoices, telephone conversations, voicemail messages, audio recordings, face-to-face meetings and conversations, and any other form of communication or correspondence.

4. "Defaulted Assets" means, with respect to Zohar CDO 2003-1, Limited ("Zohar I") and Zohar II 2005-1, Limited ("Zohar II"), the "Defaulted Obligation," and with respect to Zohar III, Limited ("Zohar III"), the "Defaulted Investment," as defined and used in Section 1.1 of applicable Zohar Indentures.

5. "Document" is used in a comprehensive sense and includes, without limitation, any and all written, printed, typed, recorded, filmed, punched, transcribed, taped, or other

graphic matter of any kind or nature, however produced, reproduced, or stored, in whatever format of paper, digital, electronic, or otherwise, whether sent or received or neither, including all originals, drafts, copies, and non-identical copies bearing notations or marks not found on the original(s), and includes but is not limited to, Communications, papers, letters, envelopes, electronic mail messages (or "emails"), telecopied messages, voice mails, telephone messages, tapes or other forms of audio, visual, or audio-visual recordings, all records, handwritten or other notes, memoranda, reports, financial statements, affidavits, transcripts, indices, telegrams, cables, telex messages, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, summaries or records of meetings or conferences, minutes or transcriptions or notations of meetings or telephone conversations or other communications of any type, tabulations, studies, analyses, evaluations, projections, work papers, statements, summaries, opinions, journals, desk calendars or other calendars, maintenance or service records, appointment books, diaries, billing records, checks, contracts, agreements, bank account statements, invoices, receipts, photographs, microfilms, microfiche, tapes or other records, punch cards, magnetic tapes, disks, CDs, DVDs, hard drives, flash drives, PDA files, electronic files, electronic databases, data cells, drums, printouts, other data compilations (in any form) from which information can be obtained, all recordings made through data processing techniques and written information necessary to understand and use such materials, and any other documents which are in your possession, custody, or control or to which you otherwise have access.

6. "Including" means including but not limited to. When the word "including" is followed by one or more specific examples, those examples are illustrative only and do not limit in any way the documents requested.

7. "Interest Coverage Ratio" means the "Class A Interest Coverage Ratio" and the

“Class A Interest Coverage Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

8. “Overcollateralization Ratio” means the “Class A Overcollateralization Ratio” and “Class A Overcollateralization Ratio Test” as defined and used in Section 1.1 of the Zohar Indentures.

9. “Loan Categories” means, with respect to Zohar I and Zohar II, the terms “Category 1”, “Category 2”, “Category 3”, and “Category 4” and, with respect to Zohar III, the terms “Collateral Investment” and “Defaulted Investment,” all as defined and used in Section 1.1 of the applicable Zohar Indentures.

10. “Related to”, “relating to”, and “in connection with”, in addition to their other customary and usual meanings, mean alluding to, discussing, concerning, constituting, comprising, containing, commenting upon, embodying, evidencing, supporting, mentioning, pertaining to, referring to, referencing, involving, setting forth, reflecting, stating, showing, dealing with, assessing, recording, describing, regarding, noting, probative of, touching upon, bearing upon, evaluating, connected with, in respect of, about, indicating, identifying, memorializing, proving, suggesting, having anything to do with, contradicting, and/or summarizing in any way, directly or indirectly, in whole or in part, the subject matter referred to in the Request.

11. “Respondents” means Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; Patriarch Partners XV, LLC and/or their affiliates, employees or agents.

12. “SEC” means the United States Securities and Exchange Commission, including but not limited to its agents, employees, officers, directors, commissioners and representatives.

13. “You” or “your” means Barclays PLC and all of its present and former divisions, groups, parents, subsidiaries, subdivisions, predecessors, successors, and affiliated entities (whether organized or doing business under the laws of the United States or under the laws of a foreign country) and its and their present and former officers, directors, employees, partners, principals, representatives and agents.

14. “Zohar Funds” means the following collateralized loan obligations: Zohar I, Zohar II and Zohar III.

15. “Zohar Financial Statements” means the balance sheets and income statements (including all notes) and certificates as to financial statements issued quarterly for each of the Zohar Funds as described in Section 7.9 of the Zohar Indentures.

16. “Zohar Indentures” means the indentures governing the Zohar Funds, including all amendments, alterations, and supplements thereto.

17. “Zohar Notes” means the Class A notes issued by the Zohar Funds, as described and defined in Article 2 of the Zohar Indentures.

