UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16462

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In the Matter of

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

Respondents.

DIVISION OF ENFORCEMENT'S RESPONSE IN OPPOSITION TO RESPONDENTS' POST-HEARING BRIEF

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I. INTRODUCTION

Respondents' post-hearing brief, like the defense they put on at the hearing, relies exclusively on the testimony of Tilton and those on her payroll. Tilton says she disclosed everything important to investors. Investors testified – and the evidence showed – that this was not true. And Tilton's response is simply that investors were investing in her "judgment." This assertion is as hubristic as it is false. The evidence at the hearing proved that Respondents, as investment advisers with fiduciary duties to act with the utmost good faith and in the best interest of their clients, failed to do just that. Respondents breached their duties and misled investors. In so doing, Respondents kept more than $200 million that properly belonged to their clients and investors.

The time has come to hold Tilton and her entities responsible for putting their own interests in front of investors' interests, for misleading and hiding the truth from investors, and enriching themselves through their misdeeds.

II. ARGUMENT

A. Tilton's Subjective Categorization Method Was Inconsistent with the Indentures and Was Not Disclosed to Investors.

1. Tilton's Subjective Categorization Method Was Not Disclosed.

Respondents' flawed defense to this action is summed up in their own words in their post-hearing brief: "An investment in Zohar Notes was really an investment in Ms. Tilton's judgment." (Respondents' Brief ("RB") at 15.) This assertion is supported by the testimony of only one person: Tilton herself. Most tellingly, in this case about investor protection, Respondents could not find or call to testify a single investor to corroborate this lawyer-created post-hoc argument. In fact, the actual investors, called by the Division, testified that Tilton herself was not an important factor in their decision to invest in Zohar notes. (Tr. 302:25-303:21; 621:10-622:12.)

Respondents essentially argue that because Tilton had the ability to amend loans, her personal decision to defer hundreds of millions of dollars of interest payments should now be considered an "amendment" and therefore no defaults ever occurred when interest was deferred according to Tilton's subjective belief. These "amendments" are not documented through any written agreement, do not have defined terms, and, critically, do not even amend the underlying loans. Tilton's argument is nonsensical. Tilton was not actually amending the loans when she accepted less than full interest—she was just accepting less than full interest and failing to properly recategorize the loans. The unpaid interest remained due and owing, but was omitted from the Zohar funds' financial statements because the collection of the funds was claimed to be doubtful.

Respondents now bizarrely assert that the Division somehow changed its case theory during the hearing, and only in closing argued that Tilton was not actually amending the loans. (RB at 49.) But this response to Respondents' post-hoc defense was previewed during the Division's opening statement:

> Now, in this proceeding, Ms. Tilton's attorneys will claim that what she was doing all along was using her discretion to amend the loans by conduct, that is, by deferring and accruing interest, to avoid categorizing them as defaulted. . . . While, as is standard in CLOs, Ms. Tilton, acting as the collateral manager, had the discretion to amend loans, this lawyer-created post-hoc justification is irrelevant for at least three reasons, as the evidence will demonstrate. First, **Ms. Tilton was not amending the loans.** And the way we know she was not amending the loans is that she didn't change the terms of the loans or take the steps necessary to effect a formal amendment. Rather, when a portfolio company was unable to pay the amount due on its loan, Ms. Tilton would, in many cases, simply accept less than the amount that was due.

(Tr. 27:6-28:4.) This has been the Division's position from the beginning.

Of course, the Division recognizes that the indentures gave Tilton, as collateral manager, the ability to amend loans – so long as those amendments did not contravene the provisions of the Zohar deals' governing documents. But Respondents seem to believe that disclosure of the collateral manager's abilities is sufficient disclosure of her actual, and drastically different, practices. It is not.

The evidence at the hearing proved that Tilton's **actual practice** – instead of objectively categorizing the funds' loan assets as promised, Tilton manipulated their value by categorizing the assets according to her own subjective, personal belief in whether a distressed company would be able to repay the loan at some indeterminate time in the future – **was not disclosed**. Tilton did not call a single witness to testify that her actual practice was disclosed. Rather, the investor witnesses called by the Division, and the evidence as a whole, show that Tilton did not disclose her subjective categorization method. (Division's Findings of Fact ("FOF") ¶ 321.)

2. The Indentures Did Not Allow Tilton to Use Her Subjective Personal Belief to Manipulate the OC Ratio; Her Post-Hoc "Amendment" Rationalization Fails.

Respondents argue that because the indentures allowed Tilton to amend loans, all of Respondents' actions were copacetic. But Respondents' ignore not only that the evidence showed that Tilton was not, in fact, amending loans, but also that the indentures in no way gave her the ability to manipulate the OC Ratio.

First, as explained in detail in the Division's post-hearing brief ("PHB") (at pp. 48-49), Tilton was not actually amending the loans to the portfolio companies, she was just accepting less than full interest and failing to properly recategorize the loans. Critically, the contemporaneous evidence showed that Tilton herself did not treat these interest deferrals as amendments: she was not amending the credit agreements (the actual loan contracts); she was not notifying the trustee of the purported "amendments" as required; and she was not notifying the ratings agencies as required. (*Id.*) And these steps were important to investors: as a result of not actually treating interest deferrals as amendments, the trustee reports do not reflect any change in the terms of the loans and ratings agencies did not have the opportunity to re-rate the loans, both of which would have been disclosed to and impacted the funds and their investors. (FOF ¶¶ 366-67.) Further, nothing in the indentures requires that only written amendments need to be reported. And critically, Respondents completely ignore that if more than 3% interest is capitalized per annum, a new rating must be applied for. (*Id.*) Tilton did not abide by any of these requirements of amending loans, demonstrating the truth: Tilton was not amending loans when she was simply deciding based on her subjective, personal belief whether to accept less interest than due.

Second, beyond Tilton not treating her interest deferrals as amendments, the indentures did not allow for Tilton to use her subjective personal belief to manipulate the OC Ratio. In the portion of the indentures that defined what constituted a Category 4 or Collateral Investment, the collateral manager was only given discretion to use her "reasonable judgment" to mark performing loans **down** to Category 1, but **not** to categorize delinquent loans as Category 4 or current obligations. (*E.g.*, DX 2 at 9 ("Category 4" definition).) Based on this plain language, an investor would not have understood that the collateral manager could simply keep loans marked as 4 or current based on her subjective belief or judgment, when only a mark down was allowed based on "reasonable judgment." So Tilton's actual practice was undisclosed and contrary to the terms of the indenture (in addition to having the effect of manipulating the OC Ratio (PHB at pp. 18-30)).

3. The Design of the Zohar Deals Does Not Support Respondents' Arguments.

As detailed in the Division's post-hearing brief (at pp. 12-15) and above, the indentures – and thus the design of the Zohar deals – required Respondents to abide by certain objective requirements, most importantly that a loan that failed to make interest payments when due was required to be categorized as defaulted. (*Id.*) Respondents now argue that this reading would have meant that the Zohar deals "would almost doom the strategy" (in other words, caused the OC Ratio to fail) from the beginning. (RB at pp. 55-57.) This nonsensical argument is contradicted by the facts proven at the hearing. For example, there was a large cushion between the starting level of the OC Ratio and the level at which an event of default would be triggered. (FOF ¶ 374.) Indeed, an analysis of loan payment history for Zohar II by the Division's expert Mayer showed that from 2005 through mid-2009, the number of loans that failed to make interest payments was not significant enough to cause the OC Ratio to fail. (FOF ¶ 64.) Though Zohar III began three years later, for its first year, too, the number of loans that failed to make interest payments was not significant enough to cause the OC Ratio to fail. (*Id.*) And the Division does not allege that the OC Ratio ever failed for Zohar I. Finally, Tilton herself confirmed during the hearing that portfolio companies largely did make their interest payments from 2005-2008. (FOF ¶ 278.) This was corroborated by Patriarch's controller, Mr. Mercado, who testified that in 2010 there was an "uptick" in portfolio companies that could not pay their owed interest, there was a reduction in what Patriarch expected to collect, and the amount of unpaid interest began to grow. (FOF ¶ 165.)

Thus, the Division's case is not inconsistent with the terms of the Zohar deals and would not have doomed them from the beginning. To the contrary, the Division's case is based on the plain meaning of the terms of the Zohar deals as disclosed. Tilton's undisclosed subjective categorization method, while improper from the beginning, only caused the OC Ratio to be misstated beginning in mid-2009, years after the inception of Zohar II. And the purported "doom" alleged by Respondents is the very protection disclosed to investors in the indentures: if the OC Ratio were to fall below an initial prescribed level, cash flow would be re-directed *away from* Respondents (by restricting subordinated management fees payable to the collateral manager and preference share distributions to entities Tilton controls) and *toward* the investors (in the form of accelerated payments on their notes). (PHB at pp. 12-15.)

4. Noteholders Did Not Have "Full and Accurate Knowledge of Respondents' Approach."

Respondents brazenly claim that noteholders had "full and accurate knowledge of Respondents' approach." (RB at 62.) This is flatly wrong and betrays an astonishingly cynical view of the exacting obligations of registered investment advisers under the securities laws. The evidence at trial showed that Respondents disclosed bits and pieces of some information, primarily in the trustee reports, but never made the type of full disclosure of their practices required by the securities laws. And the trustee reports did not disclose Tilton's subjective categorization approach. They did not even explicitly disclose that companies categorized as a 4 or current were not making interest payments at the stated rates. Rather, to reach this conclusion, an investor would be required to undertake a multi-step analysis for each loan, on a monthly basis, requiring them to: 1) review the principal balance on a particular loan; 2) review the contractual rate of interest on that loan; 3) review the amount actually paid for the period; and 4) review the category assigned to that loan. (FOF ¶ 282.)

Perhaps most importantly, investors did not expect that they would need to recalculate the reported categories or OC Ratio. (FOF ¶ ¶ 43, 81.) Nor does the law require them to do so. "[T]he law does not put the onus on investors to seek out disclosures; it puts the obligation to provide disclosures on people who solicit and manage investors' money." *In the Matter of ZPR Investment Management, Inc., and Max E. Zavanelli*, SEC Rel. No. 4417 at 6 (June 9, 2016) (quoting *SEC v. Nutmeg Group, LLC*, 162 F. Supp. 3d 754, 780 (N.D. Ill. 2016)). "Full and fair disclosure cannot be achieved through piecemeal release of subsidiary facts which if stated together might provide a sufficient statement of the ultimate fact." *Kennedy v. Tallant*, 710 F.2d 711, 720 (11th Cir. 1983).

Similarly, the evidence showed that Respondents purposefully changed their accrued interest methodology with the specific purpose of concealing the increasing amount of unpaid interest to conceal that portfolio companies were in default, but treated as current for purposes of the OC Ratio. (*See, e.g.*, PHB at pp. 27-30.) This is further evidence that Respondents were not seeking to disclose – and investors did not have – "full and accurate knowledge" of what Respondents were doing.

B. Respondents' Knowledge Is Not Imputed to the Zohar Funds.

1. <u>The Zohar Funds Are Distinct from Respondents.</u>

Under Sections 206 (1) and (2) of the Advisers Act, Respondents' "clients" are the Funds themselves, rather than the Funds' investors.[1] *See Goldstein v. SEC*, 451 F.3d 873, 881-82 (D.C. Cir. 2006). But it does not follow that Tilton and the other Respondents could not have defrauded their Fund clients. In fact, Respondents failed to disclose material information to the Funds, acted adversely to the Funds' interest, and ultimately obtained Fund assets to which they were not entitled and which otherwise would have been available to reduce the Funds' obligations.

The notes for each of the Zohar Funds were issued by two special purpose entities, each with their own boards of directors. (DX 44-46 (Board Minutes for Zohar I, II, and III).) For instance, in the Zohar II transaction, Zohar II 2005-1, Limited, a Cayman Islands company, is the Issuer. The Issuer has its own Board of Directors, located in the Cayman Islands. The Co-Issuer, Zohar II 2005-1, Corp., is a Delaware corporation also with its own board of directors. Together with another entity, the issuers are defined as the Obligors on the Zohar notes. (DX 2 (Zohar II

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[1] Fraud on a fund's investors is specifically addressed by Section 206(4) and Rule 206(4)-8. The fact that Respondents defrauded investors in the Funds does not preclude a claim that the Funds themselves were also defrauded. *See SEC v. Mannion*, 789 F.Supp.2d 1321, 1338 -1339 (N.D. Ga. 2011) ("Defendants are not now free to defraud the Fund on the grounds that the harm is ultimately borne by the investors.").

Indenture at PP050266, PP050272)). Put simply, by defrauding the Funds, Tilton defrauded entities that have a legal existence separate and apart from Tilton, and to whom she owes fiduciary duties. *See Goldstein*, 451 F.3d at 882 ("[F]orm matters in this area of the law because it dictates to whom fiduciary duties are owed."). Respondents should not be permitted to disregard the corporate form that they have chosen in order to avoid charges of fraud. *See U.S. v. Sain*, 141 F.3d 463, 474 (3d Cir. 1998) (rejecting sole shareholder's attempt to avoid criminal liability by claiming he could not have aided and abetted his corporation; "To hold otherwise would allow the controlling stockholder of a corporation to enjoy the benefits of the corporate form, protection from personal liability for corporation's debts, without accepting the burden of assuming criminal responsibility when the individual causes the corporation to commit a crime.").

More recently, the Zohar Funds have sued Patriarch Partners for breach of contract based on alleged failures to provide requested information to the Zohar Funds' new collateral manager, further evidencing the distinct legal nature of the Zohar Funds from Respondents. *See Zohar CDO 2003-1, LLC v. Patriarch Partners, LLC*, No. CA12247 (Del. Ch. filed Apr. 22, 2016); 17 C.F.R. § 201.323 (official notice).

2. <u>Respondents' Interests Were Adverse to the Zohar Funds.</u>

Respondents argue that Tilton and Respondents could not have defrauded the Funds because, as a matter of law, their knowledge is imputed to the Funds. However, as Respondents acknowledge, there is an exception to this imputation rule where the agents' interests are adverse to the principals. As one court has explained:

> The rationale behind imputation of an agent's knowledge to a principal is "the presumption that an agent has discharged his duty to disclose to his principal all material facts coming to his knowledge as to the subject of his agency." This rationale fails when the agent has an adverse interest which, by its very nature, he seeks to conceal from his principal.

Lincoln Nat. Life Ins. Co. v. Snyder, 722 F.Supp.2d 546, 556 (D. Del. 2010) (quoting *KE Property Mgmt., Inc. v. 275 Madison Mgmt. Corp.*, 1993 WL 285900, *5 (Del. Ch. July 21, 1993)). This "adverse interest exception" applies in SEC enforcement actions. *See SEC v. DiBella*, 587 F.3d 553, 568 (2d Cir. 2009) ("We have held that third party disclosure to an agent is not imputed to the principal when the agent is acting adversely to the principal's interest ....") (citation and quotations omitted).

The adverse interest exception, while defined narrowly by some courts, fits this case. Even courts that narrowly define the exception recognize that "the acts and knowledge of the agent [are not imputed to the principal] where the agent engaged in a scheme to defraud [her] principal on [her] own behalf ....." *In re Alphastar Ins. Grp. Ltd.*, 383 B.R. 231, 272 (S.D.N.Y. 2008). Essentially, the exception recognizes that where the principal is the victim of the agent's misconduct, imputation of the agent's knowledge to the principal would be illogical and unjust. *See, e.g., Kirschner v. KPMG LLP*, 938 N.E.2d 941, 952 (N.Y. 2010) (noting the exception is reserved for cases, such as "outright theft or looting or embezzlement," where "the corporation is actually the victim of a scheme undertaken by the agency to benefit himself or a third party personally"). That is what the Division proved here: Respondents' conduct resulted in their receipt of over $200 million in Fund assets that otherwise could have been used by the Funds to reduce their obligations. On these facts, the adverse interest exception applies, and Respondents' knowledge is not imputed to the Funds. *See Symbol Technologies, Inc. v. Deloitte & Touche, LLP*, 888 N.Y.S.2d 538, 543 (N.Y. App. Div. 2009) (adverse interest exception applied where plaintiff alleged senior management committed accounting fraud that resulted in over $100 million in bonuses awarded to them); *cf. Bullmore v. Ernst & Young Cayman Is.*, 861 N.Y.S.2d 578, 582 (N.Y. Sup. Ct. 2008) (finding adverse interest exception did not apply because "this is not a situation where the alleged wrongdoers were stealing from the Fund, such as by diverting funds to themselves ....").

C. This Is Not a Breach of Contract Case.

Respondents argue that this case is a breach of contract case (RB at 67), but it is not. Respondents argue that because certain of the promises and statements they made were in indentures or other documents related to the offer and sale of securities, that the Division's case really sounds in contract. This is absurd. Such an interpretation would eliminate a cause of action for fraud any time investment advisors made fraudulent statements or promises to investors through documents governing the investment, which occurs in nearly every fraud case. Respondents are not charged with breaching any contract, but rather are charged with violating Advisers Act Sections 206(1), (2), and (4), and Rule 206(4)-8. Section 206(1) of the Advisers Act prohibits an investment adviser from "employ[ing] any device, scheme, or artifice to defraud any client or prospective client[,]" and Section 206(2) prohibits an investment adviser from "engag[ing] in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client[.]" Section 206(4) prohibits a registered investment adviser from engaging "in any act, practice, or course of business which is fraudulent, deceptive, or manipulative[,]" including those defined by the Commission. Thus, the Division's case is in no way a breach of contract case.

D. Respondents Breached Their Fiduciary Duties.

1. <u>Respondents Attack a Straw Man of the Division's Fiduciary Duty Case.</u>

Unable to challenge the Division's actual breach of fiduciary duty case, Respondents attack a straw man, asserting that the Division's fiduciary duty case is somehow based on Tilton's ability to amend loans, then claiming that the Division changed theories. Neither is correct. From the beginning (*see* OIP ¶¶ 52-56), the Division alleged, then proved at the hearing, that Respondents did not disclose Tilton's actual practice – instead of objectively categorizing the funds' loan assets as promised, Tilton manipulated their value by categorizing the assets according to her own subjective, personal belief in whether a distressed company would be able to repay the loan at some indeterminate time in the future.

2. Respondents Breached Their Fiduciary Duties; Their Conflict Was Neither Disclosed Nor Waived.

Tilton's approach to categorization gave rise to an unambiguous, significant conflict of interest: she was incentivized to keep loans categorized as a 4 even when borrowers were not paying current interest in order to keep the OC Ratio test passing, to continue to receive subordinated management fees, and to retain control of the funds. Respondents improperly failed to disclose this conflict, which was not hypothetical but actually manifested, and the facts giving rise to it.

As the Supreme Court has explained, a conflict exists where a relationship "might incline a[n] investment adviser—*consciously or unconsciously*—to render advice which was not disinterested." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963) (emphasis added). The evidence is clear that Respondents stood to gain financially from Tilton's categorization practice but did not disclose that practice. The investors who testified had no understanding that Tilton would continue to categorize assets as a Category 4 or Collateral Investment even where contractual interest payments had not been made. In fact, investors testified to precisely the opposite—that they expected a loan to be considered defaulted where it had not paid contractually agreed-upon interest. (FOF ¶¶ 23, 75, 234.) Likewise, the investors had no understanding that Tilton would categorize assets based on her subjective belief in the company's future prospects. (FOF ¶¶ 29, 76, 238.) However, as described above, Tilton was handsomely compensated through this practice—she alone decided when an asset would be categorized as Category 1 or a Defaulted Obligation, and entities she controlled received subordinated management fees and preference share distributions because of her categorization method. The law requires disclosure of such a glaring conflict of interest.

