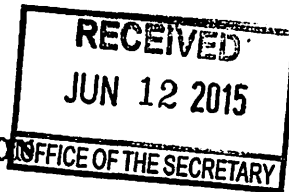


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16462

In the Matter of

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

Respondents.

**DIVISION OF ENFORCEMENT'S
BRIEF IN OPPOSITION TO
RESPONDENTS' MOTION TO HALT
THE DIVISION'S SEARCH FOR A
SUBSTITUTE CASE FOR TRIAL**

The Division of Enforcement ("Division") opposes Respondents' motion to halt the Division's search for a substitute case for trial, and files the below brief in opposition.

INTRODUCTION

In the very title of their motion, Respondents set up a straw man, then proceed to tear it down in their brief. But the Division is not searching for a "substitute case for trial." Rather, the Division is engaged in trial preparation that is not only standard, but was specifically ordered by the Law Judge in response to Respondents' motion for a more definite statement. During the telephonic prehearing conference, the Law Judge ordered that the Division identify, on a rolling basis, the investor witnesses it contacts. And that is exactly what the Division has done. Respondents are essentially seeking reconsideration of an issue already addressed by Your Honor, and that request should be denied.

Respondents are asking for radical relief: banning the Division from contacting any investor witness that it did not previously subpoena during its investigation. There is simply no support in the Rules of Practice – or in any authority whatsoever – supporting such a drastic retraction of the Division’s ability to prepare for trial. Indeed, Respondents rely on only two cases, one of which was overturned on the very point for which they cite it, and the other of which is distinguishable because it involved a new investigation started by the Division to support a separate, existing administrative proceeding. In short, Respondents have no authority supporting their extreme request.

And to be clear: the Division is simply preparing for trial, in order to prove the allegations of the Order Instituting Proceedings (“OIP”), by contacting investor witnesses in order to identify who the Division will subpoena to testify at trial pursuant to Rule 232, as the Division does in virtually all administrative proceedings. Respondents’ motion, which in substance asks to reverse the Law Judge’s prior order and to prevent the Division from preparing for trial, should be denied.

ARGUMENT

1. The Division’s investor witness contacts and disclosures comply with the Law Judge’s prior order.

Respondents’ core complaint is that the Division is doing exactly what it was directed to do by the Law Judge’s order in connection with Respondents’ prior motion for a more definite statement. In that motion, Respondents requested a complete list of investor witnesses who the Division intended to call at trial. In response, the Division argued that Respondents were essentially requesting the Division’s witness list months before it is due. During the telephonic prehearing conference, the Law Judge took argument on Respondents’ motion and issued an order requiring that the Division identify, on a rolling basis, the investor witnesses it contacts. See Exh. 2 (May 7, 2015 Prehearing Telephonic Conference Tr. at 31:15-19). And that is exactly what the

Division has done, identifying 19 investors contacted since the Law Judge's Order. See Exh. 1 (May 29, 2015 letter identifying investor witness contacts).

Respondents now argue that this number – 19 – “goes far beyond what the Respondents or Your Honor could have contemplated at the conference.” Motion at 5. Yet during the conference, Respondents estimated that there were “many dozens” of investors, the Division estimated that the number “may be less than 50,” and the Law Judge hypothesized that the Division may talk to “20 more” investors. See Exh. 2 (May 7, 2015 Prehearing Telephonic Conference Tr. at 21:8-22:1, 31:1-11). Thus, the 19 investor contacts fall squarely within the number contemplated and discussed by the parties and the Law Judge during the prehearing conference. Further, the Division does not anticipate contacting many additional investor witnesses beyond those disclosed to Respondents on May 29, 2015, along with those who testified or were interviewed during the investigation. Put simply, the Division's compliance with the Law Judge's prior order provides no basis for the relief sought by Respondents.

2. The Division is engaged in standard trial preparation, not a “new investigation.”

Respondents disingenuously claim that during the prehearing conference, the Division “revealed for the first time that [it] was reopening its investigation by speaking to a ‘substantial number’ of ‘additional investors’ to determine which among this new crop of investors could be called to testify at trial.” Motion at 4. The Division did no such thing. Rather, the Division revealed what could be a surprise to no one: that it is engaged in standard trial preparation, identifying witnesses to be subpoenaed for trial and speaking to them on a voluntary basis. There is no provision in the SEC's Rules of Practice, nor in any authority cited by the Respondents, stating that the Division may only speak to potential trial witnesses who it previously subpoenaed during its investigation. Respondents' argument that the Law Judge should impose such a rule

represents a radical request that the Law Judge fundamentally and impermissibly restrict the SEC's Rules of Practice. It should therefore be rejected.

Furthermore, the Division is not engaged in an effort to "gather new evidence" for trial. The Division is not issuing any new investigative subpoenas, which would not be allowed under the SEC's Rules of Practice, specifically Rule 230(g), as recognized by the Law Judge. See Exh. 2 (May 7 Tr. at 31:3-4). The investigation of this case ended prior to the issuance of the OIP. The Division is allowed to request issuance of subpoenas in this proceeding under Rule 232, which it will do in the form of testimony subpoenas for certain investor witnesses, requiring their appearance and testimony at the hearing. To the extent that any investor witness voluntarily provides the Division with any document, the Division has agreed to turn over such documents to Respondents, which it has already done in the case of two documents voluntarily provided by one investor witness. See Exh. 3 (June 9, 2015 e-mail providing voluntarily produced documents). Furthermore, the Division is under continuing Brady obligations, and will provide Respondents with any necessary Brady disclosures. The Division has produced certain information received from investor witnesses, pursuant to Rule 230(a)(2), in the interest of complete disclosure, even though the Division has taken no position on whether it constitutes Brady material. See Exh. 4 (June 12, 2015 e-mail providing Rule 230(a)(2) information).

Respondents contend that Rule 230(g) stands for the broader principle that evidence gathering for SEC administrative proceedings must come before the OIP, not after, citing Chief Judge Murray's decision in In re OptionsXpress, Inc., SEC Release No. 703, 2012 WL 8716701, at *3 (May 25, 2012). **But, on reconsideration, the Chief Judge overruled her own decision in that case on the exact point relied upon by Respondents and granted the Division's subpoena request under Rule 232.** In re OptionsXpress, Inc., SEC Release No. 710, 2012 WL 8704501, at

*8 (July 11, 2012). So in that case, the Chief Judge in fact allowed additional evidence gathering by the Division after the OIP issued, under Rule 232. Here, the Division is not seeking a documentary subpoena or to gather new evidence. Rather, it is simply identifying witnesses to subpoena for the hearing by speaking to them on a voluntary basis. Even if that could be interpreted as gathering new evidence, which it is not, the Chief Judge's reconsidered order in OptionsXpress supports the Division's position, as Rule 232 allows the Division to subpoena witnesses (and documents) for the hearing.

The only other decision upon which Respondents rely, In re Morgan Asset Mgmt., Inc., SEC Release 656, 2010 WL 3405823 (July 12, 2010), is distinguishable. The Division in that case instituted a new, separate investigation just days after instituting an OIP to collect additional evidence for the previously initiated proceeding. Id. at *2. Indeed, Division personnel indicated as much in the subject line of an e-mail that read "Morgan Asset—Continuing investigation after institution of proceeding." Id. The Law Judge found that using a new investigation to gather evidence for an existing proceeding is improper. Id. Here, there is no new or separate investigation. The Division's investigation concluded previously, and it is now preparing for trial by identifying trial witnesses. Thus, no authority cited by Respondents supports their motion.

Finally, Respondents' proposition would be patently unfair. Essentially, Respondents would be free to engage in standard trial preparation by talking to whichever potential witnesses they choose, while the Division would be unable to speak (on a voluntary basis) to any witness that had not received a subpoena during the investigation. This one-sided restriction defies basic notions of fairness and common sense.

