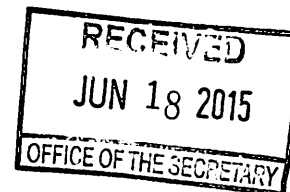


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



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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.

Administrative Proceeding
File No. 3-16462

Hon. Judge Carol Fox Foelak

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

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June 17, 2015

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PRELIMINARY STATEMENT

In its Opposition Brief, the Division of Enforcement argues (1) that the Court blessed the Division's post-OIP investigative efforts in the prehearing conference of May 7, 2015; (2) that the Division has no need to develop a substitute case for trial given the sufficiency of testimony developed before the OIP; and (3) that the post-OIP investor contacts are ordinary "trial preparation" permissible in the administrative context. The Division is wrong on all counts.

Respondents are already immersed in third-party subpoena practice to rebut the five investor witnesses selected by the Division before the OIP. This is in addition to our continuing efforts to digest an investigative file comprising nearly 2.4 million pages, 21 testimony transcripts and handwritten notes of dozens of interviews. Yet, four months before trial, the Division has launched a new investigation into 15 investors (so far) never subpoenaed during the five-year inquiry preceding the OIP. It is too late for that. Respondents cannot initiate and complete another round of third-party subpoenas to 15 or more new investors for an October trial, with deadlines for expert reports, and exhibit and witness lists due in August. The Division's Opposition brief never addresses this fundamental impediment to a fair trial.

Instead, the Division stands by its claim that all investors were defrauded in the same manner. If so, then why is the Division's newly assigned trial counsel casting so widely to replace the investor witnesses already subpoenaed and questioned? The answer is obvious: to make a new and different case at trial, while Respondents have neither the time nor the discovery tools essential for effective rebuttal. In U.S. District Court, discovery would not be one-sided, and Respondents would have the time and tools to meet the Division's continued evidence-gathering. But the Division chose this forum over Respondents' objection knowing full-well the

constraints of the administrative process. The only hope for a fair trial is for this Court to order the Division to halt its search for a substitute case and to try the one built prior to the OIP.

ARGUMENT

I. THE COURT DID NOT APPROVE THE NEW INVESTIGATION.

At the outset of this case, Respondents filed a Motion for a More Definite Statement seeking the identity of investors the Division intended to rely upon at trial. In opposing the motion, the Division emphasized its disclosure of *pre-OIP* contacts with investors, as follows:

Finally, the Division notes that it has produced to Respondents transcripts of all investigative testimony, which includes testimony from five investor representatives. In addition, although not required by Rules of Practice 230 or 231, the Division has also determined to produce to Respondents all handwritten notes of any additional interviews with investors the Division conducted during the investigation Additional disclosure of specific investors the Division intends to present at trial will occur at the time the Court sets for disclosure of witness lists.

Division's Brief in Opposition to Respondent's Motion for a More Definite Statement at 7. The Division made no mention in its brief of a plan to seek new evidence from a group of investors never previously subpoenaed, or even contacted.

On May 7, during the initial prehearing conference, the Court inquired about Respondents' pending motion. For the first time, the Division signaled a substantial but unquantified plan to contact additional investors. The Division professed not to know how many investors were at issue. (Ex. 1 ("Pre-Hr'g Conference Tr.") at 21-22.)

Respondents objected and pressed for disclosure of the names. And when the Division resisted, Respondents emphasized the necessity for third-party subpoena practice to address investor testimony:

MR. BLISS: [W]e're in the process of trying to assemble a list as best as possible of all of the investors that we could potentially talk to, and, you know, we're going to be in the process of talking to them, so I don't know how helpful it would be to provide now a list of all of the investors that we've identified.

We could attempt to do that and narrow it by the time our witness list is due, but at this point we are going to contact as many investors as we can.

MR. ZORNOW: I'm perplexed, Your Honor. I don't know what they were doing for the last five years.

You know, we've got to defend these charges now and . . . we've got to do it by finding out what these people have in their file so that when they put them up on the witness stand they have to be confronted with what they had in their file.

(Pre-Hr'g Conference Tr. at 24:25-25:16.)

The Court directed the Division to disclose additional investor contacts on a rolling basis through July 10. (*Id.* at 31.) At this point, Respondents and the Court did not know – and the Division professed not to know – the number of investors to be contacted, and how many of those investors already had been the subjects of Division interviews and requests for information prior to the OIP. It was not until weeks later when the Division finally produced its notes of its prior interviews with witnesses on May 28, 2015 and made its first rolling disclosure, by letter of May 29, 2015, that Respondents learned that the Division had contacted 19 investors, 15 of whom were never previously subpoenaed or even contacted by the Division prior to the OIP. Respondents promptly moved to halt this process on June 5.

The Division cannot credibly assert that the Court made a ruling on May 7 regarding the serious issue posed by the Division's letter of May 29 and briefed by Respondents on June 5. If the Division had revealed its intentions in opposing the Motion for a More Definite Statement, the Respondents could have been heard in their reply brief, and the Court could have ruled on May 7. But that did not happen. The issue is ripe only now that the facts are on the table.

II. THE DIVISION NEEDS A SUBSTITUTE CASE.

The Division cites two testimony excerpts – from Wendy Ruttle of Rabobank and Jaime Aldama of Barclays – to assert that investor testimony supports the allegations in the OIP. Both witnesses perfectly illustrate the deficiency in the theory and record developed by the investigating staff, which is precisely why the Division's trial counsel are now scrambling for new witnesses.