And this conflict of interest was never waived. Although the governing documents did disclose some conflicts of interest inherent in the funds' structure, the specific conflict alleged by the Division—Tilton's approach to categorization—was not disclosed. "A fiduciary cannot avoid its obligation of full disclosure by disclosing a different conflict of interest." *Edgar R. Page and Page One Financial, Inc.*, SEC Rel. No. 4400 at 5, 2016 WL 3030845 at *7 (May 27, 2016).

3. <u>The Division's Breach of Fiduciary Duty Case Is Not a Breach of Contract Case.</u>

Again, this is not a breach of contract case. Although the Collateral Management Agreement defines a standard of care, which the Division alleges that Tilton violated, the fiduciary duties here are additional and owed by law. Profiting from clients on the basis of undisclosed practices is a classic conflict of interest and breach of fiduciary duty, as the Commission has recognized. For instance, the Commission recently found that an adviser violated Section 206 of the Advisers Act by failing to disclose to its clients that it would receive compensation when it made certain investment decisions on behalf of its clients. *Robare Group et al.*, Advisers Act Rel. No. 4566 (November 7, 2016). Similarly, where payments "obtained from client funds" were "used to benefit an investment adviser," the Commission found that such an arrangement must be disclosed pursuant to Section 206. *JS Oliver Capital Management*, Rel. No. 4431 at 7, 21016 WL 3361166 at *8 (June 17, 2016).

4. Respondents Acted in Their Own Interests, Harming the Zohar Funds and Their Investors, and Breaching Their Fiduciary Duties.

Respondents go on at some length about their efforts in managing the Zohar Funds, but ignore a core fact proven at the hearing: each time a preference share distribution or subordinated collateral management fee payment was made from the Zohar Funds to Respondents when the OC Test should have failed if calculated correctly, those funds would not have been paid to Respondents. Zohar II and Zohar III paid $208 million in subordinated collateral management fees and preference share distributions to Respondents during periods in which those funds failed their OC Tests as follows:

Preference Share Distributions and Subordinated Collateral Management Fees Paid During the Period in which Zohar II and Zohar III Failed their OC Ratio Tests

CLO	OC Ratio Test Fail Period	Preference Share Distributions	Subordinated Collateral Manager Fees	Total
Zohar II	Jul 2009 - Dec 2014	$0	$76,012,349	$76,012,349
Zohar III	Jun 2009 - Dec 2014	$41,000,000	$91,403,522	$132,403,522
Total		$41,000,000	$167,415,871	$208,415,871

(FOF ¶¶ 63, 64, 66.)

Simply put, Respondents took over $200 million that belonged to the Zohar Funds and their investors, without disclosing their OC Ratio manipulation (and resulting conflict of interest) that allowed them to do so. Thus, Respondents harmed the Zohar Funds and their investors, and breached their own fiduciary duties in doing so.

E. The Evidence Supports a Finding of Materiality.

The Division detailed the evidence of materiality in its post-hearing brief, including the testimony of investors, who testified that the OC Ratio, Tilton's actual, undisclosed categorization method, and the financial statement disclosures at issue in this case were material to them. (PHB at pp. 39-40.) The standard for materiality under the Advisers Act is whether there is a substantial likelihood that a reasonable investor would have considered the information important. Amendments to Form ADV, Advisers Act Rel. No. 3060 (2010) n. 35 (*citing Steadman,* 967 F.2d at 643); *see also Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). To put a finer point on the facts proven during the hearing: a reasonable investor would – and actual investors did – plainly find it important that a collateral manager was manipulating the OC Ratio according to her subjective personal belief, while hiding the truth through false disclosures including those made in the financial statements, all while keeping over $200 million that should have gone to the funds and their investors. (PHB at pp. 39-40.) Thus, the Division proved materiality.

F. Respondents' Conduct was Intentional, Reckless, or at Least Negligent.

The Division extensively explained the evidence of intent, recklessness, and negligence in its post-hearing brief. (PHB at pp. 40-44.) In sum, the evidence showed that Respondents knew (or at least had information showing) what the indentures required with respect to categorization, that hundreds of millions of dollars of interest was unpaid, and that the collection of this interest was "doubtful." (*Id.*) Yet they continued to categorize these loans in the highest category. (*Id.*) Respondents also changed the accrued interest methodology for the specific purposes of concealing the increasing amount of unpaid interest, which would have contradicted Respondents' categorization. (*Id.* at pp. 27-30.) Remarkably, Respondents also claimed that they were fully "transparent" with investors even though the evidence plainly belies such a claim. (*Id.* at pp. 40-44.) In fact, Tilton hid her self-enriching subjective categorization method from investors. (*Id.*) Particularly in the context of an investment adviser with fiduciary duties and obligations of candor, the record evidence shows that Respondents acted with scienter or, at a minimum, negligently. (*Id.*)

As for the financial statements, Tilton personally signed the officer's certificate verifying the financial statements for the Zohar funds were prepared in accordance with U.S. GAAP. (*Id.*) Patriarch took responsibility for the financial statements. (*Id.*) But Tilton and Respondents did not analyze fair value or account for loan impairment in the manner they claimed to in the financial statement disclosures. (*Id.*) Despite her knowledge of the financial condition of the Portfolio Companies and Patriarch's actual accounting practices, Tilton allowed the financial statements to be published without anyone conducting loan impairment analyses and while including false and misleading disclosures relating to the fair value of the loan assets. (*Id.*) She certified the financial statements, knowing that she applied her own subjective standards for impairment without regard to standards prescribed by U.S. GAAP. (*Id.*) These intentional and deceptive acts are strong evidence of Respondents' scienter. (*Id.*)

G. The Division Has Proven All Necessary Elements of the Financial Statements Case.

As detailed in the Division's post-hearing brief, the Division has proven that Respondents filed false and misleading financial statements by failing to conduct a U.S. GAAP-compliant impairment analysis, and Patriarch's failing to follow its disclosed policies with respect to both impairment and fair value analyses.[2] Moreover, as also articulated in the post-hearing brief, the Division has also proven that Respondents are not entitled to a reliance defense, Respondents acted with scienter, and that the financial statements are material to investors.

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[2] Respondents' attempted reliance on *Fait v. Regions Financial Corp.*, 655 F.3d 105 (2d. Cir. 2011) is misplaced. Whether or not the financial statements comply with GAAP is not a statement of opinion, but rather is one of fact. *See Omnicare, Inc. v. Laborers District Council Const. Pens. Fund*, 135 S.Ct. 1318, 1325 (2015) ("[A] statement of fact . . . expresses certainty about a thing, whereas a statement of opinion . . .does not."). Affirmative statements that processes have been followed—such as impairment and fair value analyses are also statements of fact.

H. The Financial Statements Contained Material Misrepresentations.

1. Fair Value

The Division has proven that Respondents did not follow the disclosed method for assessing fair value of the loan assets that appeared in the footnotes to the Zohar fund financial statements.[3]

From the outset, Patriarch recorded its loan assets at cost, and considered that to also be the fair value of those assets. (Tr. 1177:4-10.) Prior to 2015, Patriarch disclosed in the footnotes to its financial statements that the fair value of the loan assets is approximately equal to their carrying value, and that "fair values are based on estimates using present value of anticipated future collections or other valuation techniques." (DX 10-12.) Beginning in 2015, the financial statements disclosed the practice that Patriarch had been following all along: loan assets are recorded at cost. The reference to fair value was removed completely. *Id.*

It is axiomatic that cost and fair value are not the same thing. (FOF ¶ 150.) The problem with Patriarch's disclosure is that Patriarch did not engage in the analysis that it said it did with respect to fair value. Indeed, the Division's accounting expert, Dr. Henning, found no evidence that Patriarch had conducted a U.S. GAAP-compliant fair value analysis at all. (FOF, ¶ 188.)

Although Patriarch introduced certain spreadsheets at the hearing that it now claims show that it did perform such an analysis, Respondents have clearly manufactured this argument after the fact in an attempt to justify their misleading disclosures. Patriarch's initial accounting expert, Dr. Dietrich, made no finding that Patriarch had engaged in a U.S. GAAP-compliant fair value analysis. (RX 22.) Moreover, Tilton testified in the investigation that the fair value of an asset was cost, as long as that asset was classified as a Category 4, contradicting her later testimony that she

[3]The footnotes are an integral part of the Zohar fund financial statements.

performed a contemporaneous fair value analysis. (DX 219 at Exh. 5, 88:19-21.) Tellingly, in her two different testimony sessions, Tilton made no reference to the alleged fair value analysis that, at the hearing, she claimed to have conducted for financial statement purposes. In addition, these documents upon which Respondents rely, were not placed on Respondents' exhibit list until a week before trial. Importantly, Mercado testified that he, the most senior accountant at Patriarch, had no involvement in evaluating the fair value of the portfolio on an aggregate basis. (Tr: 1273:21-24.) Mercado "understands" that Tilton was performing a fair value analysis, but has no actual knowledge of that process. (Tr: 1326:24-1327:3.) The accounting department's lack of involvement in any fair value analysis—a critical piece of the financial statements—also supports the idea that this "analysis" was actually an argument created for purposes of the hearing.

Further, Patriarch's changes to the Zohar financials are telling, as they removed language that Patriarch was performing a fair value analysis on the Zohar funds' loan assets. In reality, this was always their practice. Importantly, Respondents' expert could not explain why the new disclosures omitted any reference to a fair value analysis if Patriarch was in fact engaging in such an analysis.

2. <u>Impairment</u>

a. Loan Impairment Policies and Practices Did Not Comply with U.S. GAAP.

Respondents' concede that Patriarch's approach to impairment was "event-driven." (RB at 92.) That is, Patriarch waited for a definitive event to take place before it wrote off a loan asset or a portion of a loan asset. In other words, Patriarch did not write down the value of its assets as they deteriorated, but instead waited until it was absolutely clear that those assets (or some portion of those assets) had no value.[4] As the record evidence established, this practice has absolutely no foundation in U.S. GAAP. Indeed, once Patriarch changed the footnotes to its financial statements in 2015 to reflect the actual impairment practice it had followed all along, the financial statements stated that "[a] collateral debt obligation is not considered impaired, and the carrying value of the loans is not reduced until either an event or sale occur such and to the extent that, in the judgment of the collateral manager, principal losses can be conclusively determined." (DX 10-12). This is not what U.S. GAAP requires, and is inconsistent with Patriarch's previously-disclosed method.[5] Instead, U.S. GAAP requires that an asset be measured for impairment loss when it is probable that a creditor will be unable to collect all amounts due according to the contract with the debtor. (FOF ¶ 179.) Patriarch's own accounting expert admitted the elementary proposition that "reasonably probable" and "conclusively determined" do not necessarily mean the same thing. (Tr. 3216:24-3217:3.) Tellingly, he also admitted that to limit impairment analysis to only definitive events is improper under U.S. GAAP. (Tr. 3254:19-23; 3256:11-18). But this is precisely what Respondents did.

Respondents' accounting expert argues that Patriarch's (admittedly improper) approach to impairment is somehow acceptable because Patriarch evaluated a portfolio company's "enterprise value" on at least an annual basis. (RB at 90.) This approach, even if it were followed by Patriarch, does not comport with U.S. GAAP. U.S. GAAP requires that a loan be evaluated for impairment when indicators of impairment exist. Dr. Henning noted several indicators of impairment, including instances where loans are delinquent in their interest payments. (DX 18 at

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[4] Respondents' argument that Patriarch "wrote down loans" is wholly disingenuous.

[5] Prior to 2015, Patriarch's financial statements disclosed that it would analyze "anticipated future collections" to determine if a loan was impaired. (DX 10-12.)

12, FOF ¶ 179.) Moreover, U.S. GAAP requires an evaluation of conditions as of the balance sheet date, in each reporting period. (DX 21 at 5, FOF ¶ 198.) The "enterprise value" analysis relied on by Respondents relates to a portfolio company's assumed value based on **future** business conditions, not the actual financial condition and economic environment in existence as of the balance sheet date. Respondents have not challenged Dr. Henning's opinion that asset impairment should be performed **as of** the balance sheet date on assets that are actually recorded on the balance sheet. (FOF ¶ 198.)

Respondents' strained attempt to exonerate themselves from their illicit practice of not evaluating loans for impairment speaks volumes. Respondents argue that the Division "falsely alleged that 'Patriarch does not write down loans for impairment purposes but, instead, writes them off if and when Tilton determines that she will no longer support a Portfolio Company,'" and "[t]he evidence adduced at trial established that under its impairment policy, Patriarch both wrote down loans when underperforming assets needed to be restructured and wrote off loans upon liquidation." (RB at p. 91.) Patriarch did not write down loans as a result of an impairment analysis – they only wrote off loans or portions of loans once a definitive event occurred – and their claims to the contrary are highly disingenuous.

As this Court recognized, "[t]here's a difference between a write-down and a write-off. They may both be impairments, but one of them is much more a hundred percent." (Tr. 1160:8-11.) Mr. Mercado unequivocally testified to this same concept – a "write-down and write-off are different," and that there was "no precedent... for writing down assets. [Patriarch's] policy [wa]s to write off assets." (Tr. 1160:13-1161:2). Mr. Mercado could not have been more clear on this point:

Q	How long had you been working at Patriarch by this point?

A About -- almost two years.

Q And Patriarch didn't write down loans as far as you knew before this?

A That's correct.

Q And they didn't write down loans after this?

A That's correct.

(Tr. 1161:11-1161:18). Rather than acknowledging this, Respondents attempt to argue that they were in fact writing down loans through citation to testimony of their accounting expert, Mr. Lundelius: "[It] is clear to me that they . . . were not locked in on any one concept of a write down or if it is a write off . . . there was actual evidence of both actual write-downs and write-offs." (Tr. 3248:10-3249:6.); (FOF ¶ 179.)[6] Mr. Lundelius's testimony on this point was troubling because he was undoubtedly aware, just as the Court recognized, there is a difference between a write-down and write-off, but nonetheless attempted to provide testimony that he saw write-downs. On cross-examination, Mr. Lundelius admitted that although he testified that he saw write-downs, he actually only saw write-offs, some of which were for less than the full amount of the loan:

> "Q: Well, a couple things. One, when you say you saw some write-downs, you mean writing off certain loans but not writing off the entire loan, right?
>
> A: Yes."

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[6] Mr. Lundelius subsequently used the term "write down," but again admitted that he meant writing off a portion of the loan. "Q Again, you used the word write-down, but what you meant by that was just writing off, but writing off only a portion of the loan, not the entire loan, correct? A That's correct." (Tr. 3249:7-11.)

(Tr. 3248:14-17.) Put simply, Patriarch did not write down loans for impairment purposes, but rather waited for a definitive event to take place before it wrote off a loan asset or a portion of a loan asset. This is inconsistent with U.S. GAAP.

b. Patriarch Did Not Follow Its Disclosed Impairment Practice.

Patriarch attempts to justify its impairment method and shoehorn it in to the method disclosed prior to 2015 by pointing to "credit templates" that it claims applied a discounted cash flow analysis to estimate the value of future collections. Tellingly, Patriarch's original accounting expert, Dr. Dietrich, made no finding that such an analysis took place in his expert report. Moreover, Patriarch's replacement expert, Mr. Lundelius, similarly makes no claim that a discounted cash flow analysis is reflected in those credit templates. Indeed, Dr. Henning, the Division's accounting expert reviewed a credit template and noted that it did not analyze anticipated future collections on the loans at all. (DX 21 at 11.)[7] Moreover, the credit template admitted as an exhibit does not show a discounted cash flow analysis. (RX 561.)

In fact, there is no evidence that the credit templates were used for impairment purposes. Mercado, Patriarch's highest-ranking accounting staff member and a CPA, did not claim that he used the credit templates in any way—merely that he would be told if information in the templates impacted accounting somehow. (Tr. 1253:23-25.) Mercado was very clear that Patriarch's policy has been, since the inception of the funds, that a loan is not impaired unless an event or sale occurs from which a loss can be conclusively determined. (FOF ¶ 133.) It strains credulity to believe that, for multiple years, Patriarch's chief accounting officer had no involvement in—or real

[7] Contrary to Respondents' assertions, Dr. Henning did not ignore the credit templates in coming to the opinion that Patriarch had not performed a GAAP-compliant impairment analysis. *See* DX 21 at 11.

knowledge of—the alleged alternative impairment analysis that Respondents claim took place consistent with their disclosed policy.

c. Accrued Interest Evidence Supports the Division's Allegations.

Respondents cannot explain away the inconsistency between their "amendment" arguments for OC test purposes (*i.e.* loans were supposedly amended, thus interest was no longer due and owing, yet was believed to be collectible at some undetermined time in the future) and their treatment of accrued interest for financial statement purposes (*i.e.* the interest from supposedly amended loans was actually due and owing but was so unlikely to be collected that it was not recorded on the balance sheet). Respondents cannot explain why they changed the accrued interest methodology in order to make the figure appear consistent with past balance sheets if they were not attempting to conceal the ever increasing amount of unpaid interest. Respondents also cannot explain how they could acknowledge large amounts of interest were unlikely to be collected, but yet perform no impairment analysis on the principal of those very same loans. Thus, Respondents distort the Division's presentation of evidence on the issue of accrued interest and create a straw man, claiming to rebut a Division argument that Patriarch's accrued interest policy was not U.S. GAAP-compliant. The Division has never made any such argument.

Indeed, the Division acknowledges it may be appropriate to discontinue accruing interest when the collection of such interest is considered unlikely. Patriarch's internal accounting records made clear – and the Division does not dispute – that the vast majority of interest considered to be due and owing was unlikely to be collected. This fact demonstrates the inherent contradiction in many of Respondents' arguments, and evidences their intent to manipulate the OC Ratio: Respondents acknowledged there was interest due and owing; Respondents acknowledged the vast majority of this interest due and owing was unlikely to be collected; yet for purposes of the OC

Ratio these same portfolio companies that could not make their interest payments (and were believed to be doubtful of doing so) were represented to be current on their interest payments and expected to pay their principal.

Moreover, as explained in the Division's Post-Hearing Brief at § III.H, Respondents' treatment of accrued interest is at odds with their lawyer-created post-hoc "amendment" argument that loans were being amended (i.e. they were no longer technically due so there was no technical default), and that Patriarch ultimately believed it would obtain loan repayment from the portfolio companies, thereby justifying the "current" status used in calculation of the OC Ratio.[8] The testimony and evidence was uncontroverted that large amounts of interest were due, the bulk of which Patriarch did not expect to collect. Respondents' treatment of accrued interest is also at odds with their arguments that they were not concealing missed interest payments from investors, as they specifically changed their accrued interest methodology to do exactly that. The change in methodology was done for the specific purpose of creating an accrued interest figure that matched prior quarters. There was no reason to make this figure look like prior quarters other than to conceal the increasing amount of unpaid interest. Respondents' treatment of accrued interest is also at odds with their financial statement disclosures. Respondents acknowledged the unlikely

[8] In fact, during trial, Respondents recognized their treatment of accrued interest contradicted their "amendment" argument. They attempted to make their arguments compatible, using heavily leading questions, by attempting to elicit testimony from Mr. Mercado that accrued interest appearing on the balance sheet was actually the portion of interest Patriarch "agreed to receive." Mr. Mercado, repeatedly, corrected Respondents' attorney and testified the accrued interest amounts on the balance sheet were *not* what Patriarch "agreed to receive," but rather were what Patriarch "expected to collect." (Tr. 1229:1-1232:24.) Put another way, Mr. Mercado made clear that no amendments to the loans had occurred, and that accrued interest had nothing to do with what Patriarch "agreed to receive." Rather, accrued interest on the balance sheet reflects the amount of interest due and owing that Patriarch expected to collect. The vast majority of interest due and owing was not placed on the balance sheet as accrued interest because, as Patriarch acknowledged, it was unlikely to be collected.

collection of interest while failing to consider impairment of the principal on those very same loans. Notably, this had the similar effect of making the Zohar funds' assets appear to be performing well, as the bulk of the unpaid interest was omitted from the balance sheet because it was deemed uncollectible, while the related loan principal remained unchanged because Respondents performed no impairment analysis.