18. “Zohar Trustee” means the trustee for each of the Zohar Funds, as defined in Section 1.1 of the Zohar Indentures. The term “Zohar Trustee” includes U.S. Bank, N.A., LaSalle Bank, N.A., Bank of America Corp., and all of their predecessors, successors, parents, subsidiaries, affiliates, employees, representatives, and agents.

19. “Zohar Trustee Reports” means the “Monthly Report” and “Note Valuation Report” and any electronic data or other files that accompany such “Monthly Report” or “Note Valuation Report” prepared and issued by the Zohar Trustee pursuant to Section 10.13 of the Zohar Indentures.

20. If you encounter any perceived ambiguity, vagueness, or confusion in construing



either a request below or an instruction or definition relevant to a request, your response should: set forth the matter deemed ambiguous, select a reasonable construction or interpretation of the matter you deem ambiguous, explain with particularity the construction or interpretation selected by you, and respond to the request using the construction or interpretation selected by you.

21. References to any natural person shall be deemed to include that natural person's agents, servants, attorneys, representatives, current and former employees, and successors. References to any non-natural persons (i.e., entities such as corporations, LLCs, companies, trusts, partnerships, etc.) shall be deemed to include that entity's subsidiaries, parent entities, affiliates, divisions, predecessors, successors, assigns, and its and their current and former employees, agents, servants, officers, directors, partners, members, shareholders, attorneys, representatives, successors, and predecessors.

22. In the event that any Documents responsive to the following Request(s) are withheld on the basis of a claim of privilege or other protection, prepare an appropriate log identifying such Documents with particularity. For each Document withheld, provide the following information: title, date, author(s); recipient(s); document type; subject; location; number of pages; attachments or appendices; nature of privilege or protection claimed; and a description of the Document and its contents that you believe is sufficient to support your contention that the Document may properly be withheld. If a Document is withheld on the ground of attorney work product, also specify whether the document was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. Produce the log described above contemporaneously with the responsive Documents.

23. If only a portion of an otherwise responsive Document contains information subject to a claim of privilege or other protection, only those portions of the Document subject to

a claim of privilege or protection should be deleted or redacted and the remainder of the Document should be produced. If any portions of an otherwise responsive Document are deleted or redacted, those portions should be included on the log described in the foregoing instruction.

24. All documents produced in response to the following Requests shall be clearly identified, by Bates stamp or otherwise, as having been produced by you.

25. Unless otherwise specified in a particular request, electronic or computerized information, electronically stored documents, or data shall be produced in a single-page TIFF format, with load files demarcating document breaks, providing parent-child information, and including OCR data and certain metadata to be agreed upon by the parties. Notwithstanding the foregoing, excel files are to be produced in native format. Responsive documents that are not electronically stored are to be produced (i) in a single-page TIFF format, with load files demarcating document breaks, and containing searchable document text (i.e., OCR data), (ii) in a manner which reflects physical boundaries such as boxes, folders, tabs, etc., and (iii) in a manner which reflects the document custodian.

26. Unless otherwise specified, the following requests seek Documents from January 1, 2008 to the date of your production. If it is necessary to produce documents from a prior time period to fully respond to a particular request, do so.

#### **DOCUMENTS TO BE PRODUCED**

1. For the period November 3, 2003 through the date of your production, documents sufficient to show your current and/or prior holdings of any of the Zohar Notes, including documents sufficient to show the date(s) on which you acquired, sold, and/or traded any of the Zohar Notes, the counterparties and the price(s) or other terms at which such transactions occurred.

2. For the period January 1, 2003 through the date of your production, all Documents comprising of, or relating to, marketing or due diligence materials relating to the Zohar Funds.

3. For the period January 1, 2003 through the date of your production, all Documents relating to any evaluation or decision by you to purchase, sell, trade, or hold any of the Zohar Notes, including, without limitation, any credit, risk or investment committee memorandum or related Communications.

4. Documents sufficient to show the valuation assigned by you to the Zohar Notes held by you for any purpose, including but not limited to, accounting or profit/loss calculation purposes, including the dates such valuations were assigned.

5. Documents sufficient to show any amount of capital reserves or provisions taken on Zohar Notes held by you, including the dates such reserves or provisions were taken.