Rabobank was an investor in Zohar III. (Ex. 4 ("Ruttle Tr.") at 16.) Ms. Ruttle, a manager in the middle office, could offer no relevant testimony on Rabobank's decision to invest:

Q. Were you involved, at all, in the decision to invest in the Zohar III deal?

A. No.

(*Id.* at 16:25-17:2.) Rather, her role was to determine if the bank "could administratively do the deal in our middle office and back office." (*Id.* at 18:18-19.) The Division subpoenaed the wrong witness. Ms. Ruttle did not review the materials relevant to an investor. She reviewed only "select portions" of the indenture, did not read the collateral management agreement and could not recall reading the offering memorandum. (*Id.* at 19-20.) Yet the Division elicited from Ms. Ruttle – and cites in its Opposition Brief ("Div. Opp.") at 6 – testimony that, "as an investor," Ms. Ruttle would like to have heard directly from Patriarch regarding its asset characterization process, and her "opinion" on the meaning of the definition of a defaulted asset under the Zohar III indenture. (Ruttle Tr. at 32-34.) Such testimony from a witness with her basis of knowledge would not even support a breach of contract allegation, let alone a fraud claim. It will be surprising if the Division's trial counsel chooses to call Ms. Ruttle as a trial witness.

Mr. Aldama of Barclays was no more supportive of the allegations contained in the OIP. Like Ms. Ruttle, he played no role in Barclays' investment decision – indeed, he was asked to review the investment only years later in 2010. (Ex. 5 ("Aldama Tr.") at 15.) Mr. Aldama was unequivocal that he and Barclays *knew* from the trustee reports how Patriarch categorized the loans within the Zohar funds. Indeed, the Division cites an example of such testimony in its brief.¹ The Division quotes from Mr. Aldama's opinion that the indenture language did not support Patriarch's categorization practice (Div. Opp. at 7), which, again, at best would support an allegation of breach of contract. But the Division took testimony from Barclay's Head Trader, Rohit Chaku, who succinctly offered his own contrary interpretation of the indenture (*i.e.*, directly supporting Patriarch), as follows:

Q. Do you have an understanding of how Patriarch determines the categorization to which it places the assets?

....

A. *I believe it's effectively within the manager's discretion. . . .*

Q. Where did you come to that understanding?

A. From the indenture definition, various categories in the indenture.

(Ex. 6 ("Chaku Tr.") at 45:20-46:14 (emphasis added).) In short, Barclays did not support the allegations contained in the OIP, either.

¹ Div. Opp. at 7 n.1 ("It is my belief based on how some of the compan[ies] gone from a 4 to 1 from trustee report from November to December there is a jump from 4 to 1. . . . I think she's using a lot of discretion."); *see* Aldama Tr. at 50-51 ("I don't think I have ever seen the number 3 or the number 2 in the trustee reports. I know there is a 4 and there is a 1 but in between always seems to be a jump."); *Id.* at 52 ("Any structured vehicle that we own, that Barclays or any of its clients that we work, owns, the trustee report is the means that the manager has to distribute information on the portfolio to all investors.")

III. A FAIR TRIAL MUST BE BASED ON THE CASE BUILT BEFORE THE OIP.

Finally, the Division is wrong to claim it is following traditional pretrial procedure in the administrative context. The Division flatly asserts: "The investigation of this case ended prior to the issuance of the OIP." (Div. Opp at 4.) But this assertion is grounded on the theory that voluntary requests for witness accounts and documents from 15 investors do not constitute "investigation" because the Division has not issued investigative subpoenas. That cannot be the test, or the Division would be able to evade its administrative discovery obligations by contacting key sources of information only after the OIP. The Division's mantra that all investors were defrauded in the same way is designed to support a strategy. The strategy is to locate and call at trial new investor witnesses unburdened by a transcript (such as the transcripts belying any fraud on Rabobank or Barclays) and by records showing what was really known and understood by investors.

The case law does not support the Division's strategy. When Chief Judge Murray reconsidered the Division's request for a trial subpoena in *optionsXpress*, she did not retreat from her view of appropriate administrative procedure. Rather, the Chief Judge recognized the "technical difference" between trial and investigative subpoenas in a context where both the respondent and the subpoenaed party asserted no prejudice. The Chief Judge explained:

It is my understanding that the investigation as to the allegations is over when the OIP is issued, and that the Division should be ready to begin the hearing My belief, however, is not set out directly in the Commission's Rules of Practice, which is the reason for this dilemma.

In re optionsXpress, Admin. Proc. Rulings Release No. 710, Admin. Proc. File No. 3-14848, at 9 (S.E.C. July 11, 2012).

Here, Respondents will surely be prejudiced, as discussed above. And it was the Division that risked asking for the OIP before it was done gathering evidence. *See, e.g., In re*

Morgan Asset Mgmt., Inc., Admin. Proc. Rulings Release No. 656, Admin. Proc. File No. 3-13847 (S.E.C. July 12, 2010).

Moreover, what Respondents have asked for is that the Court exercise its broad power to "[r]egulat[e] the course of a proceeding and the conduct of the parties and their counsel." 17 C.F.R. § 201.111(d) (2015). The power exists to ensure fairness and due process. In the end, the Division's brief never addresses the fundamental point that Respondents will not have the time or tools adequately to address and rebut the 15 investors recently contacted. And the Division is still not done, assuring the Court only that it "does not anticipate contacting many additional investor witnesses beyond those disclosed to the Respondents on May 29, 2015." (Div. Opp. at 3.) The Division also does not contest that it will have, essentially, one-sided discovery from regulated institutions wishing to remain in the Commission's good graces.