Put simply, the Division presented this evidence, as Respondents well know, as further proof that Respondents deliberately misled investors regarding the financial condition of the Zohar Funds and their manipulation of the OC Ratio. It is most telling that Respondents are unable to rebut this evidence and instead engage in a straw man argument about U.S. GAAP-compliance. Given that the entire OIP revolves around misreporting of the values of the Zohar fund assets in various places, and given that Respondents' arguments defending this case contradict their own treatment of accrued interest, there is simply no argument that this evidence is outside the scope of the proceedings.

I. Respondents Are Not Entitled to a Reliance Defense.

As already discussed in the Division's Post Hearing Brief at § IV.G.4, Respondents are not entitled to rely on an advice of professionals defense in this case. The circumstances under which a reliance defense are available are very specific, and do not apply here. "To establish the defense, the defendant should show that he/she/it made a complete disclosure, sought the advice as to the appropriateness of the challenged conduct, received advice that the conduct was appropriate, and relied on that advice in good faith." *SEC. v. Caserta*, 75 F. Supp. 2d 79, 94 (E.D.N.Y. 1999) (citing cases). "[G]ood faith reliance" on the advice of professionals is "not a complete defense, but only one factor for consideration." *Markowski v. SEC*, 34 F.3d 99, 105 (2d Cir. 1994).

1. Respondents Did Not Make a Complete Disclosure.

Berlant does not know what, if anything, Patriarch did to analyze the impairment of the Zohar Funds loan assets. That was outside the scope of his engagement. (FOF ¶ 101.) Berlant was never asked to perform an impairment analysis. *Id.* Likewise, Berlant does not know what, if anything, Patriarch did to evaluate the fair value of the Zohar funds' loan assets because that, too, was outside the scope of his engagement. (FOF ¶ 105.) Obviously, there was not a complete disclosure of Patriarch's practices to Berlant if he is not even aware of what their practices were.

In fact, there is no evidence that would suggest that Berlant was involved in either impairment or fair value analysis for the Zohar fund financial statements. Moreover, Berlant did not receive, and Respondents do not claim that that they provided him, the credit templates or the spreadsheets that they assert prove their compliance with disclosed accounting processes for fair value and impairment, respectively. Instead, the only documents Berlant received were the Patriarch-prepared financial statements and Patriarch's internally-prepared work papers (a day or two before they were due back), which do not reflect either a fair value or impairment analysis. *See* RX 31-33.

2. Respondents Did Not Seek Advice Related to the Challenged Conduct.

Respondents claim that they sought relevant advice from Berlant because he allegedly had some input into an accounting manual for a fund that predated the Zohar funds. (RB at 97).[9]

[9] This manual, RX 1766, that Patriarch now claims was so critical to its accounting procedures for the Zohar Funds, was not identified as a potential exhibit by Respondents prior to the hearing. Moreover, Mercado was not familiar with this manual, as he testified that Patriarch had no accounting manual containing policies and procedures for either loan impairment or fair value analyses. (FOF ¶ 132.)

Berlant had no recollection of seeing this document, reviewing or commenting on this document, or providing the language contained therein. (Tr. 962:21-963:21.)

Respondents do not point to any further evidence other than generic emails requesting approval of the Zohar fund financial statements, to establish that they sought advice from Berlant on either impairment analysis, or Patriarch's disclosures relating to impairment or fair value. In fact, Mercado, Patriarch's own accountant, knew that Berlant was not ensuring compliance with U.S. GAAP, but was only making sure that the financial statements reflected what was contained in Patriarch's work papers. (FOF ¶¶ 138, 139.) Moreover, when Patriarch decided to change its disclosures relating to these items in 2015, no one from Patriarch consulted with Berlant, asked his advice about the propriety of its policies, or indicated that he or she believed the supposed "advice" Berlant had previously provided was incorrect. (FOF ¶¶ 112-117). In fact, no one at Patriarch even mentioned the financial statement changes to Berlant prior to his receiving a financial statement with the language removing the notion of U.S. GAAP compliance and altering the description of Patriarch's accounting practices. (FOF ¶ 112.)

3. Respondents Did Not Receive Advice that the Challenged Conduct Was Appropriate.

As noted above, Berlant did not even know what process Patriarch was following with respect to impairment and fair value. Accordingly, he could not have provided advice that Patriarch's processes or disclosures of those processes were appropriate. Importantly, Berlant did not tell anyone at Patriarch that he was evaluating the Zohar fund loan assets for impairment or fair value. (FOF ¶¶ 102, 105-106).

4. Respondents Did Not Rely on Advice from Anchin in Good Faith.

Because Anchin did not provide the advice necessary to underlie a reliance defense, Respondents cannot establish this defense. Respondents' argument basically boils down to the idea that because Berlant provided services to Patriarch over a long period of time, it was reasonable for Tilton to assume that Berlant was ensuring the financial statements complied with U.S. GAAP ("I would believe that if [Anchin] didn't think that these financial statements were in accordance with GAAP, then they would have advised me."). (RB at 99.) But a retrospective litigation-driven assumption that an accountant is performing certain procedures cannot form the basis of a reliance defense.

Tilton knew the limited nature of Berlant's engagement and testified in both the investigation and the hearing that she knew Berlant was not auditing or reviewing the financial statements and that there was not time for such a procedure given the indenture requirements:

> Q Are the financial statements audited by someone outside of Patriarch?
> A They're looked -- I mean my accountants would not use the word "audit." These have to go out within seven days after the end of an accounting period. Okay. So you have seven days from the time of the end of the trustee report to produce these financial statements.
> We do send them to the outside accounting firm, Angen Block and Angen [sic] . . . I would say "looks at," because if I say "review," there's a definition of review.

(DX 219, Exh. 5 90:2-13.) *See also* FOF ¶ 299. Tilton also admitted that she knew Anchin was not responsible for the contents of the financial statements. (Tr. 1957:23-25.)

Respondents try to discount the importance of the engagement letter, signed by Tilton, that clearly states that Berlant's firm was not engaging in any type of U.S. GAAP review. (DX 34.) However, the engagement letter is very clear about where the responsibilities of each party lie with respect to the financial statements. (FOF ¶ 94.) If Patriarch had wanted to ensure that Anchin was reviewing the financial statements for GAAP-compliance or Patriarch's own practices to ensure they followed disclosed policies, it should have engaged Anchin to actually do so.

5. Tilton Did Not Rely on Internal Accountants.

Respondents also argue that in signing the certifications, Tilton relied on Mercado and other internal accountants. Although the accounting department did populate the financial statements, Mercado clearly testified that his role was limited. He was the most senior accountant at Patriarch and a CPA, but was not involved in the fair value or impairment analyses. (FOF ¶¶ 143, 152.)

Instead, Tilton decided when to write off an asset. (FOF ¶ 143). Tilton also conducted the alleged "fair value" analysis: "[W]hat I did from quarter to quarter when I looked at the carrying value of the assets, is I compared it to the overall carrying value on the trustee report as well as the discounted cash flow fair market value analysis that I was doing." (Tr. 1962:20-24.) It is difficult to reconcile Tilton's argument that she relied on internal accountants with the claim that she was the one performing accounting functions—at most one of those propositions is true. Moreover, the accountants were not even provided with the credit agreements or spreadsheets upon which the alleged impairment and fair value analyses were based.

J. Respondents Acted Intentionally, Recklessly, or at Least Negligently With Respect To Patriarch's Financial Statements.

As described in the Division's Post-Hearing Brief at § IV.E, Respondents acted with the mental state required to prove a violation of the Advisers Act. As described more completely there, Tilton personally signed the financial statements, after following accounting processes that masked the financial condition of the fund assets. Moreover, the financial statements contained misleading disclosures regarding Patriarch's accounting practices.

In fact, as Respondents note, in 2015 Patriarch changed its financial statements to remove references to U.S. GAAP compliance, despite an indenture requirement that U.S. GAAP-compliant financials be prepared. At that time, Respondents also, finally, began to disclose the actual practices they had been following all along with respect to impairment and fair value.[10] Respondents admit that they made no changes to how they were preparing the financial statements. (RB at 105.) Respondents fail to grasp the import of Dr. Henning's testimony on the issue of the changes to the financial statements. Based on his more than thirty years of experience as an accountant and an academic, Dr. Henning's opinion is that a party would not remove a reference to being U.S. GAAP-compliant without a corresponding change to underlying methodologies, unless the financial statements actually were not prepared in accordance with U.S. GAAP. (FOF ¶ 196.)

K. The Financial Statements Were Material.

At the outset, it is important to note that the indenture required the publication of financial statements prepared in accordance with U.S. GAAP on a quarterly basis. (FOF ¶ 133.) Indeed, the purpose of the financial statements was to provide information on the financial status of the funds. *Id.* Investors testified that they did review the financial statements, and that those financial statements were important to them. Specifically, Aniloff testified that he looked at the fair value as reported in the financial statements because he did not have information on the underlying portfolio companies. (FOF ¶ 49.) He further testified that it would have been important to know if the collateral manager was not actually performing a fair value analysis. (FOF ¶ 50.) Mach testified that he also reviewed the financial statements and viewed them as important. (FOF ¶ 83.) Respondents attempt to categorize Mach's testimony as "absurd" simply because he did review and rely on the financial statements. This argument makes no sense—investors had the right to rely on the information that was provided to them.

[10] The Division disputes Respondents' false characterization of the discussions between the parties that took place surrounding the financial statements.

Respondents also argue that the financial statements did not alter the total mix of information, and therefore cannot be material. If investors had known that Patriarch was not actually conducting a fair value analysis, or the impairment analysis it disclosed, those investors would have had critical information necessary to evaluate the health of their investment and the internal marks that they placed on the investment. Thus, the financial statements were plainly material. And investors believed that the financial statements as published were accurate. Accordingly, they did not need to ask questions about them.

Finally, Respondents' argument that Tilton did not possess scienter with respect to materiality simply does not apply here. The cases cited by Respondents were brought under Section 10(b) of the Securities Exchange Act of 1934, which requires a higher scienter showing than Section 206 of the Advisers Act. Even if the higher scienter standard did apply, Respondents' argument that Tilton did not believe that investors cared about the financial statements is not persuasive. Tilton is a fiduciary collateral manager, who testified that she prepared the financial statements assuming that they were important to investors. (Tr. 1981: 9-10.)

L. The Division Has Not Engaged in "Litigation Misconduct."

As they did at trial, Respondents continue to claim that the Division has engaged in "litigation misconduct" so egregious that the charges against Respondents should be dismissed. (RB at 110-112.) This attempt to continue to place blame on everyone else underscores Respondents' continued failure to recognize or accept any responsibility for their misconduct. In any event, for all of the reasons that have been thoroughly briefed and argued by the Division both pre-hearing and during the hearing, the Division did not engage in any misconduct. As Respondents did, the Division also incorporates by reference its responses to Respondents' various motions to dismiss for prosecutorial misconduct.[11] In sum, Respondents' hyperbolic arguments have been considered and rejected by Your Honor, and there is no need to revisit those rulings now.

Respondents also claim that the Division made false statements and misrepresentations of the record during its closing statement. But the Division's closing statement – as is its post-hearing brief – is grounded in record evidence rather than hyperbolic argument. Indeed, the Division's closing statement was accompanied by a demonstrative presentation detailing the record evidence supporting the Division's case. That presentation – which is attached as Appendix 1 for Your Honor's convenience – demonstrates that, far from making "false statements" during its closing argument, the Division simply summed up the significant evidence demonstrating Respondents' misconduct. For example, Respondents claim it was a "false statement" for the Division to argue that investors did not know what Ms. Tilton was doing. (RB Ex. A at 4.) But that is precisely what numerous investors testified to at the hearing. (*See* Appendix 1 at pp. 34-36.) As another example, Respondents claim it was a "false statement" for the Division to argue that Ms. Tilton's investigative testimony showed that she was categorizing loans based on her subjective beliefs. (RB Ex. A at 8.) But, again, that is precisely what the record shows. (*See* Appendix 1 at pp. 21-26.) As yet another example, Respondents claim it was a "false statement" for the Division to argue that before the financial crisis, many Portfolio Companies were paying interest but that the financial crisis led to those companies paying even less interest. (RB Ex. A at 10.) But the record – indeed, Ms. Tilton's own testimony – supports that statement. (*See* Appendix 1 at pp. 27-28.) As a final example, Respondents claim it was a "false statement" for the Division to say that Patriarch called

[11] The Division likewise incorporates by reference its responses to Respondents' various motions that they now claim were denied erroneously (RB at 110 and Appendix B). These arguments too have been properly considered and rejected by Your Honor.

accrued interest "past due." (RB Ex. A at 13.) But this statement is undisputedly true – Patriarch's own internal records referred to these missed interest payments as "past due." (*See* Appendix 1 at pp. 30-32.) Respondents' other claims of "false statements" during closing argument are similarly refuted by the record evidence. (*See generally* Appendix 1.)

In sum, Your Honor should not be distracted from Respondents' own misconduct by Respondents' continued attempts to blame others. Nothing in Respondents' arguments regarding purported "misconduct" by the Division comes close to meriting a dismissal of this case.

M. A Permanent Bar is Appropriate in Light of Respondents' Recurrent Misconduct as an Investment Advisor.

As the Division explained in its opening brief, permanent associational bars are appropriate in this case. (PHB 59-60.) Respondents first contend that a permanent bar is never appropriate without a showing of scienter. (RB at 113.) As a threshold matter, as demonstrated in both the Division's opening and reply brief, there is ample evidence of Respondents' ill intent. But even if Your Honor finds only negligent violations, Respondents are simply wrong when they claim a lack of scienter is "dispositive" of the request for any bar. (RB at 113.) *See, e.g.*, *In the Matter of Peak Wealth Opportunities, LLC*, Rel. No. 3448, 2013 WL 812635, *7 (Order Making Findings and Imposing Sanctions by Default, Mar. 5, 2013) (bars appropriate for "willful" conduct, which may include inadvertent conduct; "A finding of willfulness does not require intent to violate the law, but merely intent to do the act which constitutes a violation of the law."); *cf. In the Matter of Trautman Wasserman & Co.*, Rel. No. 340, 2008 WL 149120, *23 (Init. Dec. Jan. 14, 2008) (negligent conduct supported bar from association with a broker or dealer or investment adviser in any supervisory capacity). Respondents' long-running misconduct in violation of the Investment Advisors Act – even if negligent – would support a bar. (*See* PHB at 60.)

Respondents also argue that the *Steadman* public interest factors do not support a bar. Respondents are wrong. As explained in the Division's opening brief, Respondents – who were fiduciary investment advisers – elevated their own interests over those of their clients and investors, and indeed have defended against the charges in large part by faulting their investors for failing to uncover the fraud. Moreover, Respondents' misconduct – failing to properly categorize loans, failing to properly report the critically-important OC Ratio, and failing to comply with U.S. GAAP in their financial statement reporting – occurred over years, and thus was certainly recurrent. Nor have Respondents offered any assurances – let alone sincere assurances – against future violations. (*See* PHB at 56.) Tellingly, the evidence Respondents cite for this claim are statements by *other parties* – not Respondents themselves – commenting on Ms. Tilton's purported ethics. (RB at 113-114.) Finally, while Respondents may not currently be registered as investment advisers, Tilton has given no assurances that she will not enter the securities industry again. (*See* PHB at 56.) For all of these reasons, bars are appropriate.[12]

N. The Division's Disgorgement Figure is a Reasonable Approximation of Respondents' Ill-Gotten Profits and Respondents Have Not Shown Otherwise.

Respondents primarily challenge the Division's request for disgorgement by claiming that the Division's calculation was "unreliable" and "erroneous." (RB at 116-118.) That is simply not so. As explained in the Division's post-hearing brief, disgorgement is intended to deprive a respondent of ill-gotten profits. (PHB at 56.) Because of the inherent difficulties in calculating disgorgement with precision, "disgorgement need only be a reasonable approximation of profits causally connected to the violation." *SEC v. First City Financial Corp., Ltd.*, 890 F.2d 1215, 1231

[12] Respondents also argue that civil monetary penalties are inappropriate "for the same reasons that an industry bar is unwarranted." (RB at 115.) For the reasons set forth in the Division's opening brief, as well as this reply brief, civil penalties are appropriate. (*See* PHB at 57-59.)

(D.C. Cir. 1989). Once the Division proffers such evidence, the burden shifts to respondents to show that the approximation is unreasonable, with all doubts concerning the determination of the disgorgement figure construed against Respondents. (*See* PHB at 56.) *See also In the Matter of Dennis J, Malouf*, Rel. No. 4463, 2016 WL 4035575, *26 (Comm. Op. July 27, 2016) (finding respondent had not met burden where, *inter alia*, respondent offered no alternative method of calculating the proper disgorgement amount). The Division has met its burden; Respondents have not.

The Division, based on calculations performed by its expert, Michael Mayer, has offered evidence of Respondents' substantial profits – more than $200 million – resulting from their violative conduct. Specifically, the Division has shown the amount of advisory fees that Respondents received during periods where the OC Ratio Test would have been failing had Respondents been appropriately categorizing the Zohar funds' assets. (*See* PHB at 57.) Since Respondents were not entitled to these advisory fees if the OC Ratio Test was not passing, this amount represents the amount of illicit profits Respondents received. This approach to calculating disgorgement – based on the fees actually received by Respondents – is certainly a "reasonable approximation" of Respondents' ill-gotten gains.

Respondents' argument to the contrary is flawed and does not meet their burden to show the Division's calculations are unreasonable or to present an alternative disgorgement amount. Respondents contend that the Division's calculations are erroneous because – *if* Respondents had been properly categorizing assets and thus properly reporting the OC Test Ratio – once the OC Test Ratio failed, there were mechanisms in the deals (including unknown actions Ms. Tilton could have taken) that would have raised the OC Test to a passing level, and thus the OC Test Ratio would have been raised to a passing level in the next period. (*See* RB at 116-118.) But

Respondents' argument fails to recognize the simple truth that Respondents did, in fact, receive more than $200 million in advisory fees during periods where the OC Ratio Test, properly calculated, was failing. As Mr. Mayer explained in his rebuttal report, his calculations were "based on what actually happened. Specifically, that each time a preference share distribution or subordinated collateral management fee payment was made from the [Zohar] CLO to Respondents when the OC Ratio test was violated, those funds should not have been paid to Respondents." (DX 20 at 3.) Even if there may be other ways to conceive of disgorgement, Respondents have not met their burden to show that the Division's calculation is not a reasonable approximation.

Indeed, Respondents' argument underscores the very reason disgorgement need only be a reasonable approximation. Respondents argue that there were numerous unknown "possibilities" that Respondents could have used to manage the OC Ratio had they been properly categorizing assets. (*See* RB at 118.) This argument is, essentially, a claim that because one cannot calculate with certainty the amount of advisory fees Respondents would have received if they had appropriately categorized assets, accurately reported the OC Ratio, and then used (unnamed) tools to manage that OC Ratio to remedy the OC Ratio Test failure, no disgorgement should be awarded. But even accepting for the sake of argument that such tools could or would have been employed, it is precisely this inherent uncertainty that has led courts to require only a reasonable approximation of profits: "'any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created that uncertainty.'" *SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996) (quoting *SEC v. Patel*, 61 F. 3d 137, 139 (2d Cir. 1995)). (*See also* DX 20 at 3-4 (addressing why Respondents' speculative argument is flawed). In light of the fact that the Division has calculated the actual amount of advisory fees received by Respondents during the periods in which the OC Ratio should not have been reported as passing, and the fact that

Respondents have offered no alternative calculation, Respondents should be ordered to disgorge the more than $208 million in subordinated management fees and preference share distributions that they should not have received.