6. All Documents relating to any valuation by you or a third party of any of the Zohar Notes, including without limitation:

- a. Month-end or other periodic marks provided by your trading desk to you or any third party for any Zohar Notes;
- b. Month-end or other periodic marks obtained from any third party by you for any Zohar Notes;
- c. Bids or offers shown by or requested of you or any third party for any Zohar Notes (regardless of whether a transaction was contemplated or effected).

7. All Documents relating to:

- a. Overcollateralization Ratio as reported in the Trustee Reports;
- b. Interest Coverage Ratio as reported in the Trustee Reports;
- c. Loan Categories as reported in the Trustee Reports;
- d. Defaulted Assets as reported in the Trustee Reports;

- e. Zohar Financial Statements;
  - f. Ratings of the Zohar Notes issued by Moody's and Standard and Poor's.
8. All Documents related to your monitoring of the performance of the Zohar Funds, including but not limited to any surveillance reviews, watchlist reports or any other monitoring reports relating to the Zohar Funds or Zohar Notes.
9. All Documents relating to any analyses, calculations, or computations performed by you using information or data provided by the Zohar Trustees and/or in the Zohar Trustee Reports, including Documents relating to any analyses, calculations, or computation of interest paid, interest accrued, and/or interest accrued and unpaid on an aggregate fund or loan-by loan basis.
10. All Documents relating to modeling or modeling runs performed by you relating to the Zohar Funds and/or Zohar Notes using any proprietary or commercial cashflow model, data, or software tools, such as but not limited to INTEX or Moody's Analytics.
11. Documents sufficient to identify the individual(s) employed or retained by you who have had significant responsibilities regarding the monitoring of the performance and/or valuation of the Zohar Funds and/or the Zohar Notes held by you.
12. For the period January 1, 2003 through the date of your production, any agreements (including any modifications thereof) between you and MBIA Insurance Corporation in connection with any Zohar Notes owned by you.
13. Documents sufficient to show the total compensation (direct or indirect, cash or non-cash) received by you from MBIA Insurance Corporation or profit made by you in connection with the agreements referenced in Request No. 12, including, any valuation of any non-cash compensation.

14. All Communications relating to the Zohar Funds, Zohar Notes, or Respondents for custodians Jaime Aldama, Robit Chaku, Justin Cicero and Anand Sankaranarayanan, with the exception of e-mail Communications between such custodians on the one hand and Respondents on the other hand.

15. All Documents relating to the Communications reflected in "Exhibit 32" (attached hereto) or the information contained therein, prior to, at the time of, or after those Communications.

16. All Documents relating to conference calls or meetings with Respondents relating to the Zohar Funds.

17. All Communications and all Documents relating to all Communications with the SEC relating to the Zohar Funds and/or Respondents.

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

RECEIVED  
AUG 07 2015  
OFFICE OF THE SECRETARY

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  
WITNESS LIST

The Division of Enforcement ("Division") hereby submits its witness list as attached.

Dated: August 7, 2015

Respectfully Submitted,



Dugan Bliss, Esq.  
Nicholas Heinke, Esq.  
Amy Sumner, Esq.  
Division of Enforcement  
Securities and Exchange Commission  
Denver Regional Office  
1961 Stout Street, Ste. 1700  
Denver, CO 80294

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served on the following on this 7<sup>th</sup> day of August, 2015, in the manner indicated below:

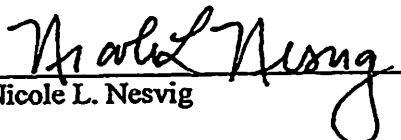
Securities and Exchange Commission  
Brent Fields, Secretary  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
(By Facsimile and original and three copies by UPS)

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

Christopher J. Gunther  
David M. Zomow  
SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP  
Four Times Square  
New York, NY 10036  
(By email pursuant to the parties' agreement)

Susan E. Brune  
MaryAnn Sung  
BRUNE & RICHARD LLP  
One Battery Park Plaza  
New York, NY 10004  
(By email pursuant to the parties' agreement)

Martin J. Auerbach  
Law Firm of Martin J. Auerbach, Esq.  
1330 Avenue of the Americas  
Ste. 1100  
New York, NY 10019  
(By email pursuant to the parties' agreement)