If there is to be fairness in the administrative context, the Court must halt the Division's search for new investor witnesses whom Respondents cannot challenge effectively given the time and discovery devices available in this forum. By choosing this forum for a case of this nature, the Division is seeking to pound a square peg into a round hole. We ask the Court to level the playing field by confining the Division to the case it built to support the OIP.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court grant the relief requested herein.

Dated: June 17, 2015
New York, New York

Respectfully Submitted,

By: Christopher Gunther, by ATU

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Exhibit 4

<p style="text-align: right;">Page 1</p> <p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>In the Matter of:)) File No. HO-11665 Patriarch Partners, LLC) D-3350</p> <p>WITNESS: WENDY RUTTLE</p> <p>PAGES: 1-46</p> <p>PLACE: Securities and Exchange Commission Brookfield Place 200 Vesey Street New York, New York 10281-1022</p> <p>DATE: April 8, 2014</p> <p>The above-entitled matter came on for hearing at 2:18 o'clock p.m.</p>	<p style="text-align: right;">Page 3</p> <p>1 PROCEEDINGS 2 MS. SUMNER: We are on the record at 3 2:18 on April 9, 2014. 4 Will you please raise your right hand: 5 Do you swear to tell the truth, the 6 whole truth and nothing but the truth? 7 THE WITNESS: Yes. 8 Whereupon, 9 WENDY RUTTLE, 10 appeared as a witness herein and, having been first 11 duly sworn, was examined and testified as follows: 12 EXAMINATION BY 13 MS. SUMNER: 14 Q. Please state and spell your full name 15 for the record. 16 A. Wendy Lani Ruttle; W-E-N-D-Y L-A-N-I 17 R-U-T-T-L-E. 18 Q. Ms. Ruttle, my name is Amy Sumner. I'm 19 a member of the staff of the Enforcement Division of 20 the Denver Regional Office of the United States 21 Securities and Exchange Commission. I am also an 22 officer of the Commission for the purposes of this 23 proceeding. 24 This is an investigation by the United 25 States Securities and Exchange Commission in the</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 4 On behalf of the Securities and Exchange 5 Commission: 6 AMY A. SUMNER, ESQ. 7 Enforcement Division 8 Securities and Exchange Commission 9 1801 California Street 10 Suite 1500 11 Denver, Colorado 80202 12 13 On behalf of the Witness: 14 ZEICHNER ELLMAN & KRAUSE LLP 15 1211 Avenue of the Americas 16 New York, New York 10036 17 BY: JANTRA VAN ROY, ESQ. 18 MICHAEL SIMS, ESQ. 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 matter of Patriarch Partners to determine whether 2 there have been violations of certain provisions of 3 the Federal Securities Laws. However, the facts 4 developed in this investigation may constitute 5 violations of other federal or state, civil or 6 criminal laws. 7 Prior to the opening of the record, you 8 were provided with a copy of the Formal Order of 9 Investigation in this matter. It will be available 10 for your examination during the course of this 11 proceeding. 12 Ms. Ruttle, have you had an opportunity 13 to review the Formal Order? 14 A. Yes. 15 Q. Prior to the opening of the record, you 16 were also provided with a copy of the Commission's 17 Supplemental Information Form 1862. A copy of that 18 notice has been previously marked as Exhibit 33. 19 Ms. Ruttle, have you had an opportunity 20 to read Exhibit 33? 21 A. Yes. 22 Q. Do you have any questions concerning 23 this exhibit? 24 A. No. 25 Q. Ms. Ruttle, are you represented by</p>

Page 13	<p>1 provided aftercare for any deals that closed, 2 surveillance on deals to make sure that the deals 3 were operating within the guidelines specified within 4 the documents. 5 Q. Did anyone report to you when you were 6 in that role? 7 A. No. 8 Q. Was there any specific type of 9 securitization that you focused on? 10 A. When I was a portfolio manager, my 11 primary deals were CLOs, CLOs and other securities. 12 MS. VAN ROY: Could you read that back. 13 (Record read.) 14 A. I'm sorry, CDOs. 15 Q. How long were you in the role of 16 portfolio manager? 17 A. Until 2010. 18 Q. What role did you move to after that? 19 A. After that, I moved to basically manager 20 of middle office -- I'm sorry, middle office manager 21 for the DCM group, which is debt capital markets. 22 Q. Is that the role you currently have? 23 A. No. 24 Q. So what were your responsibilities in 25 that role?</p>	Page 15	<p>1 portfolio manager role? 2 A. Basically, I was asked to take on the 3 role in the middle office because of staffing 4 constraints in the middle office and also I had the 5 skill set. 6 Q. And then why did you leave the middle 7 office role? 8 A. Because I wanted to do something that 9 wasn't associated with securitization. 10 Q. As you were describing your current 11 role, I thought that's pretty different. And who is 12 your -- I'm sorry if you already said -- no, who is 13 your current supervisor? 14 A. Jodi Miller. 15 Q. Do you supervise anyone in your current 16 role? 17 A. No. 18 Q. And what about when you were manager of 19 the -- the middle office manager, did you supervise 20 anyone in that role? 21 A. Yes. 22 Q. About how many people did you supervise? 23 A. I had four people, and then -- 24 initially, and then got re-orged into managing two 25 people.</p>
Page 14	<p>1 A. As manager -- as manager in the middle 2 office, I basically had responsibilities over the 3 securitization middle office, the very shrunken down 4 CDO office, and also the loan syndications group. 5 Q. What do you mean by middle office? 6 A. Basically the middle office is -- plays 7 a coordination role between the front office and also 8 the back office. 9 Q. Who did you report to in that position? 10 A. Robert Serpico. 11 Q. And when did you leave that role? 12 A. I left that role in 2012. 13 Q. What did you move to then? 14 A. I became the business manager for IT and 15 operations. 16 Q. Is that your current role? 17 A. Yes. 18 Q. What are your responsibilities in that 19 role? 20 A. I report into the office of the COO. I 21 provide -- basically I manage the budget for ITOPS, 22 which is IT and operations. I do ad hoc projects as 23 necessary, but mostly my focus is on the financials, 24 controlling expenses. 25 Q. When did you -- why did you leave the</p>	Page 16	<p>1 Q. What types of functions did those people 2 do? 3 A. They provided administrative support for 4 the conduit group, the CDO group, and also the loan 5 syndications. 6 Q. Did you have any role with respect to 7 the Zohar III transaction? 8 A. Yes. 9 Q. What was your role? 10 A. I was the portfolio manager for the 11 transaction. 12 Q. So can you describe what you did 13 specifically with respect to Zohar III? 14 A. Sure. I would -- I oversaw the 15 collateral performance of the deal, and I also 16 basically was the coordinator between the middle 17 office and the front office and the client, and would 18 basically approve any fundings. 19 Q. What do you mean when you say you would 20 approve any fundings? 21 A. If a funding notice came in, I would 22 make sure that it was in -- within the outline of the 23 deal, and then I would basically let the middle 24 office know that the deal was okay to fund. 25 Q. Were you involved, at all, in the</p>