Respondents also cursorily argue that disgorgement is inappropriate for any conduct that occurred outside of the five-year statute of limitations period for "civil fine[s], penalt[ies], or forfeiture[s]," 28 U.S.C. § 2462, citing to the Eleventh Circuit's decision in *SEC v. Graham*, 823 F.3d 1357 (11th Cir. 2016). (RB at 118-119.) But *Graham* has been described as an "outlier," with the clear weight of authority rejecting the proposition that § 2462 applies to disgorgement. *See, e.g., SEC v. Saltsman*, 07-cv-4370, 2016 WL 4136829, *28-29 (E.D.N.Y. Aug. 2, 2016) ("[T]he court agrees with the courts that have viewed *Graham* as an outlier"); *see also id.* at *25 ("[T]he vast majority of courts in this circuit have found that disgorgement is not a forfeiture"); *SEC v. Kokesh*, 834 F.3d 1158, 1164-67 (10th Cir. 2016) (declining to follow *Graham* and holding disgorgement not subject to § 2462); *SEC v. Ahmed*, 15-cv-675, 2016 WL 7197359, *7-8 (D. Conn. Dec. 8, 2016) ("This Court declines to be guided by *Graham*, which has been described as an 'outlier.' Accordingly, it concludes that Section 2462 does not apply to disgorgement."); *SEC v. Jones*, No. 13-CV-00163 (BSJ), 2015 WL 9273934, *6 (D. Utah Dec. 18, 2015) ("The court finds *Graham* unpersuasive and inapplicable to the case at hand"); *SEC v. Collyard*, No. 11-CV-3656 (JNE) (JJK), 2015 WL 8483258, *8 (D. Minn. Dec. 9, 2015) ("But that decision [*Graham*] is something of an outlier"); *SEC v. Stoecklien*, No. 15-CV-0532 (JAH) (WVG), 2015 WL 6455602, *3 (S.D. Cal. Oct. 26, 2015) ("This Court does not find *Graham* persuasive in light of the many cases finding section 2462 inapplicable to cases seeking disgorgement, the Supreme Court's limitation on its holding in Gabelli and the Ninth Circuit's indication disgorgement is equitable in nature.")). The Division urges Your Honor to follow these decisions and hold that disgorgement is not subject to § 2462's five-year statute of limitations.[13]

Finally, Respondents argue that the disgorgement amount should be reduced by the amount that Respondents have "transferred to the Zohar[ ] [Funds]," which Respondents calculate to be in excess of $500 million. (RB at 119.) In support of this argument, Respondents rely on two cases – *SEC v. AmeriFirst Funding, Inc.* and *David F. Bandimere*. But both of those cases are inapposite. In those cases, the disgorgement award was calculated as the amount of funds improperly obtained minus the amount that was *directly* returned to investors. *See SEC v. AmeriFirst Funding, Inc.*, 2008 WL 1959843, *3-4 (N.D. Tex. May 5, 2008); *David F. Bandimere*, Rel. No. 507, 2013 WL 1959843, *82 (Init. Dec. Oct. 8, 2013). Here, Respondents have not put forward evidence that any funds illicitly obtained were returned to the Zohar investors. Rather, Respondents' argument is much more attenuated: Respondents claim that the amount of advisory fees they improperly received should be reduced by the amount of money they invested in the Zohar Funds or the underlying Portfolio Companies. This argument is flawed as a matter of both logic and law. Logically, the $500 million Respondents cite does not represent money "repaid" to anyone, much less investors. (*See* RB at 119.) Rather, it represents loans or equity investments Respondents made in the Portfolio Companies or the Zohar Funds – investments Respondents presumably

[13] Even if Your Honor were to rule that § 2462 applies to disgorgement, the continuing violation doctrine would apply to allow disgorgement of the full amount of ill-gotten gains. The continuing violation doctrine applies "'where a violation, occurring outside of the limitations period, is so closely related to other violations, not time-barred, as to be viewed as part of a continuing practice such that recovery can be had for all violations.'" *SEC v. Kelly*, 663 F. Supp. 2d 276, 287 (S.D.N.Y. 2009) (quoting *SEC v. Schiffer*, 1998 WL 226101, *3 (S.D.N.Y. May 5, 1998). Here, Respondents' violations leading to disgorgement – failing to properly categorize the Zohar funds' assets – are, while rampant and repeated, all part of a continuing practice of manipulating the value of the assets by categorizing them based on Tilton's own subjective, personal belief in the underlying Portfolio Company rather than based on the objective categorization criteria set out in the governing documents and disclosed to investors.

expect to recoup or even profit on. *See, e.g.*, RX 129 (totaling investments by Ark entities in Portfolio Companies); Tr. 3050:9-3053:25 (Lys) (presuming that the Ark entities were entitled to benefit for these investments); RX 132 (totaling investments in Zohar funds); Tr. 3054:1-3055:25 (Lys) (presuming that Respondents expected to get something back for these investments); RX 134 (totaling Respondents' unpaid management and other fees); Tr. 3055:6-25 (noting that these balances are still owed to Respondents). And legally, even assuming that Respondents did invest some of the illicitly-obtained advisory fees into the Portfolio Companies or the Zohar Funds, that choice does not entitle them to an offset to the amount of advisory fees that they obtained but that should have been paid to investors. *See, e.g., SEC v. Benson,* 657 F. Supp. 1122, 1134 (S.D.N.Y.1987) ("The manner in which [the defendant] chose to spend his misappropriations is irrelevant as to his objection to disgorge. Whether he chose to use this money to enhance his social standing through charitable contributions, to travel around the world, or to keep his co-conspirators happy is his own business.").

For all of these reasons, Respondents' arguments concerning disgorgement should be rejected. Your Honor should order Respondents to disgorge the illicit advisory fees they received.

O. Respondents contend that this proceeding is unconstitutional "in several critical respects" but their challenges fail for the reasons below.

Respondents argue that the Commission's method of hiring of administrative law judges (ALJs) and the manner for their removal violate the Appointments Clause of the Constitution. *See* RB at 109 (incorporating by reference arguments made in related district court litigation); U.S. Const. art. II, § 2, cl. 2. These arguments fail because, as the Commission has held, the Commission's ALJs are employees, not constitutional officers, and thus are not subject to Article II's requirements. *See, e.g., Raymond J. Lucia Cos., Inc., et al.*, Exchange Act Rel. No. 75837, 2015 WL 5172953, at *21 (Sept. 3, 2015), *aff'd, Raymond J. Lucia Cos. v. SEC,* --- F.3d ---, 2016

WL 4191191 (D.C. Cir. Aug. 9, 2016) *pet. for reh'g en banc filed*, No. 15-1345 (Sept. 23, 2016); *Timbervest, LLC, et al.*, Investment Advisers Act Rel. No. 4197, 2015 WL 5472520, at *23-26 (Sept. 17, 2015).[14]

Respondents renew their claim that the administrative "forum violates [their] due process rights," taking issue, for example, with the Commission's Rules of Practice governing the information that must be included in the Commission's Order Instituting Proceeding, the parties' discovery obligations, the admissibility of evidence, and the time frame within which an initial decision must be issued. (RB 109.) To the extent Respondents intend to suggest that certain of the Commission's rules are constitutionally flawed—perhaps because they differ from the Federal Rules of Evidence and the Federal Rules of Civil Procedure—that claim fails, as it has been consistently rejected by both the Commission and the courts. *See, e.g.*, *Cunanan v. INS*, 856 F.2d 1373, 1374 (2d Cir. 1988) ("[A]dministrative proceedings are not controlled by strict rules of evidence; the law requires only that [the respondent] be afforded due process."); *Bernerd E. Young*, Securities Act Release No. 10060, 2016 WL 1168564, at *19 n.84 (Mar. 24, 2016) (noting that the Commission has "long rejected" arguments that administrative proceedings deny respondents due process because federal rules do not apply); *see also, e.g.*, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543 (1978) (recognizing that agencies "should be free to fashion their own rules of procedure"). Moreover, and in any event, Respondents have failed to show how

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[14] Respondents may argue that the Tenth Circuit's divided decision in *Bandimere v. SEC*, No. 15-9586, 2016 WL 7439007 (10th Cir. Dec. 27, 2016), supports their Appointments Clause claim. But a unanimous panel of the Court of Appeals for the District of Columbia Circuit held that the Commission's administrative law judges are not constitutional "Officers." *Lucia*, 832 F.3d 277. That decision was correct, and the Tenth Circuit majority's contrary ruling is wrong. The Tenth Circuit's decision issued Tuesday, December 27, 2016, and the mandate has yet to come down in that case. The government is considering options for further review of that decision.

application of the Commission's rules caused the type of prejudice sufficient to establish a due process violation. *See, e.g.*, *Horning v. SEC*, 570 F.3d 337, 347 (D.C. Cir. 2009).

To the extent Respondents' complaint is, more broadly, that the administrative adjudicatory process is itself constitutionally deficient—and, thus, it violates due process to require them to proceed in an administrative forum—that too fails. Again, the Commission and the courts have repeatedly rejected "[s]uch broad attacks on the procedures of the administrative process." *See Harding Advisory LLC*, Securities Act Release No. 9561, 2014 WL 988532, at *8 (Mar. 14, 2014). Indeed, courts have correctly recognized that to accept such challenges "would do considerable violence to Congress['s] purposes in establishing" specialized administrative agencies and would "work a revolution in administrative (not to mention constitutional) law." *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1107 (D.C. Cir. 1988).

Respondents' equal protection claim is similarly meritless. They contend that it was improper for the Commission to apply some, but not all, of the recent amendments to the Commission's Rules of Practice to this proceeding. (RB 109.) But the Commission has already addressed and rejected that argument, and recasting it as an equal protection claim does not salvage it. As the Commission has explained, it made a reasoned determination to apply the Amended Rules "to pending proceedings 'depending on the stage of the proceeding.'" Commission Order (Aug. 24, 2016) (quoting *Amendments to the Commission's Rules of Practice ("Amendments")*, Exchange Act Release No. 78319, 2016 WL 3853756, at *30 (July 13, 2016)). For cases like this one, where proceedings were "stayed on the eve of a final hearing," the Commission reasonably determined not to apply certain rules relating to pre-trial activities, as doing so could have "delay[ed] resolution and 'unduly disrupt[ed]'" those proceedings. *Id.* (quoting *Amendments*, 2016 WL 3853756, at *30).

While Respondents maintain their opposition to the Commission's approach, they have made no effort even to allege the elements of an equal protection violation. Where, as here, a regulatory classification neither infringes a fundamental right nor implicates a suspect class, it need only be rationally related to a legitimate government interest to satisfy equal protection requirements.[15] *See, e.g.*, *Sensational Smiles, LLC v. Mullen*, 793 F.3d 281, 284 (2d Cir. 2015); *Collier v. Barnhart*, 473 F.3d 444, 449 (2d Cir. 2007) (showing required to satisfy rational basis test is "minimal"). The Commission's determination as to which amended rules would apply to what proceedings easily satisfies that standard.

As the Commission explained in its Adopting Release, by amending its Rules of Practice, the Commission sought to "introduce additional flexibility into administrative proceedings, while continuing to provide for the timely and efficient disposition of proceedings." *Amendments*, 2016 WL 3853756, at *2. But the Commission was also cognizant that a scheduled "transition period" was necessary to ensure that application of the new rules was both "just and practicable." *See id.* *30-31. It thus solicited comments as to how the amendments should be applied "to proceedings that are pending or have been docketed before or on the effective date" of the changes. *See id.* at *29. Both Respondents' current law firm (Gibson, Dunn & Crutcher) and their former counsel (attorneys from Skadden) took part in that comment process. *See id.* at *29-32; *id.* at *29 n.179

[15] We do not take Respondents to be making a "class of one" equal protection claim, as they do not assert that they have been "irrationally singled out" and treated differently than others similarly situated. *See Engquist v. Oregon Dep't of Agriculture*, 553 U.S. 591, 601 (2008); RB at 109. Indeed, because they challenge the regulatory standard itself (*i.e.*, the Commission's schedule for application of the Amended Rules) and make no allegation that the Commission has improperly departed from that standard in their case, it is difficult to imagine what form a class-of-one claim might take. *See Engquist*, 553 U.S. at 602-03 ("class of one" violations have been found where governmental decision making reflects a "departure" from a "clear standard," resulting in "differential treatment" for an individual or set of individuals); *accord Vill. of Willowbrook v. Olech*, 528 U.S. 562, 565 (2000) (the equal protection clause protects against both improper statutory classifications and irrational and arbitrary execution of the laws).

(citing comment letter from, among others, David M. Zornow and Christopher J. Gunther of Skadden); Dec. 4, 2015 Comment Letter from Gibson Dunn & Crutcher at 10-11, available at https://www.sec.gov/comments/s7-18-15/s71815.shtml; *see also* Nov. 23, 2015 Comment Letter from Susan E. Brune, available at https://www.sec.gov/comments/s7-18-15/s71815.shtml. The approach the Commission ultimately adopted—a carefully constructed schedule that tied the application of the amendments to the stage of each proceeding—reflected both the input provided by commenters and, critically, the Commission's desire to ensure that pending proceedings would not be "unduly disrupt[ed]" by the need to re-open discovery or extend established deadlines. *See id.* *29-32. As the Commission noted, that determination reflects a legitimate interest in ensuring a "just and practicable" transition (*see id.* *31), and Respondents' present briefing neither offers a better solution nor shows that the Commission's approach was irrational.

III. CONCLUSION

The Division requests that Your Honor rule in its favor and granted the relief requested.

Dated: January 13, 2016

Respectfully Submitted,

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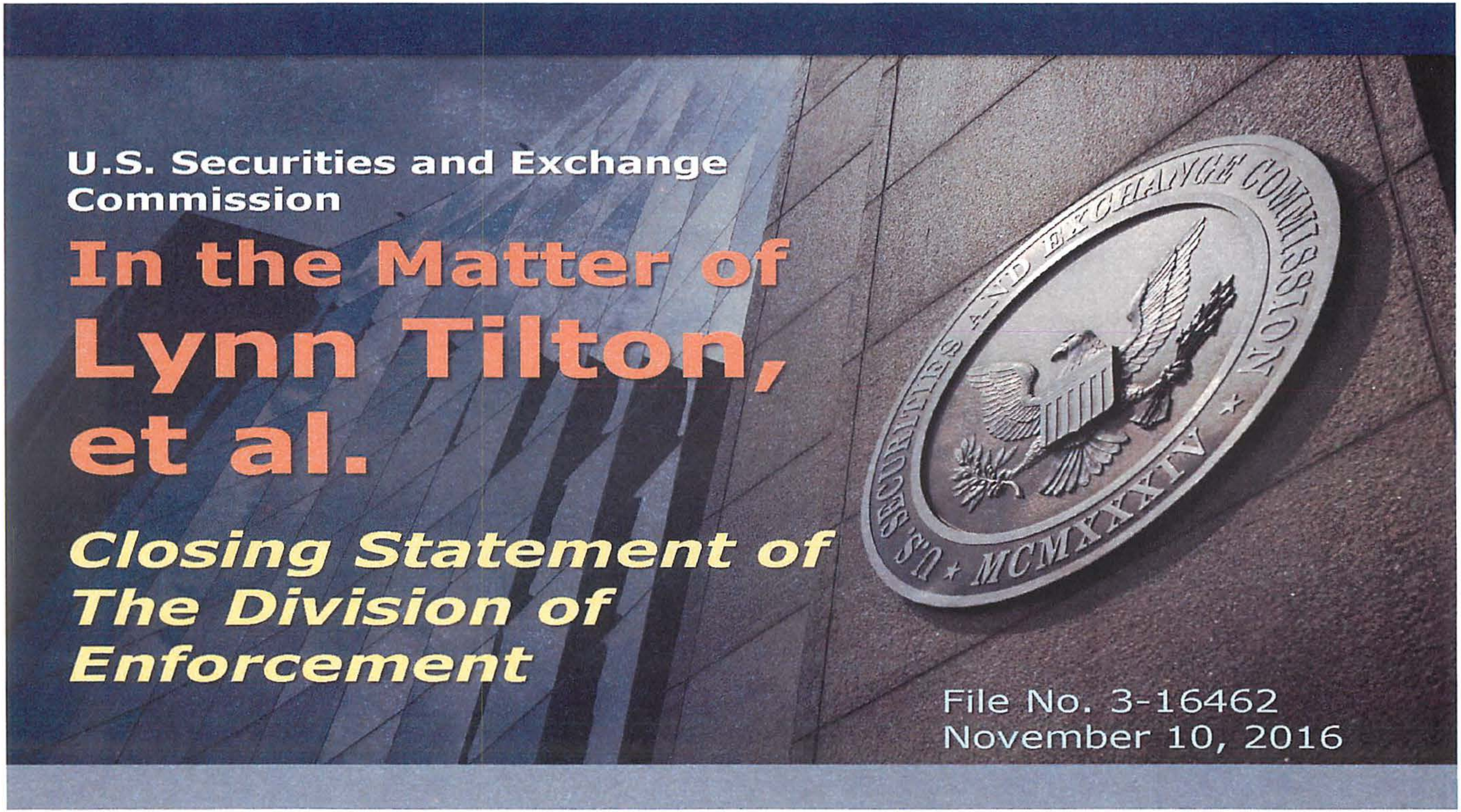
Appendix 1


U.S. Securities and Exchange Commission
In the Matter of Lynn Tilton, et al.
Closing Statement of The Division of Enforcement
File No. 3-16462
November 10, 2016
SECURITIES AND EXCHANGE COMMISSION
MCMXXXIV

Tilton Treated the Zohar Funds as Private Equity Funds

Q And you refer to Patriarch Partners as a private equity investment firm; is that right?

A It's a distressed private equity firm or investment firm.

November 1, 2016 - Hearing Day Seven
Testimony of Lynn Tilton
1801:24-1802:2

Q Mr. Mercado, are you familiar with the Zohar funds?

A Yes.

Q What are they?

A They are three funds that are private equity funds that invest in collateral asset obligations.

October 27, 2016 - Hearing Day Four
Testimony of Carlos Mercado
1106:11-18

Noteholders Were Not Investing in Equity

Q Are you -- were you investing in the equity in those underlying distressed companies?

A No. The Zohar deals are the loans that are made to those portfolio companies. So those portfolio companies have a balance sheet, like any other company. And that balance sheet consists of equity, which is held by another party, and debt, which we talked about in that GE example. The Zohar deal owns the debt that has been lent to those companies.

October 24, 2016 - Hearing Day One
Testimony of David Aniloff
101:2-101:9

Equity Upside is Not an Asset of the Funds

Q **And these -- the equity upside is not described in the trustee reports, right?**

A **It is not trustee reports, because it's not collateral to the funds.**

November 4, 2016 - Hearing Day Ten
Testimony of Lynn Tilton
2757:18-20

The OC Test is Important to Investors

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.

Expert Report of Ira Wagner
July 10, 2015

EXHIBIT
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27. The OC Ratios and the OC Test levels are important considerations for CDO investors. The level of the OC Ratio is a benchmark utilized by investors to evaluate the performance of their investments. The OC Test is designed to protect the CDO debt investors from adverse performance of the CDO's assets. At the start of the CDO there will be a cushion

DX 16 p. 16

An OC Test Breach Redirects Money to Investors

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.