Ultimately, the Division is engaged in standard trial preparation, which is not precluded by any authority, and which is necessary for any party to prepare for trial. Indeed, Your Honor has

already recognized the propriety of such preparation, noting at the prehearing conference that the Division is simply readying its best case for trial. See Ex. 2 (May 7, 2015 Prehearing Telephonic Conference Tr. at 30:16-31:11.) Respondents' motion should be denied.

3. The Division is not changing theories or seeking a "substitute case for trial."

Respondents most bafflingly argue that the Division is seeking a "substitute case for trial." It is doing no such thing. The Division's allegations are set forth in its OIP, and the Division will seek to prove the truth of those allegations during the hearing in this matter in October. Contrary to Respondents' assertion in their brief (Motion at 3), the investor testimony taken during the investigation of this matter confirms the core allegations of the OIP: that Respondents hid from investors the actual way in which loans were categorized, in a manner inconsistent with the governing indentures (and also made false statements regarding GAAP compliance):

Q. Okay. We've heard from Patriarch that Patriarch decided whether or not to classify an asset as defaulted in Zohar III based on whether or not Patriarch intended to continue to support the portfolio company by loaning it funds, providing management resources, those types of -- those types of factors. Is that something you've ever heard before?

A. No.

Q. And is that information that, as an investor, you would have liked to have known?

A. Yes.

Q. Why is that?

A. In my opinion, it would not -- I guess if Patriarch decided to support or not support a company, would -- and then I guess their decision to do so would then determine whether it's defaulted or not defaulted, I think doesn't fit the definition as stated in the document.

Q. And when you say "the document," you mean the indenture?

A. Yes.

Exh. 5 (Rittle (Rabobank) Tr. at 34:3-24).

Q. We have heard from Patriarch -- from Ms. Tilton specifically that she will categorize a company as a 4 as long as she intends to continue supporting the company by providing funding, management resources, that type of thing. Is that something you have heard before?

A. I have heard claims by Ms. Tilton that she has supported and put personal money in some companies to support the companies. It is hard for us to verify those statements since we don't get the financials of the companies.

Q. Sure.

A. But that's not what the indenture is.

Q. Let me ask my question again. So, she's told us that if she intends to continue providing support to a company, which maybe it's personal money or maybe it's extending more loan facilities and in management resources, that type of thing, then she will consider that company a category 4. And that's how she makes the determination of what is a category 4. Is that something you have ever heard before?

A. I never heard that statement before.

Q. And does that seem consistent with the indenture to you?

A. No.

Exh. 6 (Aldama (Barclays) Tr. at 56:2-57:1).¹

The Division is now preparing for trial by contacting additional investor witnesses who it expects will testify in a manner similar to this prior investor testimony, and consistent with the

¹ Respondents cite Aldama's testimony to support their claim that investors understood that Tilton had discretion to categorize assets "whatever she wants." Motion at 3. But Aldama clarified that testimony moments later, stating Tilton did not in fact have such discretion, even if she acted as though she did:

Let me clarify. The indenture clearly defines what a 4 is, a 3, a 2 and a 1. These are clear definitions of what a 4 is and a clear definition what a 1 is. I don't think she is using that to classify. It is my belief based on how some of the compan[ies] gone from a 4 to 1 from trustee report from November to December there is a jump from 4 to 1. I don't think she's using the internal categories that she's meant to use. I think she's using a lot of discretion. I don't [think] she has the discretion she's just -[.]

Exh. 6 (Aldama (Barclays) Tr. at 50:1-13)

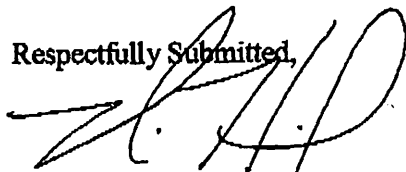
allegations of the OIP. Because the Division alleges that all investors were defrauded in the same way, the Division is not seeking a substitute case, but rather is simply identifying additional investor witnesses who will further support the Division's existing case.

CONCLUSION

For the reasons stated above, Respondents' motion to halt the Division's search for a substitute case for trial should be denied.

Dated: June 12, 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 12th day of June, 2015, in the manner indicated below:

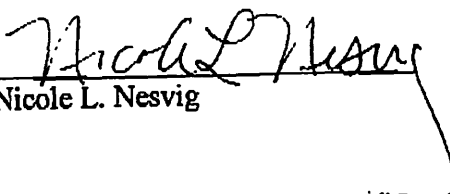
Securities and Exchange Commission
Brent Fields, Secretary
100 F Street, N.E.
Mail Stop 1090
Washington, D.C. 20549
(By Facsimile and original and three copies by UPS)

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

Christopher J. Gunther
David M. Zornow
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



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

DIVISION OF
ENFORCEMENT

Direct Number: (303) 844.1041
Facsimile Number: (303) 297.3629

May 29, 2015

Via E-mail and Overnight Delivery

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

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

Dear Mr. Gunther:

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

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



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

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

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

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

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dugan Bliss', written over a horizontal line.

Dugan Bliss
Senior Trial Counsel

Enclosure
Cc: Nicholas Heinke
Amy Sumner

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of)
) File No. 3-16462
LYNN TILTON,)
PATRIARCH PARTNERS, LLC.)
PATRIARCH PARTNERS VIII, LLC.)
PATRIARCH PARTNERS XIV, LLC, and)
PATRIARCH PARTNERS XV, LLC)

ADMINISTRATIVE PROCEEDINGS - PRE-HEARING CONFERENCE

PAGES: 1 through 35

PLACE: Securities and Exchange Commission

1961 Stout Street

Denver, CO 80294

DATE: Thursday, May 7, 2015

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

BEFORE (via telephone):

CAROL FOX FOELAK, ADMINISTRATIVE LAW JUDGE

Diversified Reporting Services, Inc.

(202) 467-9200

1 APPEARANCES (CONT.)

2
3 On behalf of the Respondents (Via Telephone):

4 SUSAN E. BRUNE, ESQ.

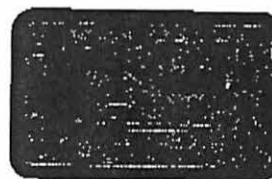
5 MARYANN SUNG, ESQ.

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7 One Battery Park Plaza

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14
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25



1 APPEARANCES:

2
3 On behalf of the Securities and Exchange Commission:

4 DUGAN BLISS, ESQ.

5 AMY SUMNER, ESQ.

6 Division of Enforcement

7 Securities and Exchange Commission

8 1961 Stout Street, Suite 1700

9 Denver, Colorado 80294

10 (303) 844-1041
11

12 On behalf of the Respondents (Via Telephone):

13 CHRISTOPHER J. GUNTHER, ESQ.

14 DAVID M. ZORNOW, ESQ.

15 MATTHEW T. WARREN, ESQ.

16 Skadden, Arps, Slate, Meagher & Flom LLP

17 Four Times Square

18 New York, New York 80290

19 (212) 735-3000
20
21
22
23
24
25

1 PROCEEDINGS

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

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

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

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

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

22 JUDGE FOELAK: Okay. Very good.

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

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

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1 Brune.
 2 JUDGE FOELAK: Okay. Counsel has provided a
 3 suggested schedule today that I guess was mutually agreed
 4 on.
 5 Can I get a guesstimate from counsel as to how
 6 long they expect the hearing might last?
 7 MR. BLISS: Yes, Your Honor. This is Dugan
 8 Bliss on behalf of the Division.
 9 We view this as about a two-week trial that
 10 could extend into three weeks, and so we think it makes
 11 sense to allow between the two- and three-week period for
 12 the hearing.
 13 MR. ZORNOW: Your Honor, it's David Zornow for
 14 the Respondents.
 15 You know, we are still in the process of
 16 digesting the discovery materials and, of course, we
 17 don't know yet, and we will on the schedule, what the
 18 SEC's witness list will look like, but I think generally
 19 speaking, based on what we know now, what Mr. Bliss said
 20 seems right.
 21 JUDGE FOELAK: Okay. I was kind of hoping for
 22 something in August or September, but I suppose counsel
 23 have conflicts and stuff like that.
 24 MR. ZORNOW: Yes, Your Honor. This is David
 25 Zornow.