Page 17	Page 19
<p>1 decision to invest in the Zohar III deal?</p> <p>2 A. No.</p> <p>3 Q. Do you know who was involved in that</p> <p>4 decision?</p> <p>5 A. Members of the origination team.</p> <p>6 Q. Do you know who those people were?</p> <p>7 A. Jeff Bazolan.</p> <p>8 Q. Could you spell the last name?</p> <p>9 A. B-A-Z-O-I-A-N.</p> <p>10 Q. Anyone else?</p> <p>11 A. Eraj Asadi; E-R-A-J A-S-A-D-I, and James</p> <p>12 Han, H-A-N.</p> <p>13 Q. Anyone else?</p> <p>14 A. Those are the primary members from our</p> <p>15 team.</p> <p>16 Q. Okay. Can you describe the process by</p> <p>17 which -- at least back at this time, the 2007 time</p> <p>18 frame, what you understood the process to be by which</p> <p>19 Rabobank would decide to make an investment in a CLO?</p> <p>20 A. Sure. I'm sorry.</p> <p>21 MS. VAN ROY: Could you read that back,</p> <p>22 maybe?</p> <p>23 A. Yes, expound a little bit on decision</p> <p>24 from a Rabobank perspective or --</p> <p>25 Q. I am asking more about the process. Was</p>	<p>1 would try to make the language stronger or ask for</p> <p>2 clarification, things like that, just to make sure</p> <p>3 that the language within the deal was clear.</p> <p>4 Q. So did you review -- did you review the</p> <p>5 indenture to Zohar III before Rabobank invested?</p> <p>6 A. Yes.</p> <p>7 Q. What other documents did you review</p> <p>8 relating to Zohar III before the investment was made</p> <p>9 or before the closing?</p> <p>10 A. Note purchase agreement.</p> <p>11 MS. VAN ROY: Could we be clear on the</p> <p>12 record as to whether the witness is talking about</p> <p>13 reviewing the entire document or select portions of</p> <p>14 the document?</p> <p>15 THE WITNESS: Select portions of the</p> <p>16 document.</p> <p>17 Q. Other than -- so you reviewed portions</p> <p>18 of the indenture; is that correct?</p> <p>19 A. Uh-hum.</p> <p>20 Q. Is that a yes?</p> <p>21 A. I'm sorry, yes.</p> <p>22 Q. And then portions of the note purchase</p> <p>23 agreement?</p> <p>24 A. Yes.</p> <p>25 Q. Anything else?</p>
Page 18	Page 20
<p>1 it decided on by a committee or that type of -- it's</p> <p>2 the process that I'm asking about, not anything --</p> <p>3 anything more than that at this time.</p> <p>4 A. Okay. So basically a deal -- I don't</p> <p>5 know, you would call it a lead, would come in and the</p> <p>6 originators would basically, you know, do the</p> <p>7 collateral analysis on the deal with whatever</p> <p>8 documents they were given. They would write up the</p> <p>9 credit memo and send it through credit within the</p> <p>10 bank, and depending on the size of the deal, it would</p> <p>11 go through the various credit committees.</p> <p>12 Q. So at what point did you first become</p> <p>13 involved with the Zohar deal? Had Rabobank already</p> <p>14 invested or was it some time earlier?</p> <p>15 A. It was pre-closing, so I would review</p> <p>16 the deal to make sure that -- from my perspective the</p> <p>17 deal worked. So it would be a combination of whether</p> <p>18 we could administratively do the deal in our middle</p> <p>19 office and back office. Any kind of payment terms</p> <p>20 that looked, you know, complicated, we would try to</p> <p>21 simplify them or things of that nature.</p> <p>22 Q. What type of payment terms are you</p> <p>23 thinking of?</p> <p>24 A. Like accruals, like the way the deal</p> <p>25 would accrue, whether the language was vague. We</p>	<p>1 A. We have internal documents, such as the</p> <p>2 liquidity documents backing the deal.</p> <p>3 Q. Any other external documents?</p> <p>4 A. Not to my recollection.</p> <p>5 Q. Do you recall reviewing the collateral</p> <p>6 management agreement?</p> <p>7 A. No.</p> <p>8 Q. What about the offering memo?</p> <p>9 A. I might have, but I can't remember for</p> <p>10 certain.</p> <p>11 Q. Okay. So when you reviewed the</p> <p>12 indenture, what portions of the indenture did you</p> <p>13 review?</p> <p>14 A. I would review the conditions precedent</p> <p>15 to borrowing, the borrowing procedures, the fee, the</p> <p>16 waterfall, the -- there is a reporting section,</p> <p>17 basically defining the requirements of their</p> <p>18 reporting, the definitions.</p> <p>19 Q. Anything else?</p> <p>20 A. Not to the best of my abilities. Those</p> <p>21 are the sections I can name.</p> <p>22 Q. What about in the note purchase</p> <p>23 agreement, what sections of those did you review?</p> <p>24 A. God, I can't remember the name of the</p> <p>25 section. Just generally looking -- reviewing the</p>