61. In each Zohar CLO, if the OC Test is breached, certain interest and principal proceeds from the underlying assets in the Priority of Payments will be re-directed to make additional principal payments on the Notes. The re-direction of these payments will continue until the OC Test is again passed, and will generally block payments of the Subordinated Collateral Management Fee to Patriarch (generally 1% of the amount of assets), preference share distributions and other payments junior in the Waterfall, as specified in Indenture Article 11 which sets out the Priority of Payments.

EXHIBIT
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DX 16 p. 29

An OC Breach Can Result in Removal of the Collateral Manager

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;
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Expert Report of Ira Wagner
July 10, 2015

EXHIBIT
16

62. Each Zohar CLO also has an Indenture Event of Default in Article 5 triggered by the decline in the OC Ratio to specified levels. In Zohar I and Zohar II, this Indenture Event of Default also constitutes "cause" to terminate the Collateral Manager under the Collateral Management Agreement.

DX 16 p. 29

The OC Test is Important to Investors

Q Is an overcollateralization test important to you as an investor?

A A senior holder would consider those ratios very important, yes.

Q Why would they consider -- why would you consider them very important?

A They provide structural support for the investment. As a senior holder, you not only have subordinated noteholders to you as hard subordination, you also have this overcollateralization test and such structural subordination.

Q When you say "structural subordination, "what does that mean?

A If the portfolio of companies on a specific transaction starts to deteriorate, this overcollateralization test are supposed to work in trapping cash flows that would otherwise fall down the waterfall to junior holder. And those cash flows would be used to pay down the senior holder. So the protection of the senior holder is a structuring that cash flows that would otherwise -- otherwise be paid down the waterfall would be trapped and paid down to the benefit of the senior holder.

October 31, 2016 - Hearing Day Six
Testimony of Jaime Aldama
1524:12-1525:12

The OC Test is Important to Investors

Q When you say you paid a lot of attention to [the OC ratio], was it important to you?

A Very important.

Q Why?

A It provides a quick snapshot of the overall health of the vehicle.

Q What do you mean by that?

A So the OC ratio is really designed to make sure that there's enough -- enough asset value, enough collateral for the vehicle to keep on paying. And if it's not, then there's a mechanism, you know, sort of once it's broken.

October 26, 2016 - Hearing Day Three
Testimony of Matthew Mach
595:25-596:11

The OC Test is Important to Investors

A The overcollateralization tests are very important in terms of how the interest collection of the underlying loans get distributed. So if those can be subject to one person's interpretation of the performance of the loans, then, yes, it's extremely relevant to that test and my evaluation of it.

Q Why is it extremely relevant?

A Because that is the most important test that allows me to measure the margin of safety on my investment.

October 24, 2016 - Hearing Day One
Testimony of David Aniloff
172:7-172:18

The OC Test is Important to Investors

A In CLO speak, what that means is, it's the value of the loans held in the CLO relative to the amount that I've lent it. As an example, if there's a $125 worth of loans in the CLO and I've lent it a hundred dollars, then that overcollateralization ratio is going to be 125 percent. The higher that ratio is, the easier I sleep at night.

Q Your answer may be -- your last answer may imply the answer to this question, but is the OC ratio important to you as a CLO investor?

A It's the most important ratio in the CLO, by far.

October 24, 2016 - Hearing Day One
Testimony of David Aniloff
103:12-23

Respondents' Expert Admits the OC Test is Important

Q. Do you believe that the OC ratio is 11:37:45 important information to CLO investors?

A. In general it is, because it tries to capture the -- again, in the numerator, think of it as a collateral value relative to notes outstanding. So in general, it is valuable information.

11:38:00 Q. And was it valuable information to the Zohar noteholders?

A. Well, that, of course, is a question for the noteholders.

November 9, 2016 - Hearing Day Thirteen
Testimony of Glenn Hubbard
Rough Transcript 131:9-18

OC Test Is Objective

A Because in my experience in investing in CLOs, it's not a subjective decision whether a company is paying its interest or principal on time.

Q If it's not a subjective decision, what is it?

A Objective. Objective. They are or they aren't.

October 24, 2016 - Hearing Day One
Testimony of David Aniloff
169:17-22

OC Test is Objective

Q And at the time you invested, did you have a general understanding of categorization of the assets for the purposes of the OC ratio test?

A We did.

Q And was it your understanding that it was an objective or subjective methodology?

A Objective.

Q Why do you say that?

A The indenture is very clear on the difference between a current and a defaulted investment.

October 26, 2016 - Hearing Day Three
Testimony of Matthew Mach
169:17-22

Respondents' Expert Admits the OC Test is Objective

Q Can we agree that CLOs generally categorize loans based on objective criteria?

A Yes.

November 8, 2016 - Hearing Day Twelve
Testimony of Mark Froeba
3354:13-15

Patriarch Touted the Objective OC Test

PATRIARCH
PARTNERS, LLC

Presentation to MBIA
Discussion of Zohar I and Zohar II

January 6, 2010

Confidential Treatment Requested

EXHIBIT
27

Zohar Objective Test Scores (LTM)
Cash does not lie

Zohar I Test Scores	Current Trigger	11/6/08	12/31/08	1/31/09	2/9/09	3/31/09
Class A I/C Ratio	>= 110.00%	152.44%	139.80%	131.59%	131.59%	143.44%
Class A O/C Ratio	>= 105.00%	122.46%	120.14%	119.86%	119.86%	119.90%
Diversity Score	>= 22	24	23	23	23	23
Weighted Average Life	<= 5	3.95	3.61	3.78	3.75	3.71
Weighted Average Spread	>= 6.750%	6.810%	7.555%	8.289%	8.320%	8.262%

DX 27 p. 11

Indentures Require Loans Not Paying Interest to be Categorized as Defaulted

INDEX

EXECUTION COPY

INDENTURE

among

ZOHAR II 2005-1, LIMITED

and

LASALLE BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of January 12, 2005

EXHIBIT
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INDEX

"Defaulted Obligation": Any Collateral Debt Obligation (other than any Originated Special Loan/Preferred Security that is a Preferred Security) included in the Collateral:

(a) (i) with respect to which a default as to the payment of principal and/or interest has occurred (without regard to any applicable grace period or any waiver of such default), but only so long as such default has not been cured; (ii) with respect to which the Collateral Manager

DX 2 p. 30

Loans Not Paying Interest Are Not Performing Assets

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.

Expert Report of Ira W
July 10, 2015

EXHIBIT
16

55. This categorization of loans is entirely consistent with the understanding of participants in the CDO market and other CLO transactions. As cash flow transactions, current payments on the underlying assets are critically important. When a borrower is not paying as it is contractually obligated to do, that asset should not be categorized as a performing asset according to the relevant definitions and should no longer be valued at par in a transaction's OC Ratio.

DX 16 p. 27

Loans Not Paying Interest Must Be Categorized as Defaulted

Q And, Mr. Aldama, was it your understanding that a loan that wasn't paying interest would be categorized as a defaulted obligation?

A Following this language, yes.

October 31, 2016 - Hearing Day Six
Testimony of Jaime Aldama
1528:12-1528:15

Loans Not Paying Interest Must Be Categorized as Defaulted

Q In general, let me ask you, if a loan isn't paying its interest, if an underlying loan in a CLO isn't paying its interest, how can you, as a CLO investor, expect that loan to be categorized?

A That loan would be categorized as a defaulted asset. And a defaulted asset is not given full par credit for the amount lent to it.

October 24, 2016 - Hearing Day One
Testimony of David Aniloff
105:24-106:5

Tilton Categorized Based on Her Subjective Belief

TextMap Annotation Digest Report

Case Name: Patriarch
Transcript: [6/24/2014] Tilton, Lynn- INV vol II

Pg: 88 Ln: 22 - 24

Annotation:

Q And where was that -- that concept of the ultimate reasonableness of recovery, how is that reflected in the indenture?

Pg: 88 Ln: 25 - Pg: 89 Ln: 10

Annotation:

A I'd have to review the indenture, but there -- the categories, we have discretion over choosing the categories; and for us in control situations, the categories are binary. A Category 1 is either -- it's a formal restructure of bankruptcy, or we believe that despite efforts in additional funding, that the value or the performance of the company will still decline in time. And a Category 4 is that we have reasonable belief to conclude that with additional funding and additional effort, that the performance of the company will improve with time.

Pg: 89 Ln: 11 - 22

Annotation:

Q Okay. Can you look at the definitions, and will you show me where that appears in the indenture -- where that content appears in the indenture. I don't care if you want to use 2 or 3 or -- I have 1, if you want to use 1.

MR. ZINK: You want her to go through the whole thing?

MS. SUMNER: No. I want her to calculate up the categories, and where this concept as -- you know, a 4 -- as she describes it, where that concept appears in the category definition.

THE WITNESS: I mean, we can go through

Pg: 89 Ln: 23 - Pg: 90 Ln: 12

Annotation:

category definitions, but the category definitions have to be read in context of a whole, and not only this indenture but with other agreements, including the collateral manager agreement, which speaks very specifically to business judgment, to discretion, to the ability to amend and to waive and to change maturities. And every -- all of the aspects of the collateral don't -- loan applications, including the collateral -- other collateral instruments that might be derived from the collateral loan obligation to maximize the cash flows of the company.

So I can go to these definitions, but this is one of many agreements that come together. And at the

10/18/2016 7:53 PM

Page 17 of 43

Annotation:

A I'd have to review the indenture, but there -- the categories, we have discretion over choosing the categories; and for us in control situations, the categories are binary. A Category 1 is either -- it's a formal restructure of bankruptcy, or we believe that despite efforts in additional funding, that the value or the performance of the company will still decline in time. And a Category 4 is that we have reasonable belief to conclude that with additional funding and additional effort, that the performance of the company will improve with time.

DX 219 p. 96

Tilton Categorized Based on Her Subjective Belief

TextMap Annotation Digest Report

Case Name: Patriarch
Transcript: [6/24/2014] Tilton, Lynn- INV vol II

Pg: 154 Ln: 12 - Pg: 155 Ln: 3 continued...

Annotation:
155: 1 facilities and change of process would result in improved performance for the operating company during that period.

Pg: 168 Ln: 15 - Pg: 169 Ln: 1

Annotation:
168:15 Q Have you considered categorizing Galey as a 1, in light of unpaid interest?
A I think I've made myself pretty clear on the fact that -- the fact that the company is not paying full contractual interest or hasn't paid previous accrued interest, is not the driving force on categorization, but that the company is in the process of a turnaround; and based on all the information and all the work that's being done, a reasonable belief that the company's performance will improve over the passage of time, and that will help maximize the cash flows to the funds.

Pg: 176 Ln: 25 - Pg: 177 Ln: 4

Annotation:
176:25 Q And Global is currently classified as a Category 4; is that correct?
A Yes.
Q And have you considered defaulting Global?
A When?

Pg: 177 Ln: 5 - Pg: 178 Ln: 9

Annotation:
177: 5 Q Anytime after April of 2009.
A I can't give you the exact circumstances, but Global Automotive is one of the great turnaround stories in 2009. In the automotive crisis, it lost half its revenues. It went from, you know, to about 100 -- I'm throwing it around -- but somewhere between 125 and 150 million of revenues and losing money. And today -- you know, in the last couple of years, Global Automotive Systems has done between 26 and $30 million dollars of EBITDA; and I think -- I can't give you the exact numbers this year, but certainly the revenues are close to $275 million dollars. So it is one of the better performing credits right now. It is one of those stories where the efforts and the funding have led to the improved performance, which has led to increased cash flows to the funds, both in interest and, I believe, even in some amortizations.
Q Has there ever a point when you considered classifying it as a defaulted asset?

10/18/2016 7:53 PM — Page 32 of 43

Annotation:
168:15 Q Have you considered categorizing Galey as a 1, in light of unpaid interest?
A I think I've made myself pretty clear on the fact that -- the fact that the company is not paying full contractual interest or hasn't paid previous accrued interest, is not the driving force on categorization, but that the company is in the process of a turnaround; and based on all the information and all the work that's being done, a reasonable belief that the company's performance will improve over the passage of time, and that will help maximize the cash flows to the funds.

DX 219 p. 111

Tilton Categorized Based on Her Subjective Belief

TextMap Annotation Digest Report

Case Name: Patriarch
Transcript: [9/24/2014] Tilton, Lynn- INV vol II

Pg: 87 Ln: 5 - 15 continued...

Annotation:

any kind of formal restructure would have been documented, and I -- but I can't sitting here tell you the timing or how it was supposed to be a factor to the rating agencies.

Pg: 87 Ln: 16 - 21

Annotation:

Q Does a failure to pay interest by a portfolio company, or to pay the full amount of interest due by a portfolio company impact it's categorization in any way?

A It depends on the circumstances, but not necessarily.

Pg: 87 Ln: 22 - Pg: 88 Ln: 13

Annotation:

Q Okay. Well, what are the circumstances under which it would impact the categorization?

A Only if that were either part of the secondary loans that would fall under, you know, Category 2 or 3, depending on where it was in the process of a restructuring; or if, in fact, it was a partial payment, and we were making the judgment or the conclusion that along with that partial payment, we believed the company was going to go into a formal restructuring or bankruptcy. Or we believe that over time, the company's value would still decline, and we were going to withdraw support of it on an ongoing basis with new funding and actual operational strategy; and would be turning it into sort of a workout collection or a collection on the assets. But in and of itself, the agreement to pay less than full interest would not change its category.

Pg: 88 Ln: 14 - 21

Annotation:

Q And why is that, that in and of itself, the agreement to pay less than full interest would not change the category?

A Because the categorizations are based on the belief in the future recovery and the reorganization, not based on how much interest is collected. The categorizations are based on the belief in the ultimate reasonableness of the recovery and the future.

10/18/2016 7:53 PM

Page 16 of 43

Annotation:

Q Does a failure to pay interest by a portfolio company, or to pay the full amount of interest due by a portfolio company impact it's categorization in any way?

A It depends on the circumstances, but not necessarily.

collection or a collection on the assets. But in and of itself, the agreement to pay less than full interest would not change its category.

DX 219 p. 95

Tilton Categorized Based on Her Subjective Belief

TextMap Annotation Digest Report

Case Name: Patriarch
Transcript: [6/24/2014] Tilton, Lynn- INV vol II

Pg: 87 Ln: 8 - 15 continued...

Annotation:

87:12 any kind of formal restructure would have been documented, and I -- but I can't sitting here tell you the timing or how it was supposed to be a factor to the rating agencies.

Pg: 87 Ln: 16 - 21

Annotation:

87:16 Q Does a failure to pay interest by a portfolio company, or to pay the full amount of interest due by a portfolio company impact it's categorization in any way?

A It depends on the circumstances, but not necessarily.

Pg: 87 Ln: 22 - Pg: 88 Ln: 13

Annotation:

87:22 Q Okay. Well, what are the circumstances under which it would impact the categorization?

A Only if that were either part of the secondary loans that would fall under, you know, Category 2 or 3, depending on where it was in the process of a restructuring; or if, in fact, it was a partial payment, and we were making the judgment or the conclusion that along with that partial payment, we believed the company was going to go into a formal restructuring or bankruptcy. Or we believe that over time, the company's value would still decline, and we were going to withdraw support of it on an ongoing basis with new funding and actual operational strategy; and would be turning it into sort of a workout collection or a collection on the assets. But in and of itself, the agreement to pay less than full interest would not change its category.

Pg: 88 Ln: 14 - 21

Annotation:

88:14 Q And why is that, that in and of itself, the agreement to pay less than full interest would not change the category?

A Because the categorizations are based on the belief in the future recovery and the reorganization, not based on how much interest is collected. The categorizations are based on the belief in the ultimate reasonableness of the recovery and the future.

10/18/2018 7:53 PM

Page 16 of 43

Annotation:

88:14 Q And why is that, that in and of itself, the agreement to pay less than full interest would not change the category?

A Because the categorizations are based on the belief in the future recovery and the reorganization, not based on how much interest is collected. The categorizations are based on the belief in the ultimate reasonableness of the recovery and the future.

DX 219 p. 95

Tilton Categorized Based on Her Subjective Belief

Q And American LaFrance now owes $11.7 18 million; is that correct?

A What it has is an accrual of deferred interest that I have not forgiven that is on its balance sheet and is deferred and accrued.

Q And was that a Category 4 at the time?

A Yes. It was also, when I started lending 24 money to the company, during this period through 2014, and I lent over $30 million of my personal funds to the company so that -- I still believed in the company and its fortunes -- so that it would maximize cash flows for the noteholders such that between this period and 2014, I lent $30 million of my own money so that the company could continue, because I believed that its fortunes could turn around, that it was in the best interest of the noteholders.

November 2, 2016 - Hearing Day Eight
Testimony of Lynn Tilton
2055:17-2056:8

Respondents' Expert Admits Tilton Categorized Based on Her Subjective Belief

Q. What is your understanding from an economic perspective of Ms. Tilton's approach to loan categorization?

A. My understanding from -- of Ms. Tilton's approach is that she as a business person is looking at underlying credits and trying to decide what particular actions on her own part increased the viability of that credit going forward.

If she were to believe that those actions would increase viability, that's Category 4.

If she came to the judgement, You know what, we just can't make this work, then it's categorized as Category 1.

So it's not the same mechanical test that I understand the Division is suggesting.

November 9, 2016 - Hearing Day Thirteen
Testimony of Glenn Hubbard
Rough Transcript 119:4-18

Companies Largely Paid Their Interest Until the Financial Crisis

Q You said that everybody knew that these companies weren't going to pay, but fact of the matter is in Zohar II, the companies did largely pay in 2005, 2006, 2007, 2008, didn't they?

A The companies have largely paid all along. After the financial crisis, things got much more difficult. Up until the financial crisis, 2005, 2006, 2007, two things were going on. One, we were lending the companies money, and they were using these working capital facilities also to pay their interest. But in 2008, 2009, most of these companies lost 30 to 50 percent of their revenue base.

November 1, 2016 - Hearing Day Seven
Testimony of Lynn Tilton
1840:5-17

Companies Largely Paid Their Interest Until the Financial Crisis

CRA Charles River Associates

Exhibit 1

MICHAEL G. MAYER, CFA, CFE
Vice President

M.B.A. Finance and Management Policy, Kellogg Graduate School of Management, Northwestern University

B.S. Marketing and Management Policy, Indiana University School of Business

CONSULTING EXPERIENCE

Michael G. Mayer is a Vice President of Charles River Associates. He has performed numerous business valuation assignments and has evaluated numerous claims for economic loss in a range of business, banking, securities, derivatives and insurance disputes. He has also performed financial investigations of brokerage firms, hedge funds, savings & loans, banks, and insurance companies as well as in whistleblower, insider trading, and FCPA matters. He has testified as an expert in International Arbitration forums, US Federal and State Courts, AAA and FINRA arbitrations, and the Bahamian Supreme Court. Mr. Mayer's testimony has addressed financial and economic issues including investment suitability and trading, portfolio management, valuation, lost profits, loss of principal and prejudgment interest.

In litigation matters, Mr. Mayer has been most actively involved in the determination of damages in securities fraud and breach of fiduciary duty cases, broker/dealer litigation, failed mergers/acquisitions, bankruptcy, lender liability, and shareholder disputes. He is regularly called upon to analyze complex securities and explain their structures. Additionally, he has significant experience in other areas of commercial litigation including antitrust, accountant's liability, breach of contract, business interruption, and insurance. He has assisted counsel with respect to discovery and document management, deposition and cross-examination assistance and trial exhibit preparation.