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1 We have taken into consideration both conflicts
 2 as well as the complexity of the case, the volume of the
 3 material that we have been provided, and I believe there
 4 may even be more material that we have yet to see, so I
 5 think the extra time will make for a more efficient
 6 presentation by both sides.
 7 JUDGE FOELAK: Okay. Where should this hearing
 8 take place? I suppose the people might be coming from
 9 all over, so Washington might be good.
 10 MR. BLISS: Your Honor, this is Dugan Bliss on
 11 behalf of the Division.
 12 I think that a good number of the witnesses
 13 will be located in New York, as well as counsel for the
 14 Respondents and the Respondents themselves.
 15 We were thinking that New York would be the
 16 most logical explanation -- or location. I think we had
 17 that conversation with Respondents' counsel, but I would
 18 welcome their thoughts on that, too.
 19 MR. ZORNOW: Yeah. It's David Zornow again,
 20 Your Honor.
 21 If that -- if you can manage that, obviously,
 22 since we are located in New York and our client is
 23 located in New York, that would be most convenient, but,
 24 of course, your convenience is not unimportant either,
 25 so --

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1 JUDGE FOELAK: Okay. Well, it sort of sounds
 2 like New York.
 3 Let's see. I looked at your schedule and
 4 there's just one thing that I might add, is pre-hearing
 5 briefs can be helpful and, you know, it also eliminates
 6 the need for opening statements and speeds things up.
 7 You might put those in at like October 5th or something
 8 or, you know, right toward the end.
 9 MS. BRUNE: Your Honor, we will certainly
 10 consider that, but it's Respondents' current intention to
 11 make opening statements if Your Honor is prepared to hear
 12 them.
 13 JUDGE FOELAK: Well, certainly. Sure, opening
 14 statements would be okay, if both parties agree on it,
 15 but pre-hearing briefs would be good.
 16 Do you expect to reach any stipulations?
 17 There's probably something you can agree on.
 18 MR. BLISS: Yes, Your Honor. This is Dugan
 19 Bliss on behalf of the Division.
 20 First of all, we do think that a pre-trial
 21 brief makes sense, even with a brief opening argument,
 22 which could also make sense.
 23 And typically we are able to enter into at
 24 least some stipulations in advance of the hearing, so we
 25 could certainly add that as a date to the scheduling

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1 order. We would have no problem with that.
 2 JUDGE FOELAK: Do you want to come up with
 3 date now or --
 4 MR. BLISS: I think from the Division's
 5 perspective, getting all of that done by October 5th, the
 6 date of the pre-trial conference, probably makes sense,
 7 both a pre-hearing brief and any fact stipulations.
 8 MR. ZORNOW: This is David Zornow. I'm sorry
 9 Go ahead.
 10 JUDGE FOELAK: I was just going to comment if
 11 you had an earlier date for stipulations it might drive
 12 you toward making them earlier, but -- Just a thought.
 13 Yes, Mr. Zornow.
 14 MR. ZORNOW: I was going to say what Mr. Dugan
 15 suggested would be fine with us. And, you know, to the
 16 extent that he can present us with stipulations earlier,
 17 perhaps we can get them, you know, squared away even
 18 earlier than that date. If we can stipulate.
 19 JUDGE FOELAK: Yes. It might help with your
 20 witness and exhibit lists.
 21 MR. ZORNOW: Yes.
 22 JUDGE FOELAK: Okay. I notice that you have
 23 put down dates for expert reports, and I gather -- it is
 24 my preference to have expert testimony -- the direct
 25 testimony by means of such expert reports and making the

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1 experts available for cross-examination. I guess that
 2 was what was in your mind?
 3 MR. BLISS: Well, Your Honor -- Dugan Bliss
 4 again on behalf of the Division.
 5 One thing that we have found helpful, and we
 6 propose to the Respondents, is to have -- their reports
 7 would serve as primarily their direct testimony, but that
 8 we would also have the opportunity to put on each expert
 9 for up to 90 minutes. If Your Honor would find that
 10 helpful, we believe it would be helpful.
 11 JUDGE FOELAK: So is the 90 minutes going to
 12 address new things that came up in the rest of the fact
 13 testimony or --
 14 MR. BLISS: No. We would view it more as a
 15 type of summary testimony to hit the high points of what
 16 is in the reports.
 17 Given the -- you know, the nature of their
 18 expert reports, we just think that could be helpful to
 19 you, if you agree.
 20 JUDGE FOELAK: Mr. Zornow, do you have any
 21 comments on that or --
 22 MR. ZORNOW: We would be okay with that, Your
 23 Honor. I guess we can all revisit it once we see what
 24 the reports say, but I think it might well be helpful to
 25 hear some summary testimony from the expert.

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1 JUDGE FOELAK: And 90 minutes does sound like a
 2 lot, but --
 3 MR. BLISS: The Division could certainly agree
 4 to a shorter period. You know, 60 minutes or -- or less,
 5 if Your Honor requests that.
 6 JUDGE FOELAK: Okay. Let's see.
 7 Okay. I thought I might address the
 8 Respondents' motion for a more definite statement.
 9 Okay. The current state of play seems to be
 10 that the Division has disclosed portfolio companies or
 11 entities that they would be presenting evidence about,
 12 and the Respondents' only concern is that they might come
 13 up with more.
 14 So what I was going to suggest is that the list
 15 that they disclose would become final by, let's say,
 16 May 15th so that there wouldn't be any further surprises.
 17 MR. BLISS: Your Honor, this is the Division.
 18 We don't have a present intention of adding companies to
 19 that list, so I think we would be fine with a set date on
 20 that.
 21 JUDGE FOELAK: Okay.
 22 MS. BRUNE: This is Susan Brune. Thank you,
 23 Your Honor.
 24 JUDGE FOELAK: Okay. Then the other thing is
 25 the Respondents, you know, request specificity as to

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1 specific investors.
 2 I sort of got the impression from reading the
 3 OIP that the Division wasn't really focusing on specific
 4 investors but focusing on the disclosures or
 5 nondisclosures that the Respondents allegedly made rather
 6 than, you know, some -- that they were focusing on all
 7 investors rather than some subclass, but maybe I'm wrong
 8 there.
 9 MR. BLISS: Your Honor, this is Dugan Bliss
 10 again on behalf of the Division, and you're exactly
 11 right. The allegations of the OIP indicate that all
 12 investors were defrauded in the same way by disclosures
 13 that were made in exactly the same manner to all of the
 14 investors, and so on that basis we do view that this is a
 15 case where simply all investors were defrauded in the
 16 same way, without some subset being defrauded in any
 17 particularly different way than anyone else.
 18 JUDGE FOELAK: Okay.
 19 MS. BRUNE: Your Honor, this is Susan Brune.
 20 Given the very tight time constraints on this
 21 sort of proceeding, we need to proceed very efficiently.
 22 There is going to be substantial third-party
 23 discovery here to understand the total mix of information
 24 that the investors had available and made use of, and I'd
 25 really rather not burden investors or burden the Court or

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1 burden the Respondents, frankly, by trying to get that
 2 kind of discovery from every conceivable investor.
 3 What we need to know is what are the specific
 4 investors upon which the Division is going to place
 5 reliance.
 6 I note that the Division has said that it will
 7 produce certain handwritten notes of interviews, I
 8 believe, including interviews with investors. I don't
 9 believe we've received those yet, but what we were
 10 thinking is maybe that what the Division is saying, given
 11 the fact that, really, trial is nigh upon us, is that
 12 that's the data set, meaning the transcripts that we've
 13 already received and the handwritten notes that can give
 14 us guidance about which investors they're talking about.
 15 And if we could get the Division to give us
 16 some clarity on that point, then I think the -- this part
 17 of the motion would be pretty much settled and moot.
 18 MR. BLISS: Your Honor, if I may respond to
 19 that. Again, Dugan Bliss on behalf of the Division.
 20 We have already turned over all transcripts of
 21 testimony involving investors. We are in the process of
 22 finalizing our review of handwritten notes and other
 23 notes of interviews with investors, which even though
 24 those can be and have been viewed as work product
 25 protected in other cases, we are going to produce in this

1 case.