  
Nicole L. Nesvig

**Division of Enforcement's Witness List  
In the Matter of Lynn Tilton et al.  
Administrative Proceeding No. 3-16462**

<b>1. Will Call List</b>	
<b>Name and Contact Information</b>	<b>Area of Testimony</b>
Lynn Tilton c/o David Zornow Skadden Arps 4 Times Square New York, NY 10036	Respondent Tilton will be called to testify regarding the management and operation of the three Zohar Funds that are the subject of this proceeding, including the categorization of assets within those funds, the preparation of the fund financial statements, Patriarch's responsibilities as a collateral manager, and her role in the conduct described in the Division's Order Instituting Proceedings.
Ira Wagner c/o Dugan Bliss Division of Enforcement 1961 Stout Street, Suite 1700 Denver, CO 80294	Mr. Wagner will testify (either live or through his expert reports) regarding the subjects in his expert reports.
Michael Mayer Charles River Associates c/o Dugan Bliss Division of Enforcement 1961 Stout Street, Suite 1700 Denver, CO 80294	Mr. Mayer will testify (either live or through his expert reports) regarding the subjects in his expert reports.
Steven Henning Marks Paneth LLP c/o Dugan Bliss Division of Enforcement 1961 Stout Street, Suite 1700 Denver, CO 80294	Mr. Henning will testify (either live or through his expert reports) regarding the subjects in his expert reports.



<b>2. May Call List</b>	
<b>Name and Contact Information</b>	<b>Area of Testimony</b>
<p><b>Carlos Mercado</b>  c/o Marc A. Weinstein  Hughes Hubbard &amp; Reed LLP  One Battery Park Plaza  New York, NY 10004-1482</p>	<p>Mr. Mercado may be called to testify regarding accounting policies and procedures at Patriarch, interaction with outside accountants, interaction with others at Patriarch, and the preparation of the financial statements for the Zohar Funds.</p>
<p><b>Peter Berlant</b>  Anchin, Block and Anchin  c/o Eric Reider  Bryan Cave LLP  1290 Avenue of the Americas  New York, NY 10104-3300</p>	<p>Mr. Berlant may be called to testify regarding the work he and/or his firm performed for the Zohar Funds and any interaction with Tilton or other Patriarch employees.</p>
<p><b>Steve Panagos</b>  Moelis &amp; Co.  c/o Jeff Sinek  Kirkland &amp; Ellis LLP  333 South Hope Street  Los Angeles, CA 90071</p>	<p>Mr. Panagos may be called to testify regarding restructuring proposals for the Zohar Funds.</p>
<p><b>Karen Wu</b>  c/o Marc A. Weinstein  Hughes Hubbard &amp; Reed LLP  One Battery Park Plaza  New York, NY 10004-1482</p>	<p>Ms. Wu may be called to testify regarding the roles and responsibilities of the structured finance and loan administration departments at Patriarch, interactions with Tilton, and interactions with outside parties relating to the Zohar Funds. She may also be called to testify about interest payments or lack of interest payments by portfolio companies.</p>
<p><b>Jaime Aldama</b>  Rohit Chaku  Barclays  c/o Andrew Michaelson  Boies, Schiller &amp; Flexner LLP  575 Lexington Avenue, 7th Floor  New York, NY 10022</p>	<p>Mr. Aldama and/or Mr. Chaku may be called to testify regarding Barclays' investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Barclays' investment.</p>

<p><b>Anthony McKiernan</b>  <b>David Crowle</b>  <b>MBIA, Inc.</b>  <b>c/o Anne Tompkins</b>  <b>Cadwalader, Wickersham &amp; Taft LLP</b>  <b>227 West Trade Street</b>  <b>Charlotte, NC 28202</b></p>	<p>Mr. McKiernan and/or Mr. Crowle may be called to testify regarding MBIA's investment in the Zohar Fund(s), MBIA's insurance of Zohar I and II, communication regarding the investment or insurance, MBIA's relationship with Patriarch, their understanding of the insurance contract and/or investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of MBIA's investment and/or insurance contract.</p>
<p><b>Wendy Ruttle</b>  <b>Alternative Representative from</b>  <b>Rabobank</b>  <b>c/o Jantra Van Roy</b>  <b>Zeichner, Ellman &amp; Krause LLP</b>  <b>1211 Avenue of the Americas, 40th Floor</b>  <b>New York, NY 10036</b></p>	<p>Ms. Ruttle and/or an alternative representative may be called to testify regarding Rabobank's investment, communication regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Rabobank's investment.</p>
<p><b>Ramki Muthukrishnan</b>  <b>Tim Walsh</b>  <b>Alternative Representative from Standard</b>  <b>and Poors</b>  <b>c/o Penny Windle</b>  <b>Cahill Gordon &amp; Reindel LLP</b>  <b>Eighty Pine Street</b>  <b>New York, NY 10005-1702</b></p>	<p>Mr. Muthukrishnan, Mr. Walsh, and/or an alternative representative from Standard and Poors may be called to testify regarding the rating and/or monitoring of the Zohar Funds, communications regarding the rating and/or monitoring of the Zohar Funds, and any interactions with Tilton or other Patriarch employees.</p>
<p><b>Jeremy Hedberg</b>  <b>Matt Mach</b>  <b>Varde Partners</b>  <b>c/o Matthew Rossi</b>  <b>Mayer Brown LLP</b>  <b>1999 K Street N.W.</b>  <b>Washington DC 20006-1101</b></p>	<p>Mr. Hedberg and/or Mr. Mach may be called to testify regarding Varde Partners' investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Varde Partners' investment.</p>