Outside of litigation, Mr. Mayer regularly consults on financial issues relating to mergers, acquisitions, joint ventures, and licensing. He has analyzed and negotiated deal structures on behalf of clients in a broad range of industries ranging from pharmaceuticals to industrial rubber products. Additionally, he has performed business and intangible asset valuations for some of the largest companies in the country. Mr. Mayer has been widely quoted in the press including the Wall Street Journal, CFO Magazine, Inside Counsel Magazine, Securities Law360, and the Chicago Tribune, among others.

EDUCATIONAL BACKGROUND AND SELECTED AFFILIATIONS

- MBA, Finance and Management Policy, Kellogg Graduate School of Management, Northwestern University
- B.S. with Distinction, Marketing and Management Policy, Indiana University School of Business
- Academic Awards include Beta Gamma Sigma Honorary Fraternity, Sigma Phi Epsilon Merit Scholarship and Dean's List
- Chartered Financial Analyst (CFA)
- Certified Fraud Examiner (CFE)
- International Society of Investment Analysts
- Investment Analysts Society of Chicago, Ethics Committee

EXHIBIT 17

Zohar II CLO

Year	Quarter Ending	Original	CRA Adjusted	Minimum	Pass/Fail
2005	Jul-05	118.38%	118.38%	112.00%	Pass
	Oct-05	113.95%	113.95%	112.00%	Pass
2006	Jan-06	118.49%	118.36%	112.00%	Pass
	Apr-06	122.53%	122.41%	112.00%	Pass
	Jul-06	122.39%	122.27%	112.00%	Pass
	Oct-06	123.86%	123.74%	112.00%	Pass
2007	Jan-07	123.12%	122.78%	112.00%	Pass
	Apr-07	123.36%	123.02%	112.00%	Pass
	Jul-07	120.50%	119.40%	112.00%	Pass
	Oct-07	122.97%	122.59%	112.00%	Pass
2008	Jan-08	122.06%	121.47%	112.00%	Pass
	Apr-08	121.45%	121.00%	112.00%	Pass
	Jul-08	123.57%	120.85%	112.00%	Pass
	Oct-08	121.97%	119.15%	112.00%	Pass
2009	Jan-09	125.93%	121.93%	112.00%	Pass
	Apr-09	124.38%	120.35%	112.00%	Pass
	Jul-09	121.19%	111.65%	112.00%	Fail
	Oct-09	121.88%	107.82%	112.00%	Fail

DX 17 p. 781

The OC Test Should Have Protected Investors During the Financial Crisis

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.

Rebuttal Expert Report of Ira W
August 31, 2015

1

EXHIBIT
19A

118. In fact, the underperformance and increased risk of the Zohar loans during the Financial Crisis is exactly when the Indenture provisions relating to the categorization of loans and the operation of the OC Test should have become operative to further protect the investors. By not properly categorizing the loans, the OC Test level triggers redirecting cash flow to pay principal to senior note investors were not operative; throughout the time of the crisis, Tilton continued to receive the subordinate management fee and preferred share distributions, even while the loan performance was suffering and the risk of the assets and the underlying strategy itself was increasing.

DX 19A p. 74

Patriarch's Records Show Tens of Millions of Past Due Interest

From:	Karen Wu <Karen.Wu@PatriarchPartners.Com>
Sent:	Friday, May 4, 2012 7:56 PM
To:	Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Cc:	Brett Parker <Brett.Parker@PatriarchPartners.com>
Subject:	Zohar I Interest Due
Attach:	Zohar I projected IC for 2012-0508 (Sent to LT) - 2012-0503.xls

Hello Lynn,

Attached please [...] information.

Thank you,
Karen

Zohar I Projected Interest Coverage Ratio for May 2012
(for the due period of 02/08/2011 to 05/08/2012)

Portfolio Companies	Interest Paid within Quarter	Interest Paid within Quarter *(includes cash received since projection)*	Past Due Interest from prior periods	Interest Projected for Current Period	Amount Received since projection	Interest Still Due for Current Period	Interest Due to Other Lenders	Add'l Amount the Company will pay to Zohar I	Total Collections for the Period (Actual + Projected)	Comments
American LaFrance	-	-	11,794,410.17	140,081.20	-	140,081.20		50,000.00	50,000.00	
American Doors, LLC dba Black Moun	-	-	77,388.42	85,254.92	-	85,254.92	17,467.26	25,000.00	20,748.91	
Galey & Lord, LLC	-	-	7,515,370.16	84,945.00	-	84,945.00	25,000.00	110,000.00	84,987.49	$25k due to AIP
Global Automotive Systems, LLC	-	-	1,565,031.78	642,587.70	-	642,587.70		750,000.00	750,000.00	$784k due, can pay up to $1MM (but Jim wants to pay scheduled)
HARTWELL INDUSTRIES, INC.	-	-	2,270,552.87	326,989.34	-	326,989.34		25,000.00	25,000.00	
Heritage Aviation	-	-	1,777,524.64	81,450.00	-	81,450.00		81,450.00	81,450.00	
Intera Group, Inc.	-	-	368,753.41	47,007.74	-	47,007.74		25,000.00	25,000.00	
Oasis (LVD Acquisition, LLC)	-	-	661,105.66	232,599.83	232,599.83	0.00		0.00	232,599.83	paid
MD Helicopters, Inc.	-	-	10,532,273.62	301,361.65	-	301,361.65		725,000.00	725,000.00	
NATURA WATER, INC.	-	-	676,982.42	39,174.33	50,000.00	-		-	50,000.00	paid
Netversant Acquisition, LLC	-	-	7,151,040.13	302,346.62	302,346.62	0.00		0.00	302,346.62	paid
Petry Media Corporation	-	-	2,282,685.71	379,455.12	-	379,455.12		50,000.00	50,000.00	
Rapid Rack Industries, Inc.	-	-	907,880.83	252,292.19	-	252,292.19		30,000.00	30,000.00	
TRIM TRENDS	-	-	469,227.37	142,033.24	-	142,033.24		250,000.00	250,000.00	

EXHIBIT
186

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE & RICHARD LLP ON BEHALF OF PATRIARCH PARTNERS LLC

PP2_01530755

DX 186 p. 2

Patriarch's Records Show Tens of Millions of Past Due Interest

From: Brett Parker <Brett.Parker@PatriarchPartners.com>
Sent: Thursday, July 5, 2012 11:20 AM
To: Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Subject: Zohar II
Attach: Zohar II Proje

Lynn,

I am following up to see if you

Let me know if this is okay.

Thank you and regards,

Brett

Zohar II Projected Interest Coverage Ratio for July 2012
(for the due period of 4/11/2012 to 7/9/2012)

Portfolio Companies	Interest Paid within Quarter	Past Due Interest from prior periods	Further Interest Accrual for Current Period	Interest Still Due for Current Period	Add'l Amount the Company will pay to Zohar II	Add'l Amount due to other lenders	Total due from Borrower	Total Collections for the Period (Actual + Projected) to Zohar II	Projection Comments
AMERICAN LAFRANCE, LLC	-	11,891,012.63	151,288.65	151,288.65	151,288.65	11,121.10	5,000.00	4,657.62	
Artemiss, LLC.	-	405,070.21	251,155.13	251,155.13	251,155.13		50,000.00	50,000.00	
Black Mountain Doors	-	201,499.71	136,839.45	136,839.45	136,839.45		30,000.00	30,000.00	
East Alliance	-	0.00	137,321.28	137,321.28	137,321.28			-	
Galey & Lord, LLC	-	9,265,819.48	105,212.11	105,212.11	105,212.11		105,212.11	105,212.11	
GLOBAL AUTOMOTIVE SYSTEMS	-	4,631,845.34	624,530.85	624,530.85	624,530.85	80,888.89	573,257.67	507,523.51	$975k in total
HARTWELL INDUSTRIES, INC.	-	3,099,387.50	384,456.18	384,456.18	384,456.18		10,000.00	10,000.00	
HERITAGE AVIATION, LTD	-	1,757,813.17	64,769.77	64,769.77	64,769.77		130,000.00	130,000.00	
INTERA GROUP, LLC	-	2,237,218.76	199,796.26	199,796.26	199,796.26	97,815.99	15,000.00	10,069.98	
JACOBS INDUSTRIES	-	424,595.35	55,456.15	55,456.15	55,456.15		44,159.14	44,159.14	
LVD ACQUISITIONS, LLC	-	5,644,078.38		-	-		200,000.00	200,000.00	
MOBILE ARMORED VEHICLES, LLC	-	1,588,484.91	151,666.67	151,666.67	151,666.67		1,000.00	1,000.00	
MD HELICOPTER, INC	-	22,767,220.79	590,743.65	590,743.65	590,743.65		750,000.00	750,000.00	
NATURA WATER, INC.	-	513,545.96	42,833.59	42,833.59	42,833.59		42,833.59	42,833.59	
NETVERSANT SOLUTIONS, INC.	-	6,365,068.83	278,271.32	278,271.32	278,271.32		150,000.00	150,000.00	
PETRY MEDIA CORP	-	2,572,194.41	366,874.72	366,874.72	366,874.72	86,066.66	50,000.00	40,499.14	
S.O. ACQUISTION, LLC	-	2,162,347.79	422,406.25	422,406.25	422,406.25		50,000.00	50,000.00	
TRIM TRENDS	-	3,317,538.17	438,906.13	438,906.13	438,906.13		530,400.18	530,400.18	

187

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE & RICHARD LLP ON BEHALF OF PATRIARCH PARTNERS LLC PP2_01531665

DX 187 p. 2

Patriarch's Records Show Tens of Millions of Past Due Interest

From:	Christine Yon </O-FIRST ORGANIZATION/OU-FIRST ADMINISTRATIVE GROUP/CN-RECIPIENTS/CN-CYON>
Sent:	Friday, May 28, 2010 4:31 PM
To:	Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Cc:	SF <SF@PatriarchPartners.com>
Subject:	Zohar III Interest Projection or June Determination
Attach:	Zohar III Projected IC for June 2010 (c).xlsx

Lynn,

We request

Attached is a
interest for c
(highlighted

Please let us

Regards,
Christine

Zohar III Projected Interest Coverage Ratio for June 2010
(for the due period of 3/9/2010 to 6/7/2010)

Portfolio Companies	Interest Paid within Quarter (as of 5/20/10)	Past Due Interest from prior periods	Interest Projected for Current Period	Interest Still Due for Current Period	Add'l Amount the Company will pay	Total Collections for the Period (Actual + Projected)	Comments
180'S LLC	473,102.94	-	240,429.37	240,429.37	-	473,102.94	No ability to pay at this time
AMERICAN LAFRANCE, LLC	-	9,891,158.30	2,993,376.85	2,993,376.85	23,321.12	23,321.12	Will pay $25k (ALF/MAV)
AMWELD INTERNATIONAL	-	1,500,582.84	1,490,132.14	1,490,132.14	-	-	No ability to pay at this time
GALEY & LORD LLC	-	4,188,231.90	-	-	-	-	No ability to pay at this time
GLOBAL AUTOMOTIVE SYSTEMS	-	2,402,229.53	786,184.21	786,184.21	339,567.62	339,567.62	Will pay $475k (GAS/Jacobs/Trim)
HERITAGE AVIATION, LTD	-	7,666.33	7,666.67	7,666.67	7,666.67	7,666.67	Will pay $250k (MD/Heritage)
INTERA GROUP, LLC	-	887,387.97	280,600.00	280,600.00	25,000.00	25,000.00	Will pay $25k
JACOBS INDUSTRIES	-	316,250.00	103,500.00	103,500.00	44,703.58	44,703.58	Will pay $475k (GAS/Jacobs/Trim)
LVD ACQUISITIONS, LLC	-	-	344,753.13	344,753.13	50,000.00	50,000.00	Can pay $50k
MD HELICOPTER, INC	-	5,579,197.52	1,908,715.64	1,908,715.64	242,333.33	242,333.33	Will pay $250k (MD/Heritage)
NATURA WATER, INC.	-	132,537.44	97,864.32	97,864.32	15,000.00	15,000.00	Will pay $15k
NETVERSANT SOLUTIONS, INC.	-	2,346,868.52	1,199,424.96	1,199,424.96	300,000.00	300,000.00	Will pay $300k
MOBILE ARMORED VEHICLES, LLC	-	487,985.18	215,491.66	215,491.66	1,678.88	1,678.88	Will pay $25k (ALF/MAV)
TRIM TRENDS	-	641,849.78	210,059.93	210,059.93	90,728.80	90,728.80	Will pay $475k (GAS/Jacobs/Trim)

156

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE & RICHARD LLP ON BEHALF OF PATRIARCH PARTNERS LLC PP2_00673429

DX 156 p. 2

Interest Collection Was Doubtful, Yet Loans Were Categorized as Current

Q And these tens of millions of dollars listed under past due interest from prior periods, those were not included in the financial statements, correct?

A They were not, because we had -- they were doubtful. If they would ever be received, and if they were, then we would have taken it as income when received as in the notes to the financial statements.

Q And they were doubtful even for the companies that you believed that you could turnaround, right?

A They were doubtful at the time. That's why they were deferred and accrued. If we believed we could have collected it, then we would have put it in the accrued interest on the financial statements.

November 2, 2016 - Hearing Day Eight
Testimony of Lynn Tilton
2065:25-2066:15

Investors Did Not Know What Tilton Was Doing

Q Was it ever communicated to you that Ms. Tilton was amending loans by conduct to avoid categorizing them as defaulted?

A In the last -- in the last six or nine months, yes. Prior to that, no.

Q And how was that communicated to you?

A It was communicated to us through Alvarez & Marsal, who is the new collateral market for Zohar III.

...

Q And during your investment that's -- were what Ms. Tilton was doing, would that have been important for you to know?

A That would have.

Q Why?

A Again, that's really -- the only way that we have of engaging the health of the overall companies, and if they're performing what cash flows we, as an investor, could expect is what's in the trustee report. And so if loans are being modified and terms are being changed, as an investor, we want to know those things so we can accurately gauge what cash flows would be.

October 26, 2016 - Hearing Day Three
Testimony of Matthew Mach
605:11-605:18, 605:22-606:9

Investors Did Not Know What Tilton Was Doing

Q Mr. Aldama, was Ms. Tilton's categorization approach, that the categorizations are based on the belief in the future recovery and the reorganization, disclosed to you as an investor at Barclays?

A No.

Q Would it have been important for you to know that this is how Ms. Tilton was categorizing loans?

A Yep.

Q Why?

A Primarily because that's not how the indenture reads for this specific deal. The reasonable, by the -- the reasonableness test by the asset manager is we've seen that language in other deals, and we've seen some discretion by asset managers on other deals that we worked -- on this specific indenture that there's no room for that discretion. So, yes, it would have been important.

October 31, 2016 - Hearing Day Six
Testimony of Jaime Aldama
1531:20-1532:12

Investors Did Not Know What Tilton Was Doing

Q And had you known that Ms. Tilton was categorizing assets based on her subjective belief in the underlying portfolio companies, would that have affected your investment decision?

A Yes.

Q Would you have invested in the Zohar bonds if you had known that?

A I can't say without a hundred percent certainty, but I feel highly confident I would not have.

October 24, 2016 - Hearing Day One
Testimony of David Aniloff
169:23-170:6

An Accurate OC Test Was Extremely Important to Investors

Q If the overcollateralization ratio test had not been passing above the 112.7, but rather failing, would that have changed -- let me ask that question differently -- would that have been important to your investment decision?

A Extremely.

Q Why?

A Because, again, that's a margin of safety. So when you're looking at a transaction where the underlying loans are to distressed companies, which is different than a typical CLO, which is not loans to distressed companies, I would have required even more overcollateralization in a transaction like this than I would have required in something that's more transparent, that consisted of more broadly syndicated loans.

October 26, 2016 - Hearing Day One
Testimony of David Aniloff
131:4-18

Patriarch Falsely Disclosed That it Conducted a Fair Value Analysis

ZOHAR CDO 2003-1, LIMITED

CERTIFICATE AS TO FINANCIAL STATEMENTS

IN WITNESS WHEREOF, I have executed this Certificate on this 17th day of August 2010.

Confidential Treatment Requested Pursuant to FOIA

ABA-010527

<u>Disclosure of Fair Value of Financial Instruments.</u> The Company believes that the fair value of the Collateral Debt Obligations, taken as a whole, is approximately equal to the $475,322,675 carrying value presented on the Balance Sheet.

Fair value estimates are generally subjective in nature, and are made as of a specific point in time based on the characteristics of the financial instruments and relevant market information. Where available, quoted market prices are taken into account in the determination of fair value. For substantially all of the Collateral Debt Obligations, however, fair values are based on estimates using present value of anticipated future collections or other valuation techniques. These techniques involve uncertainties and are significantly affected by the assumptions used and judgments made regarding risk characteristics of various financial instruments, discount rates, estimates of future cash flows, future expected loss experience and other factors. Changes in assumptions could significantly affect these estimates and the resulting fair values. Derived fair value estimates cannot necessarily be substantiated by comparison to independent markets and, in many cases, could not be realized in an immediate sale of the instrument. Accordingly, the aggregate fair value amounts determined by the Company do not purport to represent, and should not be considered representative of, the underlying enterprise value of the Company. In addition, because of differences in methodologies and assumptions used to estimate fair values, the Company's estimate of fair values should not be compared to those of other financial institutions.

EXHIBIT 10A

DX 10A p. 6

Patriarch Was Simply Holding Loans at Cost

Q And tell the Court the valuation techniques that Patriarch used to come up with the fair value of the loans.

A I mean, this is a general discussion as a fair value concept. And from our perspective, the fair value that we believe was the most accurate was cost of the actual CDO balances.

Q So -- to be very clear, tell the Court what cost is.

A Cost is the actual cash that was paid for those loans.

October 27, 2016- Hearing Day Four
Testimony of Carlos Mercado
1177:4-14

Revised Financial Statements Reveal that "Fair Value Analysis" Was Simply Cost

ZOHAR CDO 2003-1, LIMITED

CERTIFICATE AS TO FINANCIAL STATEMENTS

I, Lynn Tilton, manager of the attorney-in fact for Zohar CDO 2003-1, Limited, an exempted company organized and existing under the laws of the Cayman Islands (the "Issuer") do hereby certify that I am duly authorized to execute and deliver this Certificate pursuant to Section 7.9(a) of the Indenture, dated as of November 13, 2003, by and among the Issuer; Zohar CDO 2003-1, Corp., a Delaware corporation (the "Co-Issuer"); Zohar CDO 2003-1, LLC, a Delaware limited liability company (the "Zohar Subsidiary"); MBIA Insurance Corporation (the "Credit Enhancer"); CDC Financial Products Inc. (Class A-1 Note Agent); and U.S. Bank National Association, a national banking association organized under the laws of the United States, (the "Trustee"), as trustee, (as the same may be amended or otherwise modified from time to time, the "Indenture"). Capitalized terms used herein that are defined in the Indenture shall have the same meanings as therein defined.

I attach the fo

1. Purs... subs... of th... Capi... acco... (the

2. Purs... subs... begi... Nove... belo... Statements").

3. Notes which are considered integral to the presentation of the Balance Sheet and Income Statements and, therefore, form part of the Balance Sheet and Income Statements.

These financial statements have been prepared under a basis of accounting in which the Company's investment in Collateral Debt Obligations ("CDOs") are recorded at cost and the company's equity interests in portfolio companies are not recorded on the consolidated balance sheet.