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

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

14 MS. BRUNE: Your Honor --

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

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

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

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

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

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

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

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

23 JUDGE FOELAK: Let me ask you something.

24 Don't -- don't the Respondents know who their
25 investors -- or have records of who their investors were

1 or are?

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

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

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

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

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

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

1 copy of our witness list, bottom line.

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

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

18 JUDGE FOELAK: Well, I --

19 MS. BRUNE: Your Honor --

20 JUDGE FOELAK: Yeah, go ahead.

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

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

1 the investors are, although I would respectfully disagree
 2 with Mr. Bliss that the SEC's information about who the
 3 investors are was largely supplied by Patriarch.
 4 We, of course, did our best to comply with
 5 their requests during the investigation, but the fact
 6 remains that there can be no dispute that there are a
 7 large number of potential investors and that we've got a
 8 short time to prepare for trial, and so I'd really like
 9 to see if we can't put some discipline on this out of
 10 really fairness and practicality.
 11 We were able to reach a practical resolution on
 12 the first part about the portfolio companies and I really
 13 think that we should be able to reach a practical
 14 resolution on the investors as well.
 15 And so, respectfully, since the Division seems
 16 unprepared to limit itself to those investors who've been
 17 talked to via interviews and, therefore, I suppose are
 18 reflected in these handwritten notes and those few that
 19 were put on the record, I think we've really got to make
 20 a deadline and one that's relatively near so that we can
 21 embark on the third-party discovery that we need to
 22 embark on and we won't have to waste effort and waste
 23 everybody's time.
 24 The Division's been at this for really almost
 25 forever, and, you know, really, in fairness, we need to

1 institutional investors who are very, very serious
 2 entities and serious people, but that they genuinely did
 3 not have the understanding that supposedly follows from
 4 the contract.
 5 I mean, I think what we've got here is a notion
 6 on the part of those at the Division who are urging this
 7 case about what the contract means, and then we have the
 8 participants in these deals that have been around for a
 9 long, long time and month after month are communicating
 10 and providing very detailed information about how the
 11 contract is being complied with and also about, you know,
 12 how the deals are performing.
 13 And I think it would present a false state of
 14 reality if we were to simply say, Oh, well, it -- this is
 15 exactly what the contract means and we weren't able to
 16 explore how the parties understood the contract to be
 17 constructed and how they were being applied.
 18 And so really it's understanding at some level
 19 of granularity what's actually going on as opposed to
 20 what the Division, I think, is going to argue, you know,
 21 surely must have gone on.
 22 We've got to be real and practical, and that
 23 requires defense investigation. I really do not want to
 24 be in the position of having to present, you know, many
 25 dozens of subpoenas to investors when far fewer would be

1 be able to do our work in the short time efficiently. So
 2 I'd like a very short deadline by which the staff --
 3 JUDGE FOELAK: Okay. I --
 4 MS. BRUNE: -- is going to identify which
 5 investors.
 6 JUDGE FOELAK: Okay. Certainly.
 7 Maybe I'm missing something, but you were
 8 talking as if the total mix of information available to
 9 an individual investor -- or investors as individuals was
 10 at issue, but it doesn't really matter. If you've got
 11 the most knowledgeable and sophisticated investor in the
 12 world that really knows the true facts, it's still no
 13 good for the industry participant to tell them false
 14 things.
 15 MS. BRUNE: Well, obviously not, Your Honor. I
 16 think we can agree on that. But here, what the Division
 17 is doing is it's taking the indenture, the contract, and
 18 it is saying, essentially, you know, any fool would
 19 understand that this is how the indenture actually
 20 worked.
 21 And our contention is, first of all, you know,
 22 it's not the case that any fool would have that
 23 understanding, and that second, the investors did not
 24 have that understanding. And, you know, far from
 25 foolish, they're obviously very sophisticated

1 necessary to prepare this case.
 2 JUDGE FOELAK: Okay. Maybe -- again, maybe I'm
 3 still missing something, but -- and maybe these
 4 allegations are totally false, but they're allegations
 5 along the lines of the loans were really impaired under
 6 GAAP but were carried on the books at the original face
 7 value and may be a little different.
 8 MR. ZORNOW: Your Honor, it's David Zornow. If
 9 I can just jump in here.
 10 When Ms. Brune refers to third-party discovery,
 11 I mean, part of what we will be presenting is that there
 12 was a ton of information that was provided to the
 13 investors, and one of the reasons that we will be seeking
 14 subpoenas is to obtain material showing that the
 15 investors, A, received it, B, understood it, and C,
 16 analyzed it, and I think that that's going to be a
 17 critical part of the defense here.
 18 And so I do think to the extent that we can,
 19 you know, hone in on a subgroup of investors, that's just
 20 going to be very helpful, I think, for everybody.
 21 JUDGE FOELAK: Could I ask you something? Are
 22 the investors in this matter, are they individuals or are
 23 they, you know, hedge funds or institutional entities or
 24 what?
 25 MR. ZORNOW: They are --

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

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

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

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

1 in the process of trying to assemble a list as best as
 2 possible of all of the investors that we could
 3 potentially talk to, and, you know, we're going to be in
 4 the process of talking to them, so I don't know how
 5 helpful it would be to provide now a list of all of the
 6 investors that we've identified.
 7 We could attempt to do that and narrow it by
 8 the time our witness list is due, but at this point we
 9 are going to contact as many investors as we can.
 10 MR. ZORNOW: I'm perplexed, Your Honor. I
 11 don't know what they were doing for the last five years.
 12 You know, we've got to defend these charges now
 13 and we've got to -- we've got to do it by finding out
 14 what these people have in their file so that when they
 15 put them up on the witness stand they have to be
 16 confronted with what they had in their file.
 17 MR. GUNTHER: And just one -- Your Honor, this
 18 is Chris Gunther.
 19 You know, one thing to know and to make note in
 20 the mix here is from the testimony we've already gotten
 21 from the Division, there are witnesses who acknowledge
 22 that they were told by Ms. Tilton exactly how she
 23 categorized the loans consistent with the way that you'll
 24 hear that she did it and the way that's key to the
 25 defense in this case, so it's kind of remarkable that at

1 this stage the Division is saying we're going to try to
 2 find some other witnesses who might say they were misled
 3 by her rather than directly told exactly how she did it.
 4 And if that is the mix we're dealing with,
 5 where we're trying to figure out if there are people who
 6 are going to say something different from what we've
 7 already seen in the testimony we've already gotten, we
 8 have to be prepared to address it.
 9 MR. BLISS: Your Honor, this is Dugan Bliss on
 10 behalf of the Division.
 11 We totally disagree with that characterization
 12 of witness testimony that has occurred up to this point.
 13 We -- I'm certainly not aware of the testimony of any
 14 witness who was told of Ms. Tilton's secret method of
 15 categorization.
 16 And I would also point out that as we speak to
 17 investors, you know, obviously we're under ongoing Brady
 18 obligations that I'm well aware of, and when we speak to
 19 investors, if there is Brady information that comes up,
 20 that will be required to be disclosed as the case goes
 21 along. So we're certainly going to comply with those
 22 obligations, which addresses at least some of those
 23 concerns that Respondents have raised.
 24 MS. BRUNE: Your Honor, to -- I'm sorry.
 25 JUDGE FOELAK: Okay. I was going to suggest,