Page 29	Page 31
<p>1 obligations.</p> <p>2 Q. What do you mean by that?</p> <p>3 A. The bank had a revolving note out. So</p> <p>4 we would -- if the OC was failing, we would no longer</p> <p>5 be required to fund any obligations that were</p> <p>6 requested by the issuer.</p> <p>7 Q. Do you have an understanding of any</p> <p>8 other consequences if the OC test were to fail?</p> <p>9 A. That would be the primary thing.</p> <p>10 Q. Based on my reading of the indenture,</p> <p>11 some other consequences of Patriarch failing the test</p> <p>12 are that Patriarch could be removed as collateral</p> <p>13 manager or -- and/or the subordinated management fees</p> <p>14 could be terminated. Does that sound familiar to you</p> <p>15 at all?</p> <p>16 A. Yes.</p> <p>17 Q. Are those -- are those consequences</p> <p>18 important to you?</p> <p>19 A. Those would be in the sense that if you</p> <p>20 stop those fees from coming through, there would be</p> <p>21 more funds in the waterfall in order to pay off the</p> <p>22 debts.</p> <p>23 Q. Would you be in favor of replacing</p> <p>24 Patriarch as collateral manager if the OC test -- if</p> <p>25 the fund failed the OC test?</p>	<p>1 ratio or -- let me change that. Let me rephrase</p> <p>2 that.</p> <p>3 Do you have an understanding of how the</p> <p>4 valuation of the assets is reflected in the OC ratio?</p> <p>5 A. My understanding is that you take the</p> <p>6 value of all your assets at the haircut and then</p> <p>7 basically that is your collateral.</p> <p>8 Q. And that's the numerator in the OC</p> <p>9 ratio; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Did anyone from Patriarch -- let me ask</p> <p>12 you a different question.</p> <p>13 Do you expect, as an investor, that the</p> <p>14 indenture will govern the way that those</p> <p>15 categorizations of an asset as defaulted is made?</p> <p>16 A. I would think there would be some</p> <p>17 language within the indenture. The company may also</p> <p>18 have their investment policy, which would also define</p> <p>19 treatment of what they could purchase and how they</p> <p>20 treated their assets.</p> <p>21 Q. Okay. What do you mean, an "investment</p> <p>22 policy"?</p> <p>23 A. To my understanding, most deals will</p> <p>24 have an investment policy, so that investment policy</p> <p>25 will define the types of deals it can be invested in</p>
Page 30	Page 32
<p>1 A. I wouldn't have a view on that. That</p> <p>2 wouldn't be part of my responsibility.</p> <p>3 Q. Do you know if Rabobank ever has</p> <p>4 replaced collateral managers in situations where</p> <p>5 tests have failed?</p> <p>6 A. I wouldn't be able to answer that.</p> <p>7 Q. You just don't know one way or the</p> <p>8 other?</p> <p>9 A. Yeah.</p> <p>10 Q. Within the Zohar III deal, the assets</p> <p>11 are classified as either collateral assets or</p> <p>12 defaulted assets. Are you familiar with that?</p> <p>13 A. Uh-hum.</p> <p>14 Q. Is that a yes?</p> <p>15 A. Yes. I'm sorry, yes.</p> <p>16 Q. Do you have an understanding of how the</p> <p>17 categorization of an asset affects its valuation</p> <p>18 within the portfolio?</p> <p>19 A. Yes.</p> <p>20 Q. What's your understanding of that?</p> <p>21 A. Basically, all assets are given a</p> <p>22 defined haircut, and if their defaulted -- for all</p> <p>23 defaulted assets, the haircut is very substantial.</p> <p>24 Q. And do you have an understanding of how</p> <p>25 that haircut plays into the calculation of the OC</p>	<p>1 and basically how that asset is then treated.</p> <p>2 Q. I see. So is that something that you</p> <p>3 think would be in the deal documents, though, the</p> <p>4 investment policy?</p> <p>5 A. It should be part of the deal -- the</p> <p>6 closing set, yes.</p> <p>7 Q. Do you expect that a collateral manager</p> <p>8 will follow the terms of the indenture?</p> <p>9 A. Yes.</p> <p>10 Q. Did anyone from Patriarch ever disclose</p> <p>11 to you how Patriarch made the determination of</p> <p>12 whether or not to categorize an asset as defaulted?</p> <p>13 A. To my knowledge, no.</p> <p>14 Q. I am handing you what's previously been</p> <p>15 marked as Exhibit 3. This is a copy of the</p> <p>16 indenture, the Zohar III indenture.</p> <p>17 MS. SUMNER: I apologize, I don't have a</p> <p>18 separate copy, Counsel. It's a lot of paper.</p> <p>19 MS. VAN ROY: Okay. I have one</p> <p>20 elsewhere.</p> <p>21 Q. Do you recognize Exhibit 3, Ms. Ruttle?</p> <p>22 A. Yes.</p> <p>23 Q. And I just wanted to talk about some of</p> <p>24 the definitions here in Exhibit 3.</p> <p>25 If you want to -- you can spend as much</p>