On behalf of the Issuer I certify that I have reviewed the Balance Sheet and Income Statements and that such Balance Sheet and Income Statements present fairly, in all material respects, the information contained herein under the basis of accounting described in the preceding paragraphs and in the Notes to the Consolidated Balance Sheet and Income Statements.

IN WITNESS WHEREOF, I have executed this Certificate on this 17th day of February 2015.

Zohar CDO 2003-1, Limited
as Issuer

By: __________
Name: Lynn Tilton
Title: Manager of the attorney-in-fact for the Issuer

1

EXHIBIT
10B

> These financial statements have been prepared under a basis of accounting in which the Company's investment in Collateral Debt Obligations ("CDOs") are recorded at cost and the company's equity interests in portfolio companies are not recorded on the consolidated balance sheet.

DX 10B p. 1

CDO Assets are Senior Secured Loans

ZOHAR CDO 2003-1, LIMITED

CERTIFICATE AS TO FINANCIAL STATEMENTS

EXHIBIT

10A

Confidential Treatment Requested Pursuant to FOIA

ABA-010527

NOTE 1 – ORGANIZATION

Zohar CDO 2003-1, Limited (the "Company") is an exempted company organized and existing under the laws of the Cayman Islands. The Company was established as a special purpose vehicle to invest in senior secured loans (hereinafter, the "Collateral Debt Obligations").

DX 10A p. 4

Patriarch Falsely Claimed to Conduct an Impairment Analysis

ZOHAR CDO 2003-1, LIMITED

4. Carrying Value of Collateral Debt Obligations

The term "Collateral Debt Obligations" refers to the assets that comprise the Company's portfolio of held-for-investment senior secured loans. The Collateral Debt Obligations are recorded at cost upon acquisition, which is equal to the amount of the cash paid to acquire the Collateral Debt Obligations.

For financial accounting purposes, principal payments received from borrowers under the loan facilities reduce the carrying value of the respective loan assets. Advances to borrowers pursuant to revolving credit agreements increase the carrying value of the respective loan assets. In the event the Company's expected realization of principal under a CDO is impaired, such that the anticipated future collections are determined to be less than the carrying value of the loan, the Company will record an impairment loss equal to the amount of the anticipated shortfall and will thereafter carry the loan at the reduced amount.

EXHIBIT 10A

Confidential Treatment Requested Pursuant to FOIA

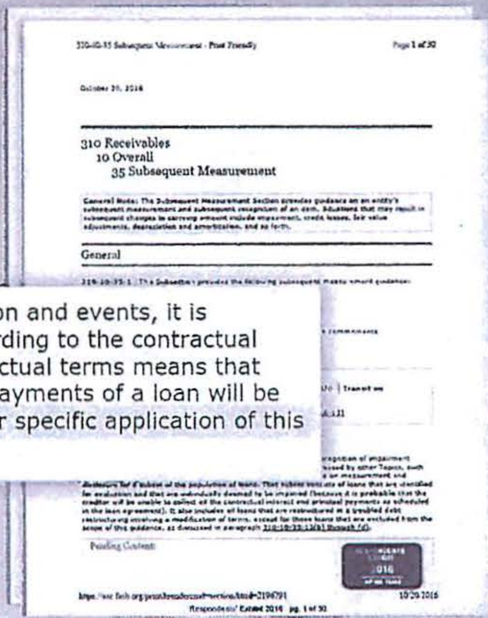
ABA-010527

DX 10A p. 5

Respondents' Expert Admitted Probable Standard

GAAP for Loan Impairment

- Relevant GAAP for loan impairment is found in Subtopic 310-10. Dr. Henning cites to Subtopic 310-10 but ignores the last sentence and reference to Subtopic 310-40 in subsection 310-10-35-16:


310 Receivables
10 Overall
35 Subsequent Measurement

General

310-10-35-16 A loan is impaired when, based on current information and events, it is probable that a creditor will be unable to collect all amounts due according to the contractual terms of the loan agreement. All amounts due according to the contractual terms means that both the contractual interest payments and the contractual principal payments of a loan will be collected as scheduled in the loan agreement. See Subtopic 310-40 for specific application of this guidance to loans restructured in a troubled debt restructuring.

RX 2016, p.13, 10/20/16

4

Lundelius Demonstrative Slides p. 4

Tilton Directed Employees Not to Write Down

From: Lynn Tilton <Lynn.Tilton@Patriarch.Org>
Sent: Tuesday, January 15, 2008 7:46 PM
To: Todd Kaloudis <Todd.Kaloudis@PatriarchPartners.com>
Subject: Re: Zohar II

Pls call me on my cell phone now.

----- Original Message -----
From: Todd Kaloudis
To: Lynn Tilton; William Phan
Sent: Tue Jan 15 19:43:33 2008
Subject: RE: Zohar II

Lynn, I'm sorry that we disappointed you with this. We anticipated that this issue required your guidance... which is why we flagged it for you albeit later than we would have liked to.

Nothing is final yet. William is in a better position than I am to discuss since he has been arguing with Peter Berlant about this for 24 hours. I believe we are ready to have revised financials already based on an alternative classification of this particular asset... Please let us know when you can speak to William.

-tk

Todd Kaloudis
Patriarch Partners, LLC
32 Avenue of the Americas, 17th Floor
New York, NY 10013
+1 212 825-6836 w
+1 646-884-0600 m
+1 212 825-2038 f

-----Original Message-----
From: Lynn Tilton
Sent: Tuesday, January 15, 2008 7:33 PM
To: Todd Kaloudis; William Phan
Subject: Zohar II

Not at all happy with the accounting initiatives. Until we write the loan off the books and have been all possible cash, we have no obligation to take that writedown. Who came up with that conclusion? And next time run things by me before, not after the fact.
Not happy

GOVERNMENT EXHIBIT 202 HO-11665/D-3350

EXHIBIT 133

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE & RICHARD LLP ON BEHALF OF PATRIARCH PARTNERS LLC PP2_00134354

Not at all happy with the accounting initiatives. Until we write the loan off the books and have been all possible cash, we have no obligation to take that writedown. Who came up with that conclusion? And next time run things by me before, not after the fact.
Not happy

DX 133 p. 1

Tilton: We Don't Write Down, We Write Off

From: Lynn Tilton </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LTILTON>
Sent: Friday, August 13, 2010 6:29 PM
To: Carlos Mercado <Carlos.Mercado@PatriarchPartners.com>
Cc: Accounting <Accounting@PatriarchPartners.com>; Karen Wu <Karen.Wu@PatriarchPartners.Com>; Michael Parker <Michael.Parker@PatriarchPartners.com>
Subject: RE: Zohar I - Interest Accruals for 8/10/2010 Determination Data

we do not write up or write down—we write off.

PATRIARCH PARTNERS

Lynn Tilton
Chief Executive Officer
Patriarch Partners, LLC
32 Avenue of the Americas
New York, NY 10013
212 825-6772
212 825-2038 fax
Lynn.Tilton@patriarchpartners.com

Web: www.patriarchpartners.com
Blog: dust2diamonds.typepad.com/dust-to-d

we do not write up or write down—we write off.

From: Carlos Mercado
Sent: Friday, August 13, 2010 6:15 PM
To: Lynn Tilton
Cc: Accounting; Karen Wu; Michael Parker
Subject: RE: Zohar I - Interest Accruals for 8/10/2010 Determination Data

Thank you Lynn, I will go ahead and finalize the financial statements. As for the asset write down issue, you raised the question to me when we completed the Zohar II financial statements in July. There was no precedent before then that I am aware of. As you mentioned, we can discuss further at another time.

Carlos E. Mercado

Patriarch Partners, LLC
32 Avenue of the Americas, 17th Fl
New York, NY 10013
646-723-7632

EXHIBIT
162

From: Lynn Tilton
Sent: Friday, August 13, 2010 6:07 PM
To: Carlos Mercado
Cc: Accounting; Karen Wu; Michael Parker

GOVERNMENT EXHIBIT
201
HO-11665/D-3350

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE & RICHARD LLP ON BEHALF OF PATRIARCH PARTNERS LLC PP2_00580148

DX 162 p. 1

Mercado: We Don't Write Down, We Write Off

Q What was that policy?

A Our policy has been, since the inception of each one of the funds, that the collateralized debt obligations are not considered to be impaired unless an event or sale occurs from which a principal loss can be conclusively determined.

October 27, 2016- Hearing Day Four
Testimony of Carlos Mercado
1117:25-1118:5

Revised Financial Statements Reveal Patriarch Does Not Impair Consistent With GAAP

ZOHAR CDO 2003-1, LIMITED

CERTIFICATE AS TO FINANCIAL STATEMENTS

I, Lynn Tilton, manager of the attorney-in fact for Zohar CDO 2003-1, Limited, an exempted company organized and existing under the laws of the Cayman Islands (the "Issuer") do hereby certify that I am duly authorized to execute and deliver this Certificate pursuant to Section 7.9(a) of the Indenture, dated as of November 13, 2003, by and among the Issuer; Zohar CDO 2003-1, Corp., a Delaware corporation (the "Co-Issuer"); Zohar CDO 2003-1, LLC, a Delaware limited liability company (the "Zohar Subsidiary"); MBIA Insurance Corporation (the "Credit Enhancer"); CDC Financial Products Inc. (Class A-1 Note Agent); and U.S. Bank National Association, a national banking association organized under the laws of the United States, (the "Trustee"), as trustee, (as the same may be amended or otherwise modified from time to time, the "Indenture"). Capitalized terms used herein that are defined in the Indenture shall have the same meanings as therein defined.

I attach the following:

1. Pursuant to Section 7.9(a)(i) of the Indenture subsidiaries as of the February 6, 2015 Determ of the Preference Shares as of each Deter Capitalization as of each Determination Date accounting described below and in the Notes t (the "Balance Sheet").
2. Pursuant to Section 7.9(a)(ii) of the Indenture subsidiaries for the period comprising all Due beginning on November 13, 2003 and ending November 7, 2014 and ending on February 6, 2 below and in the Notes to Consolidated B Statements");
3. Notes which are considered integral to the pre and, therefore, form part of the Balance Sheet a

These financial statements have been prepared under a b in Collateral Debt Obligations ("CDOs") are recorded companies are not recorded on the consolidated balance

> agreements increase the carrying value of the respective loan assets. In the event the Company's expected realization of principal under a CDO is impaired on a permanent basis, such that the anticipated future collections are determined to be less than the carrying value of the loan, the Company will record an impairment loss equal to the amount of the anticipated shortfall and will thereafter carry the loan at the reduced amount. A Collateral Debt Obligation is not considered impaired and the carrying value of the loans is not reduced until either an event or sale occur such and to the extent that, in the judgment of the Collateral Manager, principal losses can be conclusively determined. Pursuant to Section 7.7(a) of the

On behalf of the Issuer I certify that I have reviewed the Balance Sheet and Income Statements and that such Balance Sheet and Income Statements present fairly, in all material respects, the information contained herein under the basis of accounting described in the preceding paragraphs and in the Notes to the Consolidated Balance Sheet and Income Statements.

IN WITNESS WHEREOF, I have executed this Certificate on this 17th day of February 2015.

Zohar CDO 2003-1, Limited
as Issuer

By: ____________________
Name: Lynn Tilton
Title: Manager of the attorney-in-fact for the Issuer

1

EXHIBIT
10B

DX 10B p. 5

Accrued Interest: Unpaid Interest on Loans

ZOHAR III, LIMITED

CERTIFICATE AS TO FINANCIAL STATEMENTS

I, Lynn Tilton, managing member of Patriarch Partners XV, LLC, Collateral Manager of Zohar III, Limited, an exempted company organized and existing under the laws of the Cayman Islands (the "Issuer") do hereby certify that I am duly authorized to execute and deliver this Certificate pursuant to Section 7.9(a) of the Indenture, dated as of April 6, 2007, by and among the Issuer; Zohar III, Corp., a Delaware corporation (the "Co-Issuer"); Zohar III, LLC, a Delaware limited liability company (the "Zohar Subsidiary"); NATIXIS Financial Products Inc. (Class A-1R and Class A-1D Note Agent); and LaSalle Bank National Association, a national banking association organized under t

from ti

same o

I attach

1.

2.

and ending on March 8, 2010 as well as the period beginning on December 9, 2009 and ending on March 8, 2010), prepared in accordance with U.S. generally accepted accounting principles (the "Income Statement").

3. Notes which are considered integral to the presentation of the Balance Sheet and Income Statement and, therefore, form part of the Balance Sheet and Income Statement.

I certify that I have reviewed the Balance Sheet and Income Statement and that such Balance Sheet and Income Statement present fairly, in all material respects, the financial position of the Issuer and its consolidated subsidiaries.

IN WITNESS WHEREOF, I have executed this Certificate on this 15th day of March, 2010.

Lynn Tilton

EXHIBIT

12D

Accrued Interest and Fees Receivable (net of $0.9 million allowance for uncollectables)	6,907,911

DX 12D p. 2

Changed Methodology to Conceal Unpaid Interest

From:	Carlos Mercado </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CMERCADO>
Sent:	Friday, March 12, 2010 11:15 AM
To:	Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Cc:	Accounting <Accounting@PatriarchPartners.com>
Subject:	Zohar III - Interest Accruals for 3/8/10 Determination Date
Attach:	Zohar III Variance Analysis 3-2010.pdf, Zohar III Interest Accrual Analysis 3-2010(s).xls

GOVERNMENT EXHIBIT 219 HO-11665/D-3350

Lynn,

- Prior to sending you completed financials, we are attaching our draft interest accrual analysis for your review and guidance.
- The current period's interest accrual reflects unpaid interest due in the current period which incorporates the interest projection provided to you by Structured Finance. This is a departure from the interest accrual methodology used in the prior three periods in which total accumulated & unpaid interest for all prior periods was reduced by specific exclusions to arrive at the accrual.
  1. Using our revised methodology, the current period's interest accrual would show a $4.1 MM increase from the prior period. ... payment periods an... exposures to ALF, G...
  2. To maintain a more ... interest of compani... Netversant and Trim...
  3. We request your ... specific borrowers ... column where you ... statements is shown...
- In addition, we have attach... initial interest accrual assum... Receivable and Interest Income over the past four quarters.
- The Zohar III F/S are due Monday, March 15th by 5pm. However, we seek your guidance on the attached interest accrual computation by Sunday, March 14th so that we can complete the final F/S, send to Peter Berlent, and return a final draft to you for approval with sufficient time to review.

	6/8/2009	9/8/2009	12/8/2009	3/8/2010 Preliminary
Collateral Investments	$916,523,283	$949,222,917	$938,945,141	$930,345,079
Net Accrued Interest and Fees Receivable	**6,358,285**	**6,571,766**	**6,910,056**	**6,907,911**
As a % of Collateral Investments	0.69%	0.69%	0.74%	0.74%
Interest Income	**14,177,751**	**14,811,993**	**15,012,088**	**12,915,752**
As a % of Collateral Investments	1.55%	1.56%	1.61%	1.39%

As mentioned above, attached separately is an interest analysis spreadsheet detailing each borrower's accrual whereby you can adjust any interest accrual.

EXHIBIT 218

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE ... ON BEHALF OF PATRIARCH PARTNERS LLC PP2_00702437

- The current period's interest accrual reflects unpaid interest due **in the current period** ***which incorporates the interest projection provided to you by Structured Finance.*** This is a departure from the interest accrual methodology used in the prior three periods in which total accumulated & unpaid interest for all prior periods was reduced by specific exclusions to arrive at the accrual.

DX 218 p.1

Changed Methodology to Conceal Unpaid Interest

From: Carlos Mercado </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CMERCADO>
Sent: Friday, March 12, 2010 11:15 AM
To: Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Cc: Accounting <Accounting@PatriarchPartners.com>
Subject: Zohar III - Interest Accruals for 3/8/10 Determination Date
Attach: Zohar III Variance Analysis 3-2010.pdf, Zohar III Interest Accrual Analysis 3-2010(a).xls

GOVERNMENT EXHIBIT 219 HO-11665/D-1350

Lynn,

- Prior to sending you completed financials, we are attaching our draft interest accrual analysis for your review and guidance.
- The current period's interest accrual reflects unpaid interest due in the current period *which incorporates the interest projection provided to you by Structured Finance*. This is a departure from the interest accrual methodology used in the prior three periods in which total accumulated & unpaid interest for all prior periods was reduced by specific exclusions to arrive at the accrual.
  1. Using our revised methodology, the current period's interest accrual would show a $4.1 MM increase from the prior period. This result is primarily due to secondary facilities with varying interest payment periods and thus long… exposures to ALF, GAS and MD…
  2. To maintain a more consistent … interest of companies with pas… Netversant and Trim Trends). …
  3. We request your guidance … specific borrowers that wo… column where you can gui… statements is shown below.
- In addition, we have attached a preli… initial interest accrual assumptions. … Receivable and Interest Income over the past four quarters.
- The Zohar III F/S are due Monday, March 15th by 5pm. However, **we seek your guidance on the attached interest accrual computation by Sunday, March 14th so that we can complete the final F/S, send to Peter Berlant, and return a final draft to you for approval with sufficient time to review.**

	6/8/2009	9/8/2009	12/8/2009	3/8/2010 Preliminary
Collateral Investments	$916,523,283	$949,222,917	$938,945,141	$930,345,079
Net Accrued Interest and Fees Receivable	**6,368,285**	**6,571,766**	**6,910,056**	**6,907,911**
As a % of Collateral Investments	0.69%	0.69%	0.74%	0.74%
Interest Income	**14,177,751**	**14,811,993**	**15,012,988**	**12,915,752**
As a % of Collateral Investments	1.55%	1.56%	1.61%	1.39%

As mentioned above, attached separately is an interest analysis spreadsheet detailing each borrower's accrual whereby you can adjust any interest accrual.

EXHIBIT 218

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE … ON BEHALF OF PATRIARCH PARTNERS LLC

PP2_00702437

1. **Using our revised methodology, the current period's interest accrual would show a $4.1 MM increase from the prior period**. This result is primarily due to secondary facilities with varying interest payment periods and thus longer accrual periods up through Determination Date. Zohar III also has larger exposures to ALF, GAS and MDHI, all having significant debt and interest levels.

DX 218 p.1

Changed Methodology to Conceal Unpaid Interest

GOVERNMENT EXHIBIT 219 HO-11665/D-3350

From:	Carlos Mercado </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CMERCADO>
Sent:	Friday, March 12, 2010 11:15 AM
To:	Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Cc:	Accounting <Accounting@PatriarchPartners.com>
Subject:	Zohar III - Interest Accruals for 3/8/10 Determination Date
Attach:	Zohar III Variance Analysis 3-2010.pdf; Zohar III Interest Accrual Analysis 3-2010(a).xls

Lynn,

- Prior to sending you completed financials, we are attaching our draft interest accrual analysis for your review and guidance.
- The current period's interest accrual reflects unpaid interest due in the current period which *incorporates the interest projection provided to you by Structured Finance*. This is a departure from the interest accrual methodology used in the prior three periods in which total accumulated & unpaid interest for all prior periods was reduced by specific exclusions to arrive at the accrual.
  1. Using our revised methodology, the current period's interest accrual would show a $4.1 MM increase from the prior period. This result is primarily due to secondary facilities with varying interest payment periods and thus longer accrual periods up through Determination Date. Zohar III also has larger exposures to ALF, GAS and M
  2. To maintain a more consisten interest of companies with pa Netversant and Trim Trends).
  3. We request your guidance specific borrowers that w column where you can su statements is shown below.
- In addition, we have attached a preli initial interest accrual assumptions. The summary below highlights the trends in Collateral Investments, Interest Receivable and Interest Income over the past four quarters.
- The Zohar III F/S are due Monday, March 15th by 5pm. However, we seek your guidance on the attached interest accrual computation by Sunday, March 14th so that we can complete the final F/S, send to Peter Berlant, and return a final draft to you for approval with sufficient time to review.