1 Counsel, surely at some point you're going to stop -- I
 2 mean, you mentioned you're, you know, talking to more
 3 investors. At some point you're going to close the
 4 universe of potential witnesses way before drawing up
 5 your witness list.
 6 Could you provide them with a list of the
 7 investors in that universe like a month from now?
 8 MS. BRUNE: Your Honor, that would be a very
 9 good resolution of this.
 10 I note that if what they're doing is they're
 11 now roaming around looking for investors they didn't find
 12 in their 5-1/2 year investigation -- and I agree with Mr.
 13 Gunther's thoughts that the transcripts we've seen so far
 14 don't really support the Division's allegations -- then
 15 we -- we may well not end up with transcripts of even
 16 what they say, which means that they'll be kind of
 17 surprising and so, therefore, it's important for us to do
 18 that third-party file work that we've talked about to get
 19 ready. So I would really appreciate it if this one-month
 20 deadline were imposed.
 21 MR. BLISS: And, Your Honor, on behalf of the
 22 Division, honestly, one month seems like an incredibly
 23 fast amount of time given the realities of the fact that,
 24 you know, this case will require time. Everyone on our
 25 trial team has substantial other commitments as well, and

1 so I just don't think that that will be done in a month.
 2 JUDGE FOELAK: Okay. What about two months?
 3 MR. BLISS: I think if we're talking about two
 4 months we could make our best efforts to talk to as many
 5 of the investors as we feel necessary within two months.
 6 JUDGE FOELAK: All you have to do is provide
 7 them with the list of the universe of investors. At
 8 least that would narrow it down and that their -- you
 9 know, your witnesses would be a subset of that.
 10 MR. BLISS: We would be happy to do that, Your
 11 Honor.
 12 MR. ZORNOW: Can we compromise at six weeks?
 13 Because they've got to know pretty well. I mean, they
 14 brought an action. It was based on evidence that they
 15 took. They've got to have a pretty good idea. Maybe
 16 they can supplement it two weeks after that if they have
 17 to, but --
 18 MR. BLISS: Your Honor, I do think that we're
 19 going to need, you know, the two months to compile it.
 20 And, look, what we anticipate is that we have
 21 talked to a number of investors either through testimony
 22 or through interviews and we've gotten very similar
 23 information. We anticipate we'll get similar information
 24 from the additional investors, but a two-month window is
 25 something that we would certainly agree to.

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

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

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

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

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

Bliss, Dugan

From: Bliss, Dugan
Sent: Tuesday, June 09, 2015 4:23 PM
To: Christopher.Gunther@skadden.com; Zornow, David M <David.Zornow@skadden.com>
(David.Zornow@skadden.com); sbrune@bruneandrichard.com;
msung@bruneandrichard.com
Cc: Heinke, Nicholas; Sumner, Amy A.
Subject: In the Matter of Patriarch
Attachments: 2015-04-09 Letter from Mayer Brown to Patriarch (3).pdf; 2015-04-24 Letter from
Patriarch to Mayer Brown (3).pdf

Counsel:

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

Thank you,
Dugan

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



From: Heinke, Nicholas
To: Christopher.Gunther@skadden.com; Zornow.David.M.<David.Zornow@skadden.com>
(David.Zornow@skadden.com); sbrune@bruneandrichard.com; msung@bruneandrichard.com
Cc: Sumner.Amy.A.; Bliss.Duqan
Subject: RE: In the Matter of Patriarch
Date: Friday, June 12, 2015 6:44:00 AM

Counsel –the Division has determined to produce certain information it has learned from investors in the Zohar funds that may not be in Respondents’ possession. Specifically, counsel for Panning Capital Management informed the Division that Panning, which purchased its Zohar investment on the secondary market, was primarily focused on the insurance coverage by MBIA in connection with its decision to purchase, and was not particularly focused on the overcollateralization ratio. Counsel for King Street provided the Divisions with similar information.

The Division takes no position as to whether this information constitutes material exculpatory evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1967) and Commission Rule of Practice 230(b)(2), but rather is producing this information pursuant to Commission Rule of Practice 230(a)(2). By disclosing such information, the Division does not waive its right to object to the admission of such information on relevance grounds or otherwise.

Thank you.
Nic

Nicholas P. Heinke
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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. HO-11665
PATRIARCH PARTNERS, L.L.C) D-3350
)

WITNESS: WENDY RUTTLE
PAGES: 1-46
PLACE: Securities and Exchange Commission
 Brookfield Place
 200 Vesey Street
 New York, New York 10281-1022
DATE: April 9, 2014

The above-entitled matter came on for hearing at 2:18 o'clock p.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:
AMY A. SUMNER, ESQ.
Enforcement Division
Securities and Exchange Commission
1801 California Street
Suite 1500
Denver, Colorado 80202

On behalf of the Witness:
ZEICHNER ELLMAN & KRAUSE LLP
1211 Avenue of the Americas
New York, New York 10036
BY: JANTRA VAN ROY, ESQ.
MICHAEL SIMS, ESQ.



PROCEEDINGS

MS. SUMNER: We are on the record at 2:18 on April 9, 2014.

Will you please raise your right hand:
Do you swear to tell the truth, the whole truth and nothing but the truth?

THE WITNESS: Yes.
Whereupon,
WENDY RUTTLE,

appeared as a witness herein and, having been first duly sworn, was examined and testified as follows:

EXAMINATION BY

MS. SUMNER:

Q. Please state and spell your full name for the record.

A. Wendy Lani Ruttle; W-E-N-D-Y L-A-N-I R-U-T-T-L-E.

Q. Ms. Ruttle, my name is Amy Sumner. I'm a member of the staff of the Enforcement Division of the Denver Regional Office of the United States Securities and Exchange Commission. I am also an officer of the Commission for the purposes of this proceeding.

This is an investigation by the United States Securities and Exchange Commission in the

matter of Patriarch Partners to determine whether there have been violations of certain provisions of the Federal Securities Laws. However, the facts developed in this investigation may constitute violations of other federal or state, civil or criminal laws.

Prior to the opening of the record, you were provided with a copy of the Formal Order of Investigation in this matter. It will be available for your examination during the course of this proceeding.

Ms. Ruttle, have you had an opportunity to review the Formal Order?

A. Yes.

Q. Prior to the opening of the record, you were also provided with a copy of the Commission's Supplemental Information Form 1662. A copy of that notice has been previously marked as Exhibit 33.

Ms. Ruttle, have you had an opportunity to read Exhibit 33?

A. Yes.

Q. Do you have any questions concerning this exhibit?

A. No.

Q. Ms. Ruttle, are you represented by

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1 time as you want looking through Exhibit 3, but it
 2 might be more productive for me to point to you what
 3 I'm interested in. If you need to look at more at
 4 that point, feel free, but the definition section is
 5 where I'm looking, and the specific definition is on
 6 page 21 of the indenture.
 7 And there is -- the fourth entry down is
 8 a definition for defaulted investment.
 9 A. Uh-hum.
 10 Q. It says, "Any collateral investment
 11 included in the collateral (other than a current pay
 12 investment):" And then it goes on to say, "With
 13 respect to which a default as to the payment of
 14 principal and/or interest has occurred, but only so
 15 long as such default has not been cured."
 16 I'm not asking you for a legal opinion,
 17 but sitting here today, as you read that, what does
 18 that mean to you?
 19 A. Basically, whatever asset hasn't paid
 20 the principal interest obligation, and has not been
 21 able to do so.
 22 Q. And that means that if the asset has not
 23 paid, it should be -- would be considered a defaulted
 24 investment under this definition?
 25 A. Yes, in my opinion.