<p>John McDermott                  Kevin O'Hagen                  Alternative Representative from Nord/LB                  c/o Michael M. Fay                  Berg &amp; Androphy                  120 W. 45th Street, 38th Floor                  New York, NY 10036</p>	<p>Mr. McDermott, Mr. O'Hagen and/or an alternative representative may be called to testify regarding Nord/LB's investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, their understanding of the investment, any interaction with Tilton or other Patriarch employees, and the</p>
<p>David Aniloff                  SEI                  c/o Merri Jo Gillette                  Morgan Lewis                  77 West Wacker Dr.                  Chicago, IL                  60601-5094</p>	<p>Mr. Aniloff may be called to testify regarding SEI's investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, his understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of SEI's investment.</p>
<p>Michael Craig-Scheckman                  REDACTED</p>	<p>Mr. Craig-Scheckman may be called to testify regarding Deer Park's investment in the Zohar Fund(s), communications regarding the investment, relationship with Patriarch, his understanding of the investment, any interaction with Tilton or other Patriarch employees, and the monitoring or assessment of Deer Park's investment.</p>
<p>Any witness identified by Respondent</p>	
<p>Any witness necessary for rebuttal (including but not limited to rebuttal to affirmative defenses)</p>	
<p>Any witness necessary to authenticate a document or the source of certain materials</p>	

G9kdpatc

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 PATRIARCH PARTNERS XV, LLC and  
4 OCTALUNA LLC,

Plaintiffs,

New York, N.Y.

5

v.

16 Civ. 7128(JSR)

6

7 U.S. BANK NATIONAL ASSOCIATION  
8 and MBIA INSURANCE  
9 CORPORATION,

Defendants.

-----x

10

September 20, 2016  
2:25 p.m.

11

12

Before:

13

HON. JED S. RAKOFF,

14

District Judge

15

APPEARANCES

16

GIBSON, DUNN & CRUTCHER LLP  
Attorneys for Plaintiffs

17

BY: RANDY M. MASTRO  
ROBERT F. SERIO  
GABRIEL HERRMANN  
JENNIFER H. REARDEN

18

19

ALSTON & BIRD, LLP  
Attorneys for Defendant  
U.S. Bank National Association

20

BY: MICHAEL E. JOHNSON  
ALEXANDER S. LORENZO

21

22

CADWALADER, WICKERSHAM & TAFT LLP  
Attorneys for Defendant  
MBIA Insurance Corporation

23

BY: JONATHAN M. HOFF

24

25

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1 to get the benefit of whatever discovery there might be for our  
2 brief --

3 THE COURT: Remind me -- let me look at Judge Stein's  
4 order. And since my father was a doctor, I'm able to read  
5 Judge Stein's handwriting.

6 So your brief is due on the 27th of September. Their  
7 reply is on October 2nd. So we could -- October 2nd is a  
8 Sunday, is it not?

9 MR. HOFF: Yes, your Honor.

10 THE COURT: OK. We could have a surreply from you, if  
11 you wished, say, by noon on the 5th, and that would give you  
12 full opportunity to take advantage not only of whatever  
13 discovery had taken place but also of responding to whatever  
14 arguments they had made in their reply.

15 MR. HOFF: True. I, with respect, want to remind the  
16 Court that the first night of Rosh Hashanah is October 2. The  
17 first and second days are October 3 and 4.