Page 33

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

Page 34

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

Page 35

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

Page 36

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

Exhibit 5

<p style="text-align: right;">Page 1</p> <p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION In the Matter of:)) File No. Patriarch Partners LLC) HO-11685)</p> <p>WITNESS: JAIME ALDAMA</p> <p>PAGES: 1-84</p> <p>PLACE: 200 Vesey Street, New York, New York</p> <p>DATE: Thursday, May 1, 2014</p> <p>The above entitled matter came on for hearing at 2:05 p.m.</p>	<p style="text-align: right;">Page 3</p> <p style="text-align: center;">INDEX EXHIBITS</p> <table border="0"> <thead> <tr> <th style="text-align: left;">NUMBER</th> <th style="text-align: left;">DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>33</td> <td>Form 1682</td> <td style="text-align: right;">5</td> </tr> <tr> <td>177</td> <td>Subpoena</td> <td style="text-align: right;">6</td> </tr> <tr> <td>178</td> <td>Background questionnaire</td> <td style="text-align: right;">8</td> </tr> <tr> <td>1</td> <td>Zohar Indenture</td> <td style="text-align: right;">55</td> </tr> <tr> <td>160</td> <td>Patriarch loans</td> <td style="text-align: right;">58</td> </tr> <tr> <td>181</td> <td>Interest on loans</td> <td style="text-align: right;">58</td> </tr> <tr> <td>176</td> <td>Zohar quarterly financial statement</td> <td style="text-align: right;">60</td> </tr> <tr> <td>179</td> <td>Bates # PAT 0001 - 0006</td> <td style="text-align: right;">60</td> </tr> <tr> <td>176</td> <td>Term sheet</td> <td style="text-align: right;">69</td> </tr> <tr> <td>180</td> <td>Bates # PAT 00028 - 00036</td> <td style="text-align: right;">70</td> </tr> </tbody> </table>	NUMBER	DESCRIPTION	PAGE	33	Form 1682	5	177	Subpoena	6	178	Background questionnaire	8	1	Zohar Indenture	55	160	Patriarch loans	58	181	Interest on loans	58	176	Zohar quarterly financial statement	60	179	Bates # PAT 0001 - 0006	60	176	Term sheet	69	180	Bates # PAT 00028 - 00036	70
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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 For the SEC:</p> <p>4 AMY A. SUMNER United States Securities and Exchange Commission 1801 California Street, Suite 1500 Denver, Colorado 80202</p> <p>6</p> <p>7</p> <p>8 For Mr. Chaku:</p> <p>9 ANDREW Z. MICHAELSON MICHAEL S. GRISOLIA Boies, Schiller & Flexner, LLP 575 Lexington Avenue, 7th Floor New York, New York 10022</p> <p>12</p> <p>13</p> <p>14 ALLAN BORKOW Barclays Capital Inc. 745 Seventh Avenue New York, New York 10019</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2 MS. SUMNER: We're on the record at 2:05 on</p> <p>3 May 1st, 2014.</p> <p>4 Would you please raise your right hand?</p> <p>5 (The witness complied.)</p> <p>6 Do you swear to tell the truth, the whole</p> <p>7 truth, and nothing but the truth?</p> <p>8 THE WITNESS: I do.</p> <p>9 EXAMINATION BY MS. SUMNER:</p> <p>10 Q. Please state and spell full name for the record.</p> <p>11 A. Jaime Royero Aldama; J-A-I-M-E, R-E-Y-E-R-O,</p> <p>12 A-L-D-A-M-A.</p> <p>13 Q. Mr. Aldama, my name is Amy Sumner. I'm a member</p> <p>14 of the staff of the Enforcement Division of the Denver</p> <p>15 regional office of the United States Securities and</p> <p>16 Exchange Commission. I'm also an officer of the</p> <p>17 Commission for the purposes of this proceeding.</p> <p>18 This is an investigation by the United States</p> <p>19 Securities and Exchange Commission in the matter of</p> <p>20 Patriarch Partners, to determine whether there have been</p> <p>21 violations of certain provisions of the federal</p> <p>22 securities laws. However, the facts developed in this</p> <p>23 investigation may constitute violations of other federal</p> <p>24 or state, civil or criminal laws.</p> <p>25 Prior to the opening of the record, you were</p>																																	