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1 you mean the portion that we've just been reading
 2 together?
 3 THE WITNESS: Yes.
 4 Q. And is it important to you that an
 5 asset -- that the assets in Zohar III be valued
 6 correctly?
 7 A. Yes.
 8 Q. And why is that?
 9 A. I think you want to know basically an
 10 accurate picture of the portfolio composition,
 11 because it really will -- is a portrait of what the
 12 risk is to that portfolio. So if you're not valuing
 13 your portfolio correctly, then Rabobank, as the
 14 investor of that debt, doesn't have an accurate
 15 picture of the risk.
 16 Q. What about, is it important to you as an
 17 investor that the assets be appropriately categorized
 18 as either defaulted or not defaulted?
 19 A. Yes.
 20 Q. And why is that?
 21 A. Because it would determine what kind of
 22 haircut is applied to the asset, and then if your
 23 assets are -- if you're counting more assets as
 24 defaulted and they're not, then your investment would
 25 seem more risky.

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1 Q. In your opinion?
 2 A. Yes.
 3 Q. Okay. We've heard from Patriarch that
 4 Patriarch decided whether or not to classify an asset
 5 as defaulted in Zohar III based on whether or not
 6 Patriarch intended to continue to support the
 7 portfolio company by loaning it funds, providing
 8 management resources, those types of -- those types
 9 of factors. Is that something you've ever heard
 10 before?
 11 A. No.
 12 Q. And is that information that, as an
 13 investor, you would have liked to have known?
 14 A. Yes.
 15 Q. Why is that?
 16 A. In my opinion, it would not -- I guess
 17 if Patriarch decided to support or not support a
 18 company, would -- and then I guess their decision to
 19 do so would then determine whether it's defaulted or
 20 not defaulted, I think doesn't fit the definition as
 21 stated in the document.
 22 Q. And when you say "the document," you
 23 mean the indenture?
 24 A. Yes.
 25 MS. VAN ROY: And by "the definition,"

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1 Vice versa, if you would then categorize
 2 assets that were defaulted but categorized them as
 3 collateral, then you would be portraying your
 4 portfolio as stronger and therefore less risky than
 5 it really is.
 6 Q. Based on some of the work that we --
 7 strike that.
 8 Based on some of the information that's
 9 been produced by Patriarch, it appears that in
 10 certain cases, portfolio companies that were not
 11 categorized as defaulted failed to pay large
 12 percentages of interest that were due to Patriarch
 13 under the terms of their loans.
 14 For instance, one company called
 15 "American La France," which was a fire truck
 16 manufacturer, did not pay approximately 81 percent of
 17 the interest it was due -- that was due to Patriarch
 18 between 2008 and 2013. That's across all three Zohar
 19 deals, it's not specific to Zohar III.
 20 But is that information something -- is
 21 that surprising to you, that a company that's not
 22 paying 81 percent of the interest is not listed as
 23 defaulted?
 24 A. Yes.
 25 Q. And why is that?

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1 A. Yes.

2 Q. Was there a specific person at the

3 trustee that you dealt with?

4 A. There was a lot of turnover at the

5 trustee, so the name that comes to mind is Rob

6 Feeney. I think he was the trustee on the deal.

7 Q. What types of -- what types of

8 communications would you have with the trustee?

9 A. Basically asking him whether compliance

10 reports were ready, whether the rating agency

11 confirmation was received, you know, things like

12 that.

13 Q. Did you ever have any interaction or

14 communications with either the rating agencies that

15 rated the Zohar III deal, on the Zohar III?

16 A. No.

17 Q. Ms. Ruttle, I have no further questions

18 at this time. We may however call you again to

19 testify in this investigation. Should this be

20 necessary we will contact your counsel.

21 Ms. Ruttle do you wish to clarify

22 anything or add anything to the statements you've

23 made today?

24 A. No.

25 MS. SUMNER: Counsel, do you wish to ask

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1 any clarifying questions?

2 MS. VAN ROY: No.

3 MS. SUMNER: We are off the record at

4 3:30.

5 (Time noted: 3:30 o'clock p.m.)

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4 WENDY RUTTLE	Ms. Sumner	3

5

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1 SCOPIST'S CERTIFICATE

2

3 I, Rena Farber, hereby certify that

4 the foregoing transcript consisting of 46 pages,

5 is a complete, true and accurate transcript of the

6 investigative hearing, held on Wednesday, April 9,

7 2014, at 3 World Financial Center, New York, New

8 York, in the matter of PATRIARCH PARTNERS, LLC.

9 I further certify that this

10 proceeding was reported by Deborah Moschitto and

11 that the foregoing transcript has been scoped by

12 me.

13

14

15 Rena Farber Date

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
REPORTER'S CERTIFICATE

I, Deborah Moschitto, reporter, hereby certify that the foregoing transcript of 46 pages is a complete, true, and accurate transcript of the testimony indicated, held on Wednesday, April 9, 2014, at 3 World Financial Center, New York, New York, in the matter of

PATRIARCH PARTNERS, LLC.

I further certify that this proceeding was recorded by me and that the foregoing transcript was prepared under my direction.

Deborah Moschitto Date

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PROOFREADER'S CERTIFICATE

In the Matter of: PATRIARCH PARTNERS, L.L.C
Witness: WENDY RUTTLE
File Number: HO-11665/D-3350
Date: APRIL 9, 2014
Location: 3 World Financial Center
 New York, New York

This is to certify that I, Deborah Moschitto, do hereby swear and affirm that the attached proceedings before the United States Securities and Exchange Commission were held according to the record and that this is the original, complete, true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing.

Deborah Moschitto Date

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
In the Matter of:)
) File No.
Patriarch Partners LLC) HO-11665
)

WITNESS: JAIME ALDAMA
PAGES: 1-84
PLACE: 200 Vesey Street,
New York, New York

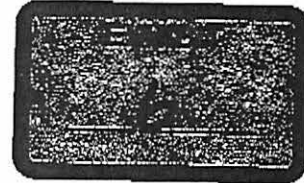
DATE: Thursday, May 1, 2014

The above entitled matter came on
for hearing at 2:05 p.m.

1 APPEARANCES:
2
3 For the SEC:
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5 United States Securities and Exchange Commission
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17 New York, New York 10019
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1 PROCEEDINGS
2 MS. SUMNER: We're on the record at 2:05 on
3 May 1st, 2014.
4 Would you please raise your right hand?
5 (The witness complied.)
6 Do you swear to tell the truth, the whole
7 truth, and nothing but the truth?
8 THE WITNESS: I do.
9 EXAMINATION BY MS. SUMNER:
10 Q. Please state and spell full name for the record.
11 A. Jaime Reyero Aldama; J-A-I-M-E, R-E-Y-E-R-O,
12 A-L-D-A-M-A.
13 Q. Mr. Aldama, my name is Amy Sumner. I'm a member
14 of the staff of the Enforcement Division of the Denver
15 regional office of the United States Securities and
16 Exchange Commission. I'm also an officer of the
17 Commission for the purposes of this proceeding.
18 This is an investigation by the United States
19 Securities and Exchange Commission in the matter of
20 Patriarch Partners, to determine whether there have been
21 violations of certain provisions of the federal
22 securities laws. However, the facts developed in this
23 investigation may constitute violations of other federal
24 or state, civil or criminal laws.
25 Prior to the opening of the record, you were

1 again is the standard in every structured transaction
2 and for investors to have that and rely on that
3 information.

4 Q. Do you have an understanding of when an asset is
5 considered a category 4?

6 A. My understanding is from what the indenture says
7 what a category 4 should be. My understanding is that
8 Lynne can decide what is a category 4 and she has some
9 discretion to what to call 4 whatever she wants.

10 Q. Why do you think she has full discretion?

11 A. I don't think -- my understanding, my belief that
12 it is Lynne and Patriarch that assign the internal
13 ratings to the facility's reference on the portfolio.

14 And there is no mechanic to dispute the categorization.
15 So a defaulted security that has been publicly labelled
16 defaulted she can call that 4 if she wants to. It would
17 be hard for her to justify herself but there is no -- as
18 the manager of the portfolio she has a lot of discretion
19 to use and call whatever she wants. She shouldn't,
20 but --

21 Q. Do you believe that under the terms of the
22 indenture she has the right to label something 4 at her
23 own discretion?