18 THE COURT: Well, that's a fair point. I see why we  
19 wound up with October 2nd.

20 So, let's see. First, I think we can adjust these to  
21 accommodate that concern is my point. We can talk about that.  
22 I mean, let's find out from plaintiffs' counsel -- and then  
23 we'll come back to defense counsel -- if you had to narrow down  
24 your request for expedited discovery to what was really  
25 critical in your view and that could reasonably occur in a

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1           The thing is that number 1 is a reasonable first crack  
2 at the documents you want for the underlying case. Now, is  
3 there not a way to narrow that to address solely the issues  
4 that are going to be contested on preliminary injunction?

5           MR. MASTRO: Yes, your Honor. Let me go through some  
6 other requests that I think might limit that some.

7           THE COURT: OK.

8           MR. MASTRO: Although, your Honor, I should say if  
9 they are going to be producing all the documents relating to  
10 the proposed sale, that would include these, you know, that are  
11 covered by 2 and some of the other requests, and they did that  
12 now, they won't have to do it again.

13          THE COURT: Oh, no. They understand that and I  
14 understand that, and that's why I didn't think their  
15 duplication issue was such an issue. But what I'm concerned  
16 at, you have a very broad request like this. Then after you  
17 identify the presumably many documents that fit within that  
18 request, then you're going to have to, if you are defense  
19 counsel, go through them for all sorts of objections that might  
20 be raised, and that is a process that will take a meaningful  
21 amount of time. And it's one thing if they had to do it by  
22 October 27th, or slightly earlier, under the case management,  
23 and it's another thing if they've got to do it in a week or  
24 even less.

25          MR. MASTRO: Understood, your Honor. Let me go

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1 that doesn't address valuation, how are they going to put it in  
2 on reply? That is not addressing what's in the opposition and  
3 they're basically sandbagging us. And they're going to put a  
4 witness on when they have no expert report that talks about it?  
5 That's not fair.

6 So what I think they're doing is they're making the  
7 assertion but it is not supported by any evidence in their  
8 moving papers, and they have the burden. They can do that, and  
9 particularly given the timeframes we're talking about here to  
10 get from here to the hearing is --

11 THE COURT: All right. I'm ready to rule.

12 Both sides have agreed on number 24. Both sides are  
13 agreeable to the scope of number 1, namely, communications  
14 between the trustee and MBIA regarding any potential or actual  
15 sale of the Zohar I collateral, and I agree with plaintiffs'  
16 counsel that that should run from November 2015. But I am  
17 going to strike number 5.

18 When I say "strike" and "narrow," of course all these  
19 things may be the subject of discovery requests during the rest  
20 of the case. We're only talking about discovery for this  
21 expedited purpose.

22 Given that, I don't think we need to disturb the  
23 present briefing schedule. However, if defense counsel,  
24 notwithstanding the Jewish holiday, thinks there's something  
25 that arose from the discovery, and only from the discovery,

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2016, I served true and correct copies of (1) Non-Party MBIA's Non-Party MBIA Insurance Corporation's Memorandum Of Law In Opposition To Respondents' Motion To Compel MBIA To Produce Documents Responsive To Respondents' Subpoena and (2) the Declaration of Jonathan M. Hoff, on the persons and in the manner indicated below:

United States Securities and Exchange Commission  
Office of the Secretary  
Attn: Secretary of the Commission, Brent J. Fields  
100 F Street NE  
Mail Stop 1090  
Washington, DC 20549  
Fax Number: 703-813-9793  
(By Facsimile and original and three copies by Federal Express)

Hon. Judge Carol Fox Foelak  
100 F Street NE  
Mail Stop 2557  
Washington DC 20549  
(By Federal Express)

Dugan Bliss, Esq.  
Division of Enforcement  
Securities and Exchange Commission  
1961 Stout Street, Suite 1700  
Denver, CO 80294  
(By Federal Express)

Randy M. Mastro  
Gibson Dunn Crutcher LLP  
200 Park Ave  
New York, NY 10166  
(By Federal Express)

  
Aaron Buchman



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

**In the Matter of**

**LYNN TILTON;**

**PATRIARCH PARTNERS, LLC;**

**PATRIARCH PARTNERS, VIII, LLC;**

**PATRIARCH PARTNERS, XIV, LLC; AND**

**PATRIARCH PARTNERS XV, LLC,**

**Respondents.**

Administrative Proceeding  
File No. 3-16462

Judge Carol Fox Foelak

**HOFF DECLARATION**

**CADWALADER, WICKERSHAM & TAFT LLP**

200 Liberty Street  
New York, NY 10281

(212) 504-6000

Attorneys for Non-party

MBIA Insurance Corporation