	6/8/2009	9/8/2009	12/8/2009	3/8/2010 Preliminary
Collateral Investments	$916,523,283	$949,222,917	$938,945,141	$930,345,079
Net Accrued Interest and Fees Receivable	**6,350,285**	**6,571,766**	**6,910,086**	**6,907,911**
As a % of Collateral Investments	0.69%	0.69%	0.74%	0.74%
Interest Income	14,177,751	14,811,993	15,012,088	12,915,752
As a % of Collateral Investments	1.55%	1.56%	1.61%	1.39%

As mentioned above, attached separately is an interest analysis spreadsheet detailing each borrower's accrual whereby you can adjust any interest accrual.

EXHIBIT 218

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE
ON BEHALF OF PATRIARCH PARTNERS LLC

PP2_00702437

2. To maintain a more consistent accrual level we have applied a **50% reduction** to the unpaid current period interest of companies with past-due balances (ALF, Amweld, Galey, GAS, Intera, Jacobs, MDHI, MAV, Natura, Netversant and Trim Trends). The net impact results in an accrual that is in-line with the prior period.

DX 218 p.1

Changed Methodology to Conceal Unpaid Interest

GOVERNMENT EXHIBIT 219 HO-11665/D-1350

From: Carlos Mercado </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CMERCADO>
Sent: Friday, March 12, 2010 11:15 AM
To: Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Cc: Accounting <Accounting@PatriarchPartners.com>
Subject: Zohar III - Interest Accruals for 3/8/10 Determination Date
Attach: Zohar III Variance Analysis 3-2010.pdf; Zohar III Interest Accrual Analysis 3-2010(a).xls

Lynn,

- Prior to sending you completed financials, we are attaching our draft interest accrual analysis for your review and guidance.
- The current period's interest accrual reflects unpaid interest due in the current period *which incorporates the interest projection provided to you by Structured Finance.* This is a departure from the interest accrual methodology used in the prior three periods in which total accumulated & unpaid interest for all prior periods was reduced by specific exclusions to arrive at the accrual.
  1. Using our revised methodology, the current period's interest accrual would show a $4.1 MM increase from the prior pe… payment periods and thus lon… exposures to ALF, GAS and M…
  2. To maintain a more consisten… interest of companies with pa… Netversant and Trim Trends).
  3. We request your guidance… specific borrowers that wa… column where you can gui… statements is shown below.
- In addition, we have attached a … initial interest accrual assumptions. … Receivable and Interest Income over…

3. **We request your guidance on these accruals, as we are not sure if you have expectations for specific borrowers that warrant additional adjustments. The attached spreadsheet has a yellow column where you can guide us on our accrual assumptions.** The present impact on the financial statements is shown below.

- The Zohar III F/S are due Monday, March 15th by 5pm. However, **we seek your guidance on the attached interest accrual computation by Sunday, March 14th so that we can complete the final F/S, send to Peter Berlant, and return a final draft to you for approval with sufficient time to review.**

	6/8/2009	9/8/2009	12/8/2009	3/8/2010 Preliminary
Collateral Investments	$916,523,283	$949,222,917	$938,945,141	$930,345,079
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Interest Income	**14,177,751**	**14,811,993**	**15,012,008**	**12,915,752**
As a % of Collateral Investments	1.55%	1.56%	1.61%	1.39%

As mentioned above, attached separately is an interest analysis spreadsheet detailing each borrower's accrual whereby you can adjust any interest accrual.

EXHIBIT 218

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE … ON BEHALF OF PATRIARCH PARTNERS LLC PP2_00702437

DX 218 p.1

Changed Methodology to Conceal Unpaid Interest

From:	Carlos Mercado </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CMERCADO>
Sent:	Friday, March 12, 2010 11:15 AM
To:	Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Cc:	Accounting <Accounting@PatriarchPartners.com>
Subject:	Zohar III - Interest Accruals for 3/8/10 Determination Data
Attach:	Zohar III Variance Analysis 3-20

GOVERNMENT EXHIBIT 219 HO-11665/D-3350

Lynn,

	6/8/2009	9/8/2009	12/8/2009	3/8/2010 Preliminary
Collateral Investments	$916,523,283	$949,222,917	$938,945,141	$930,345,079
Net Accrued Interest and Fees Receivable	**6,358,285**	**6,571,766**	**6,910,056**	**6,907,911**
As a % of Collateral Investments	0.69%	0.69%	0.74%	0.74%
Interest Income	**14,177,751**	**14,811,993**	**15,012,008**	**12,915,752**
As a % of Collateral Investments	1.55%	1.56%	1.61%	1.39%

As mentioned above, attached separately is an interest analysis spreadsheet detailing each borrower's accrual whereby you can adjust any interest accrual.

EXHIBIT 218

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE
ON BEHALF OF PATRIARCH PARTNERS LLC

PP2_00702437

DX 218 p.1

Concealed Unpaid Interest

From:	Carlos Mercado </O=FIRST ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=CMERCADO>
Sent:	Friday, March 12, 2010 11:15 AM
To:	Lynn Tilton <Lynn.Tilton@PatriarchPartners.Com>
Cc:	Accounting <Accounting@PatriarchPartners.com>
Subject:	Zohar III - Interest Accruals for 3/8/10 Determination Date
Attach:	Zohar III Variance Analysis 3-2010.pdf; Zohar III Interest Accrual Analysis 3-2010(s).xls

GOVERNMENT EXHIBIT 219 HO-11665/D-3350

Lynn,

- Prior to sending you completed financials, we are attaching our draft interest accrual analysis for your review and guidance.
- The current period's interest accrual reflects unpaid interest due in the current period ***which incorporates the interest projection provided to you by Structured Finance***. This is a departure from the interest accrual methodology used in the prior three periods in which total accumulated & unpaid interest for all prior periods was reduced by specific exclusions to arrive at the accrual.
    1. **Using our revised methodology, the current period's interest accrual would show a $4.1 MM increase from the prior period**. This result is primarily due to secondary facilities with varying interest payment periods and thus longer accrual periods up through Determination Date. Zohar III also has larger exposures to ALF, GAS and MDHI, all having significant debt and interest levels.
    2. To maintain a more consistent accrual level we have applied a 50% reduction interest of companies with past-due balances (ALF, Amweld, Galey, GAS, Intera, Netversant and Trim Trends). The net impact results in an accrual that is in-line
    3. **We request your guidance on these accruals, as we are not sure if you specific borrowers that warrant additional adjustments. The attached column where you can guide us on our accrual assumptions.** The presen statements is shown below.
- In addition, we have attached a preliminary financial statement variance analysis that initial interest accrual assumptions. The summary below highlights the trends in Collat Receivable and Interest Income over the past four quarters.
- The Zohar III F/S are **due Monday, March 15th by 5pm**. However, **we seek your guidance on the attached interest accrual computation by Sunday, March 14th so that we can complete the final F/S, send to Peter Berlant, and return a final draft to you for approval with sufficient time to review.**

	6/8/2009	9/8/2009	12/8/2009	3/8/2010 Preliminary
Collateral Investments	$916,523,283	$949,222,917	$938,945,141	$930,345,079
Net Accrued Interest and Fees Receivable	**6,358,285**	**6,571,766**	**6,910,056**	**6,907,911**
As a % of Collateral Investments	0.69%	0.69%	0.74%	0.74%
Interest Income	14,177,751	14,811,993	15,012,008	12,815,752
As a % of Collateral Investments	1.55%	1.56%	1.61%	1.39%

As mentioned above, attached separately is an interest analysis spreadsheet detailing each borrower's accrual whereby you can adjust any interest accrual.

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Total accrual **47,269,947.19**

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Berlant Engagement Letter

ABA

Anchin, Block & Anchin LLP
Accountants and Consultants

1375 Broadway
New York, New York 10018
(212) 840-3456
FAX (212) 840-7066

July 1, 2007

Ms. Lynn Tilton
Patriarch Partners, LLC
32 Avenue of the Americas
17th Floor
New York, NY 10013

Dear Ms. Tilton;

We are pleased to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of various miscellaneous services (discussed below) we will provide to Patriarch Partners, LLC and its related entities (collectively, "Patriarch").

Scope of Services

All services encompassed within the terms of this en… basis, and we will be under no obligation to render a… you or an authorized officer of Patriarch. Moreover, … advice which we may have provided under this agre…

The services governed by this engagement letter fa… keeping services, (2) preparation and/or assistanc… various financial and business matters, and (4) int… Patriarch has a business or employment relationship.

Bookkeeping Services shall be performed by us under the direction of a Patriarch officer or employee who shall have sufficient knowledge and experience to perform such tasks, and Patriarch shall provide us with specific instructions regarding the performance of those services and shall take full responsibility for the manner in which the services are provided. All bookkeeping entries made by our employees shall be reviewed and approved by Patriarch; and all characterizations of revenues and expenditures shall be the responsibility of Patriarch.

Financial Statement Services shall consist of reading and commenting on financial statements, computations or other financial data compiled by Patriarch employees. Such services shall not constitute compilation, review or audit services as those terms are used in the professional literature published by the AICPA. Accordingly, we will not render any report with respect to such statements, computations or data and will take no responsibility regarding the accuracy or completeness of such statements, computations or data or whether such statements or data comply with generally accepted accounting principles or any other specified basis of accounting. Our responsibility shall be limited to advising you of any obvious errors which come to our attention as a result of our reading of such statements or data, and our services shall in no way relieve you of any obligations that you may have with respect to the accuracy and completeness of any data which you ask us to read and comment upon.

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Confidential Treatment Requested Pursuant to FOIA

ABA-000009

Financial Statement Services shall consist of reading and commenting on financial statements, computations or other financial data compiled by Patriarch employees. Such services shall not constitute

AICPA. Accordingly, we will not render any report with respect to such statements, computations or data and will take no responsibility regarding the accuracy or completeness of such statements, computations or data or whether such statements or data comply with generally accepted accounting principles or any other

DX 34 p. 1

Berlant Was Not Reviewing

Q Mr. Mercado, to your knowledge, was Peter Berlant reviewing or opining on compliance with GAAP with respect to the Zohar funds financial statements?

A He wasn't reviewing or opining on GAAP. What he was doing was providing guidance on GAAP.

Q What do you mean by that?

A He was providing instruction as to whether or not he believed there was an issue that we needed to incorporate into the financial statements, whether or not there was something missing that he felt should be -- we should consider to be included into the financial statements.

Q But he wasn't involved in testing the Zohar funds' compliance with those financial statements, right?

A You used the word "testing." No, he wasn't doing testing.

October 27, 2016- Hearing Day Four
Testimony of Carlos Mercado
1128:18-1129:9

Tilton Repeatedly Described Her Subjective Categorization Approach

TextMap Annotation Digest Report

Case Name: Patriarch
Transcript: [2/12/2013] Tilton, Lynn- INV vol I

Pg: 181 Ln: 20 - Pg: 182 Ln: 6 continued...

Annotation:
turnaround, we do not believe there's a reasonableness to recovery.

Pg: 182 Ln: 7 - 16

Annotation:
Q The structured finance people, do they ever make the decision to move it from 4 to 1, or is that only you?
A They know that when we are defaulting something -- I mean I will make the decision, but they may categorize it as a 1. I mean ultimately they're not making the decision to not lend to a company, you know, to give up our support, to put it into a Chapter 7.
But they don't need me to tell them that it's then a Category 1. We have a general practice.

Pg: 182 Ln: 17 - Pg: 183 Ln: 1

Annotation:
Q Can you tell me how that practice -- how did that practice get established?
A I can't tell you exactly when it got established, but basically if we're supporting a company and we are effectuating a turnaround, they are usually paying some form of interest, and in those instances where they are paying interest, and we are continuing our support with a reasonable belief of recovery, we keep it a Category 4. At what time we don't, it becomes a Category 1.

Pg: 182 Ln: 20

Annotation:
established, but basically if we're supporting a company

Pg: 182 Ln: 22

Annotation:
paying some form of interest, and in those instances

Pg: 182 Ln: 22

Annotation:
paying some form of interest, and in those instances

Pg: 184 Ln: 1 - 11

Annotation:
Do you know whether you did receive advice from lawyers, internal or external, on this practice that you

10/18/2016 7:52 PM Page 25 of 37

established, but basically if we're supporting a company and we are effectuating a turnaround, they are usually paying some form of interest, and in those instances where they are paying interest, and we are continuing our support with a reasonable belief of recovery, we keep it a Category 4. At what time we don't, it becomes a Category 1.

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Tilton Repeatedly Described Her Subjective Categorization Approach

TextMap Annotation Digest Report

A If we continue the support in terms of active funding, active management to effectuate the turnaround strategy, and we have a reasonable belief of recovery because we're taking those actions and that's what causes recovery, you know, under our history and track record, then we consider it a Category 4.

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Must Notify Trustee of Amendments

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INDENTURE

among

ZOHAR II 2005-1, LIMITED

ZOHAR II 2005-1, CORP.

ZOHAR II 2005-1, LLC

MBIA INSURANCE CORPORATION,
as Credit Enhancer

IXIS FINANCIAL PRODUCTS INC.,
as Class A-1 Note Agent and Class A-3 Note Agent

and

LASALLE BANK NATIONAL ASSOCIATION,
as Trustee

Dated as of January 12, 2005

(b) Payment Date Accountings. The Issuer shall render an accounting (the "Note Valuation Report") determined as of each Determination Date, and made available to each Rating Agency, the Trustee, the Preference Share Paying Agent, the Collateral Manager, the Class A-1 Note Agent, the Class A-3 Note Agent, the Credit Enhancer and the Holders of Notes (and any beneficial owner thereof to the extent it has certified to the Trustee that it is such a holder), not later than the Business Day preceding the related Payment Date; provided that each such report shall be delivered electronically to the Credit Enhancer and to any other such party who so requests in writing. Each Note Valuation Report shall be accompanied by a Section 3(c)(7) Reminder Notice. The Note Valuation Report shall contain the following information (determined, unless otherwise specified below, as of the related Determination Date):

DX 2 p. 187

(52) if since the date of determination of the last Note Valuation Report any term or condition of any Collateral Debt Obligation has (to the best knowledge of the Issuer or the Collateral Manager) been amended or waived, and the effect of such amendment or waiver was to change the interest rate or the date for the payment of any principal or to release any collateral security thereunder, a description of such amendment or waiver in reasonable detail;

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CONFIDENTIAL TREATMENT REQUESTED BY BRUNE & RICHARD LLP
ON BEHALF OF PATRIARCH PARTNERS, LLC

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Loans Were Not Submitted For Re-Rating

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The Issuer (or the Collateral Manager on behalf of the Issuer) shall promptly apply to Standard & Poor's for a new rating in respect of any Collateral Debt Obligation that does not have a monitored publicly available rating from Standard & Poor's and as to which any one or more of the following events occurs, is agreed between the issuer

ZOHAR II 2005-1, CORP.

payable at final maturity; (ii) a reduction by more than 3.00% per annum in the rate of interest payable (whether calculated based on a spread above a floating reference rate or a fixed rate); (iii) a reduction by more than 25% in the aggregate amount of principal

IXIS FINANCIAL PRODUCTS INC.,
as Class A-1 Note Agent and Class A-3 Note Agent

and

(v) a change in, or waiver of, the interest rate resulting in a deferral or capitalization of interest by more than 3.00% per annum (based on the Principal Balance of such Collateral Debt Obligation) or any deferral or capitalization that would cause such Collateral Debt Obligation to become a PIK Loan.

RESPONDENTS' EXHIBIT 8

CONFIDENTIAL TREATMENT REQUESTED BY BRUNE & RICHARD LLP ON BEHALF OF PATRIARCH PARTNERS LLC

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Respondents' Exhibit 8 pg. 1 of 447

RX 8 p. 55

Loans Were Not Submitted For Re-Rating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE C

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.

Rebuttal Expert Report of Ira W
August 31, 2015

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EXHIBIT
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effect.[23] Based on these provisions, if in fact Tilton was amending, waiving, or modifying the terms of a loan by accepting less than the contractual amount of interest, I would expect to see submissions to S&P for new Credit Estimates. I did not see any such submission following the

failure to pay contractual interest (in fact the failure to pay any interest on some monthly due dates) during the Review Period.

DX 19A p. 25-26

Submitting Loans for Rating Could Result in Default

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.

Expert Report

August 10, 2015

RESPONDENTS' EXHIBIT 21 AP No. 16462

Respondents' Exhibit 21 pg. 1 of 64

II includes a default basis linked to the ratings of the loans. Thus, loans rated "D" or "SD" by S&P or "C" by Moody's will be treated as defaulted under this definition and will receive "haircuts" in the par tests. However, it is clear in this definition as well that that there is no basis

R 21 p. 25

Submissions To Rating Agencies Confirm These Were Not Amendments

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSIO

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.

Rebuttal Expert Report of Ira Wagner
August 31, 2015

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Amendment and Forbearance Information[26]

American LaFrance, LLC	100-01	100-02
Name of Loan or Security	Term Loan	Revolver
Outstanding on Closing Date?	O/S on Closing Date	O/S on Closing Date
Acq Date for After-Acquired Asset		
CLO Classification of Asset	Collateral Debt Obligation	Collateral Debt Obligation
Obligor(s)		
Currency	US Dollars	US Dollars
Priority and Security	Senior Secured	Senior Secured
Type of Commitment	Term	Revolving
Original Date of Facility	7/17/08	7/17/08
Form of Syndication/Placement	Single Lender Middle Market	Single Lender Middle Market
Small (≤$100MM) Loan Agreement	Yes	Yes
Current Credit Agreement/Amend	10th Amendment to Amended and Restated Credit Agreement	10th Amendment to Amended and Restated Credit Agreement
Date of Latest Amendment	1/8/10	1/8/10
Latest Forbearances #		
Date of Latest Forebearance		
Expiration of Latest Forebearance		

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Submissions To Rating Agencies Confirm These Were Not Amendments

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSIO

ADMINISTRATIVE PROCEEDING
File No. 3-16462

In the Matter of

LYNN TILTON;

PATRIARCH PARTNERS, LLC;

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PATRIARCH PARTNERS XV, LLC,

Respondents.

Rebuttal Expert Report of Ira Wagner
August 31, 2015

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Interest Rate and Payment Information[27]

American LaFrance, LLC	100-01	100-02
Name of Loan or Security	Term Loan	Revolver
Libor Margin – 0% if Libor-Flat (leave blank if no LIBOR option)	8.000%	8.000%
[illegible] (leave blank if no LIBOR option)	5.500%	5.500%
Addl Default Interest Margin	2.000%	2.000%
Revolving Commitment Fee		
Letters Of Credit Commissions		
Interest Payment Status	Current	Current
Interest Payment Default Date		
CURRENT RATE OPTION	Libor	Libor
CURRENT Contractual Rate	Libor + 8.0%	Libor + 8.0%
CURRENT Cash Pmt Rate	Libor + 8.0%	Libor + 8.0%

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **DIVISION OF ENFORCEMENT'S RESPONSE IN OPPOSITION TO RESPONDENTS' POST-HEARING BRIEF** was served on the following on this 13th day of January, 2017, 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)

Randy M. Mastro, Esq.
Lawrence J. Zweifach, Esq.
Barry Goldsmith, Esq.
Caitlin J. Halligan, Esq.
Reed Brodsky, Esq.
Monica K. Loseman, Esq.
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
(By email pursuant to the parties' agreement)

Susan E. Brune, Esq.
Brune Law PC
450 Park Avenue
New York, NY 10022
(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