24 A. I don't think so. I just feel that that's what
25 she has been doing for the past few years.

1 seen the number 3 or the number 2. In fact, I don't
2 think I've ever seen the number 3 or number 2 in the
3 trustee reports. I know there is 4 and there is 1 but
4 in between seems to be always a jump.

5 Q. I think that's right.

6 What does that say to you?

7 A. She didn't know that the companies were going to
8 file the day before and she only found out that day or
9 she is not performing her duties as stated in the
10 collateral management agreement.

11 MS. SUMNER: Let's go off the record at
12 3:27. Let's take a short break.

13 (Recess taken.)

14 MS. SUMNER: We are back on the record at
15 3:45.

16 BY MS. SUMNER:

17 Q. During the break, Mr. Aldama, did you have any
18 substantive conversations with the SEC staff about this
19 investigation?

20 A. No.

21 Q. Have you reviewed the indenture for Zohar 1?

22 A. I have at some point reviewed and read some
23 sections on indenture, yes.

24 Q. What parts have you reviewed?

25 A. Basically related to the rights that we would

1 Q. You don't think she has the right to do that
2 necessarily but you think she --

3 (Talking over each other.)

4 A. Let me clarify. The indenture clearly defines
5 what a 4 is, a 3, a 2 and a 1. These are clear
6 definitions of what a 4 is and a clear definition what a
7 1 is. I don't think she is using that to classify. It
8 is my belief based on how some of the company's gone
9 from a 4 to 1 from trustee report from November to
10 December there is a jump from 4 to 1. I don't think
11 she's using the internal categories that she's meant to
12 use. I think she's using a lot of discretion. I don't
13 she has the discretion she's just --

14 Q. What companies are you specifically thinking of?

15 A. There are companies like -- the one that comes to
16 mind is American LaFrance and that was labeled as a
17 category 4 shortly before we had to read in the paper
18 that she has shut down the entire company and news
19 reports seem to imply that a company was doing very bad
20 much earlier and that went from a 4 to a 1.

21 And I don't believe that one day the company is a
22 4 and in good standing and the following day you have to
23 shut down the entire plan. It just seems to me
24 unrealistic. I don't remember specific names, but when
25 you track the recharacterization I don't think I have

1 have under the indenture upon an event of default of the
2 deal and then around the portfolio management. The
3 section that talks about characterization of assets, the
4 section that talks about the rights that Lynne has to
5 extend maturities and so on and so forth.

6 Q. And you testified earlier that you received the
7 trustee reports. Why is that something that you look
8 at? Why do you look at the trustee reports?

9 A. Any structured vehicle that we own, that Barclays
10 or any of the clients that we work owns, the trustee
11 report is the means that the manager has to distribute
12 information on the portfolio to all investors. As
13 opposed to bilateral discussion with the manager, asset
14 managers use the trustee reports as a distribution
15 platform to all investors of the security around the
16 performance of the portfolio, the current levels on the
17 coverage ratios and how the deal is performing.

18 Q. Have you had any discussions with anyone at
19 Natixis about restructuring the Zohar 1 deal?

20 A. We have had over time different discussions at
21 different points in time.

22 Q. Who have you dealt with at Natixis?

23 A. So, mostly Kevin Alexander. But I have had calls
24 and proposals from people at Natixis and over the years
25 that I believe worked for Kevin Alexander, but they're

1 more in change of the structuring of the position.
 2 Q. Kevin Alexander is a lawyer, right?
 3 A. No. He's a trader. I'm not sure if he's
 4 otherwise.
 5 Q. Trader, okay.
 6 A. I think there's another Kevin who could be a
 7 lawyer.
 8 Q. But he's a trader, to your knowledge?
 9 A. Yeah, he is a trader.
 10 Q. And then I just need to circle back a little bit.
 11 On the issue of categorization, do you believe that the
 12 indenture governs the way that the assets should be
 13 classified, the 1 through 4?
 14 A. The indenture does govern the characterization of
 15 assets, yes.
 16 Q. What is your understanding of what a category 4
 17 asset is?
 18 A. In terms of performing assets, a good asset that
 19 doesn't seem to have imminent problems.
 20 Q. When you say no imminent problems, what do you
 21 mean by that?
 22 A. That is not in imminent danger of defaulting.
 23 Q. How do you define "imminent"?
 24 A. The next day. When a company is getting closer
 25 to filing a Chapter 11, experience shows that it's not

1 (Indicating.)
 2 Take whatever time you need to look through
 3 it. The categories are defined in the definition
 4 section on page 10.
 5 A. Okay.
 6 Q. The category 4 specifically contains within the
 7 defined terms current collateral debt obligation and
 8 that takes you to page 23?
 9 A. Okay.
 10 Q. And so, based on your reading of the indenture,
 11 do you believe that if a company has not paid interest
 12 on its loan facilities, it should be considered a
 13 category 4?
 14 A. Repeat the question, sorry.
 15 Q. Sure. If a company has not paid interest owed on
 16 its loan facilities should it be considered a category 4
 17 or if it's not paid a significant amount of interest
 18 owed under its loan facilities?
 19 A. No.
 20 Q. Why is that?
 21 A. Because it is not, I guess, performing, it's not
 22 current under obligations -- that would be page 39 of
 23 noncurrent obligations.
 24 Q. Has anyone from Patriarch ever disclosed to you
 25 how it determines the categorization of the assets?

1 something that happens from month to month. It does
 2 take time and it's a build-up of problems but you can
 3 project this filings over time.
 4 Q. What about a company that is not paying
 5 significant sums of interest but is due on its loans?
 6 Based on your understanding of the indenture would that
 7 type of a company be considered a category 4?
 8 A. Can you repeat the question?
 9 Q. A company that hasn't paid considerable or
 10 significant percentages of interest that are due under
 11 its loans?
 12 A. If the company doesn't pay interest that is due
 13 and payable under the terms of the facility, that would
 14 not be a category 4, no.
 15 Q. And what is your basis for saying that?
 16 A. It is in breach of -- a company that is in breach
 17 of their financial obligations and it's unable to make
 18 payments on amounts that are due and payable. And does
 19 not have the money to cover those amounts. It is a
 20 company that I don't think personally, I don't think
 21 should be considered as performing.
 22 Q. Let's take a look at the indenture and maybe we
 23 can nail it down a little bit better. I'm handing you
 24 what's been previously marked as Exhibit No. 1, a copy
 25 of the Zohar 1 indenture.

1 A. No.
 2 Q. We have heard from Patriarch -- from Ms. Tilton
 3 specifically that she will categorize a company as a 4
 4 as long as she intends to continue supporting the
 5 company by providing funding, management resources, that
 6 type of thing.
 7 Is that something you have heard before?
 8 A. I have heard claims by Ms. Tilton that she has
 9 supported and put personal money in some companies to
 10 support the companies. It is hard for us to verify
 11 those statements since we don't get the financials of
 12 the companies.
 13 Q. Sure.
 14 A. But that's not what the indenture is.
 15 Q. Let me ask my question again. So, she's told us
 16 that if she intends to continue providing support to a
 17 company, which maybe it's personal money or maybe it's
 18 extending more loan facilities and in management
 19 resources, that type of thing, then she will consider
 20 that company a category 4. And that's how she makes the
 21 determination of what is a category 4.
 22 Is that something you have ever heard before?
 23 A. I never heard that statement before.
 24 Q. And does that seem consistent with the indenture
 25 to you?