<p style="text-align: right;">Page 13</p> <p>1 Brothers in September 2008.</p> <p>2 Q. When you started at Barclays in September of</p> <p>3 2008, what was your role?</p> <p>4 A. I moved to a group in charge of structuring</p> <p>5 credit and ABS products.</p> <p>6 Q. And when you started, what were your day-to-day</p> <p>7 responsibilities?</p> <p>8 A. A lot of the work for the first few years while</p> <p>9 at Barclays was to work structured products that were</p> <p>10 created between 2005 and 2008, and work with our clients</p> <p>11 in finding ways to better their economic position.</p> <p>12 Q. What was your title when you first started at</p> <p>13 Barclays?</p> <p>14 A. My first title was Director.</p> <p>15 Q. Director of what?</p> <p>16 A. Credit and ABS Structuring Desk.</p> <p>17 Q. And then, about how many people did you work with</p> <p>18 in that role?</p> <p>19 A. Our group of 12.</p> <p>20 Q. And did you supervise others?</p> <p>21 A. The 12, yes.</p> <p>22 Q. Who did you report to in that position?</p> <p>23 A. My direct supervisor was Jeff Smalles.</p> <p>24 Q. What is his title or was his title, I guess?</p> <p>25 A. The Global Head of Credit and ABS Structure.</p>	<p style="text-align: right;">Page 15</p> <p>1 want to work out of.</p> <p>2 Q. When you say people want to work out of these</p> <p>3 legacy assets, what kind of people do you mean?</p> <p>4 A. The risk site – it's evolved from 2008. Sit</p> <p>5 with banks or European institutions that found</p> <p>6 themselves owning the risk and our engagement with those</p> <p>7 institutions was to help them exit the risk. It was</p> <p>8 banks, insurance companies, European government, U.S.</p> <p>9 government.</p> <p>10 Q. When did you first become involved with the Zohar</p> <p>11 1 deal?</p> <p>12 A. The deal was brought to our attention at some</p> <p>13 point in 2010.</p> <p>14 Q. And who brought it to your attention?</p> <p>15 A. It would have been my boss, Jeff Smalles, at the</p> <p>16 time.</p> <p>17 Q. And what were you told back in 2010 about it?</p> <p>18 A. My work was to work with our clients in their</p> <p>19 structured products. One of our clients was Barclays,</p> <p>20 and Barclays held a series of legacy positions on their</p> <p>21 portfolio. And our expertise and our services were used</p> <p>22 to work more challenged positions and if the position</p> <p>23 could be traded it would be traded by a trader. If</p> <p>24 there was something to do it's in the position it would</p> <p>25 have been done. It's positions that are challenging and</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. Were you originating ABS products at this point?</p> <p>2 A. The market did not want new products, so there</p> <p>3 was no new origination of products; so we focused on the</p> <p>4 existing products. We worked with existing products</p> <p>5 already in the market.</p> <p>6 Q. And then, has your role changed over the time</p> <p>7 you've been at Barclays?</p> <p>8 A. The role has not changed. The market has changed</p> <p>9 which has evolved the role, while in 2008, there was no</p> <p>10 appetite for new origination. In 2013, there is more</p> <p>11 appetite. So we're moving to origination function.</p> <p>12 Between 2008 and 2011 the most part of our work product</p> <p>13 was around existing positions, existing structured</p> <p>14 positions. ABS, CDOs, CLOs, commercial real estate</p> <p>15 positions, and work with our clients in helping them</p> <p>16 exit those risks and extract them from those positions.</p> <p>17 Q. Do you still report to Mr. Smalles?</p> <p>18 A. No, I now report to Bill Hirschberg.</p> <p>19 Q. Do you still supervise a group of 12 or so?</p> <p>20 A. We have reduced, shrunk the size of the group and</p> <p>21 we're now five.</p> <p>22 Q. What sort of functions do those folks have?</p> <p>23 A. Part of the group is in focus on new origination</p> <p>24 of products like CLOs and structured credit. And other</p> <p>25 part is still focus on legacy assets that people still</p>	<p style="text-align: right;">Page 16</p> <p>1 positions that are troubled and it's when we were</p> <p>2 brought in. So I was part of a series of positions that</p> <p>3 we worked for the legacy group at Barclays.</p> <p>4 Q. Why was Zohar considered challenged or -- I can't</p> <p>5 remember the other adjective you used?</p> <p>6 A. Troubled.</p> <p>7 Q. Troubled or challenged?</p> <p>8 A. At the time that the position was brought to my</p> <p>9 attention it probably wasn't as troubled as when we</p> <p>10 started do some of the digging and some of the work.</p> <p>11 The guys at the legacy group had tried to dispose and to</p> <p>12 work with the manager in finding ways to move forward</p> <p>13 and to exit the risk, and they did not have any success.</p> <p>14 Q. What had they tried to do previously, do you</p> <p>15 know?</p> <p>16 A. I don't. The fact they came to us meant that</p> <p>17 they had not been able to succeed in anything that they</p> <p>18 had attempted to do.</p> <p>19 Q. Do you know who was dealing with Zohar before it</p> <p>20 was brought to your group?</p> <p>21 A. It have been a combination of Rohit Chaku and</p> <p>22 Jake Scrivens, and Blit Hammock.</p> <p>23 Q. Once the deal was brought to your group or to</p> <p>24 your attention, what did you do?</p> <p>25 A. Normally, when a deal is brought to our group,</p>