1 A. No.
 2 Q. I know you weren't at Barclays at the time Zohar
 3 was purchased. but have you ever heard from anyone at
 4 Barclays that the reason they purchased Zohar I was to
 5 purchase Lynne Tilton's expertise?
 6 A. I have not heard that statement before, no.
 7 Q. As an investor, is it important to you that a
 8 collateral manager follow the terms of the indenture?
 9 A. Extremely important, yes.
 10 Q. Why is that?
 11 A. The documents, indenture, collateral and
 12 agreement, offer memorandum, these government documents
 13 are the legal contract that we have with the manager
 14 insofar it comes to managing the CDO or the portfolio.
 15 My experience have shown that managers that tend to
 16 deviate from indenture and interpret their own ratings
 17 tend to be -- end up problematic.
 18 We have had experiences where managers deviate
 19 from the indenture and has significantly deteriorated
 20 our economic position. The reason we have an indenture
 21 is to protect our interest as investors. The moment the
 22 manager starts deviating from indenture it's -- our
 23 interests greatly harmed as holders of the position.
 24 Q. I'm handing you two exhibits that have been
 25 previously marked Exhibits No. 160 and 161.

1 are significant amounts of interest that are owed by
 2 American LaFrance or that were owed by American LaFrance
 3 that were not paid. Can you see where I'm getting
 4 that -- drawing that conclusion?
 5 A. No, I can't clearly see where you're getting that
 6 conclusion.
 7 Q. Is that something that you were aware of?
 8 A. No.
 9 Q. And as an investor, is that something that you
 10 would have wanted to know?
 11 A. Yes. We would have expected for this to be
 12 flagged on the trustee report.
 13 Q. And how would it be flagged?
 14 A. As interest not paid.
 15 Q. Do you think that the fact that American LaFrance
 16 failed to pay a significant amount of its interest and
 17 at times didn't make interest payments for significant
 18 periods, should affect its categorization?
 19 A. Yes.
 20 Q. Why is that?
 21 A. Because it seems obvious from the lack of
 22 payments that they were already in trouble back in 2009
 23 from my report, and they did not have enough resources
 24 to cover the interest that were due and payable and so
 25 it is hard to call it a category 4. It's already

1 (Indicating.)
 2 And these are documents that were produced
 3 to us by Patriarch. They are internal Patriarch
 4 documents. And you are looking at 160 now. And this is
 5 based on what we understand -- this is a spreadsheet
 6 from Patriarch's loan administration system and
 7 basically this shows all the various loan facilities to
 8 one specific portfolio company. These are loans to
 9 American LaFrance.
 10 A. Correct.
 11 Q. And what it shows is the principal balance of the
 12 loan at inception and then accrued interest.
 13 A. I can see that.
 14 Q. And then if you look at 161. This is also from
 15 Patriarch's internal system and what this shows is the
 16 amount of interest that has actually been paid by the
 17 portfolio company or by this portfolio company on the
 18 specific loan facility.
 19 And I just want to make sure that we're comparing
 20 apples to apples so if you look at the first page of the
 21 spreadsheet on 160, it ends in 001, that facility 8511
 22 for Zohar I. And then if you look at the page ending in
 23 002 on Exhibit No. 161 that facility 8511 for Zohar I.
 24 A. Yes.
 25 Q. So what this document is showing is that there

1 failing to pay interest.
 2 Q. Did you review the funds, the Zohar fund
 3 quarterly financial statements or Zohar I's quarterly
 4 financial statements?
 5 A. The quarterly report you mean.
 6 Q. Well, they also file financial statements that
 7 are required under the indenture but they are separate
 8 from the quarterly report?
 9 A. I don't think I have.
 10 Q. Let me show you one and see if it is something
 11 you looked at before.
 12 (Indicating.)
 13 I'm handing you a document that's previously
 14 been marked as Exhibit No. 175; and just take a look at
 15 that and see if you've seen either that one or one
 16 similar to it.
 17 (Indicating.)
 18 A. I don't think I have seen this before.
 19 Q. Have you ever discussed Zohar I's financial
 20 statements with anyone?
 21 A. No.
 22 (Exhibit No. 179 was so marked and received
 23 into evidence.)
 24 BY MS. SUMNER:
 25 Q. Mr. Aldama, I'm handing you a document that's

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1 point. But they're not exclusive. There are more
 2 issues that we found with this position.
 3 With regard to the dates, I may have been very
 4 vague on the dates. I recollect many things. I
 5 recollect what was said but I may be off by months on
 6 those meetings and dates. I think that's my part on
 7 clarification. There may be another one around Lynne
 8 Tilton's intent to buy the position.
 9 I mentioned before throughout the conversation
 10 that she offered 10 cents on the dollar to buy the
 11 position. I don't think that was what she felt the
 12 position was worth at the time. She did caveat that
 13 level with the fact that she didn't really have the
 14 capital to buy our position. So that was as much as she
 15 was willing to pay for the position. But I don't think
 16 that was bid granted and it wasn't a serious bid, I
 17 guess.
 18 MS. SUMNER: Counsel, any clarifying
 19 question?
 20 MR. MICHAELSON: No questions.
 21 MS. SUMNER: We're off the record at 4:47 on
 22 May 1st, 2014.
 23 (Time noted: 4:47 p.m.)
 24
 25

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1
 2 UNITED STATES
 3 SECURITIES AND EXCHANGE COMMISSION
 4 REPORTER'S CERTIFICATE
 5
 6 I, Jeffrey Shapiro, reporter, hereby certify
 7 that the foregoing transcript of 84 pages is a complete,
 8 true, and accurate transcript of the testimony
 9 indicated, held on May 1, 2014, at the Securities and
 10 Exchange Commission, Brookfield Plaza, 200 Vesey Street
 11 New York, New York 10281, in the matter of:
 12 Patriarch Partners, LLC.
 13
 14 I further certify that this proceeding was
 15 recorded by me and that the foregoing transcript was
 16 prepared under my direction.
 17
 18
 19 _____ Date
 20 JEFFREY SHAPIRO
 21
 22
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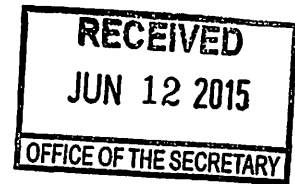
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 2 SCOPIST CERTIFICATE
 3
 4 I, JEFFREY SHAPIRO, hereby certify that the
 5 foregoing transcript consisting of 84 pages is a
 6 complete, true and accurate transcript of the
 7 investigative hearing, held on Thursday, May 1, 2014, at
 8 Brookfield Plaza, 200 Vesey Street, New York, New York
 9 10281, in the matter of Patriarch Partners, LLC.
 10 I further certify that this proceeding was
 11 reported by me and that the foregoing transcript has
 12 been scoped by me.
 13
 14
 15
 16 _____
 17 JEFFREY SHAPIRO Date
 18
 19
 20
 21
 22
 23
 24
 25

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1 PROOFREADER'S CERTIFICATE
 2
 3 In the Matter of: Patriarch Partners, LLC
 4 File Number: HO-11665
 5 Date: May 1, 2014
 6 Location: Brookfield Plaza
 7 200 Vesey Street
 8 New York, New York 10281
 9
 10
 11 This is to certify that I,
 12 JEFFREY SHAPIRO, the undersigned, do hereby swear and
 13 affirm that the attached proceedings before the United
 14 States Securities and Exchange Commission were held
 15 according to the record, and that this is the original,
 16 complete, true and accurate transcript that has been
 17 compared to the reporting or recording accomplished at
 18 the hearing.
 19
 20
 21 _____
 22 JEFFREY SHAPIRO Date
 23
 24
 25



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
1961 STOUT STREET, SUITE 1700
DENVER, COLORADO 80294-1961
303.844.1000



TELECOPIER TRANSMITTAL COVER SHEET

DATE: June 12, 2015
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FROM: Nicholas Heinke, Esq.

Number of Pages
(Including Cover Sheet): 33

RE: In the Matter of Lynn Tilton, et al. (3-16462)

COMMENTS:

Division's Brief In Opposition to Respondents' Motion to Halt the Division's Search for a Substitute Case for Trial

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