Page 49	Page 51
<p>1 again is the standard in every structured transaction 2 and for investors to have that and rely on that 3 information.</p> <p>4 Q. Do you have an understanding of when an asset is 5 considered a category 4?</p> <p>6 A. My understanding is from what the indenture says 7 what a category 4 should be. My understanding is that 8 Lynne can decide what is a category 4 and she has some 9 discretion to what to call 4 whatever she wants.</p> <p>10 Q. Why do you think she has full discretion?</p> <p>11 A. I don't think -- my understanding, my belief that 12 it is Lynne and Patriarch that assign the internal 13 ratings to the facility's reference on the portfolio. 14 And there is no mechanic to dispute the categorization. 15 So a defaulted security that has been publicly labelled 16 defaulted she can call that 4 if she wants to. It would 17 be hard for her to justify herself but there is no -- as 18 the manager of the portfolio she has a lot of discretion 19 to use and call whatever she wants. She shouldn't, 20 but --</p> <p>21 Q. Do you believe that under the terms of the 22 indenture she has the right to label something 4 at her 23 own discretion?</p> <p>24 A. I don't think so. I just feel that that's what 25 she has been doing for the past few years.</p>	<p>1 seen the number 3 or the number 2. In fact, I don't 2 think I've ever seen the number 3 or number 2 in the 3 trustee reports. I know there is 4 and there is 1 but 4 in between seems to be always a jump.</p> <p>5 Q. I think that's right.</p> <p>6 What does that say to you?</p> <p>7 A. She didn't know that the companies were going to 8 file the day before and she only found out that day or 9 she is not performing her duties as stated in the 10 collateral management agreement.</p> <p>11 MS. SUMNER: Let's go off the record at 12 3:27. Let's take a short break.</p> <p>13 (Recess taken.)</p> <p>14 MS. SUMNER: We are back on the record at 15 3:45.</p> <p>16 BY MS. SUMNER:</p> <p>17 Q. During the break, Mr. Aldama, did you have any 18 substantive conversations with the SEC staff about this 19 investigation?</p> <p>20 A. No.</p> <p>21 Q. Have you reviewed the indenture for Zohar 1?</p> <p>22 A. I have at some point reviewed and read some 23 sections on indenture, yes.</p> <p>24 Q. What parts have you reviewed?</p> <p>25 A. Basically related to the rights that we would</p>
<p>Page 50</p> <p>1 Q. You don't think she has the right to do that 2 necessarily but you think she --</p> <p>3 (Talking over each other.)</p> <p>4 A. Let me clarify. The indenture clearly defines 5 what a 4 is, a 3, a 2 and a 1. These are clear 6 definitions of what a 4 is and a clear definition what a 7 1 is. I don't think she is using that to classify. It 8 is my belief based on how some of the company's gone 9 from a 4 to 1 from trustee report from November to 10 December there is a jump from 4 to 1. I don't think 11 she's using the internal categories that she's meant to 12 use. I think she's using a lot of discretion. I don't 13 she has the discretion she's just --</p> <p>14 Q. What companies are you specifically thinking of?</p> <p>15 A. There are companies like -- the one that comes to 16 mind is American LaFrance and that was labeled as a 17 category 4 shortly before we had to read in the paper 18 that she has shut down the entire company and news 19 reports seem to imply that a company was doing very bad 20 much earlier and that went from a 4 to a 1.</p> <p>21 And I don't believe that one day the company is a 22 4 and in good standing and the following day you have to 23 shut down the entire plan. It just seems to me 24 unrealistic. I don't remember specific names, but when 25 you track the recharacterization I don't think I have</p>	<p>Page 52</p> <p>1 have under the indenture upon an event of default of the 2 deal and then around the portfolio management. The 3 section that talks about characterization of assets, the 4 section that talks about the rights that Lynne has to 5 extend maturities and so on and so forth.</p> <p>6 Q. And you testified earlier that you received the 7 trustee reports. Why is that something that you look 8 at? Why do you look at the trustee reports?</p> <p>9 A. Any structured vehicle that we own, that Barclays 10 or any of the clients that we work owns, the trustee 11 report is the means that the manager has to distribute 12 information on the portfolio to all investors. As 13 opposed to bilateral discussion with the manager, asset 14 managers use the trustee reports as a distribution 15 platform to all investors of the security around the 16 performance of the portfolio, the current levels on the 17 coverage ratios and how the deal is performing.</p> <p>18 Q. Have you had any discussions with anyone at 19 Natixis about restructuring the Zohar 1 deal?</p> <p>20 A. We have had over time different discussions at 21 different points in time.</p> <p>22 Q. Who have you dealt with at Natixis?</p> <p>23 A. So, mostly Kevin Alexander. But I have had calls 24 and proposals from people at Natixis and over the years 25 that I believe worked for Kevin Alexander, but they're</p>

13 (Pages 49 to 52)

Exhibit 6

Page 1	<p>UNITED STATES SECURITIES AND EXCHANGE COMMISSION</p> <p>In the Matter of:)) File No. Patriarch Partners LLC) HO-11665)</p> <p>WITNESS: ROBIT CHAKU</p> <p>PAGES: 1-72</p> <p>PLACE: 200 Vesey Street, New York, New York</p> <p>DATE: Thursday, May 1, 2014</p> <p>The above entitled matter came on for hearing at 9:47 a.m.</p>																						
Page 2	<p>1 APPEARANCES:</p> <p>2</p> <p>3 For the SEC:</p> <p>4 AMY A. SUMNER United States Securities and Exchange Commission 5 1801 California Street, Suite 1500 Denver, Colorado 80202</p> <p>6</p> <p>7</p> <p>8 For Mr. Chaku:</p> <p>9</p> <p>10 ANDREW Z. MICHAELSON MICHAEL S. GRISOLIA Boles, Schiller & Flexner, LLP 11 575 Lexington Avenue, 7th Floor New York, New York 10022</p> <p>12</p> <p>13</p> <p>14 ALLAN BORKOW Barclays Capital Inc. 15 745 Seventh Avenue New York, New York 10019</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																						
Page 3	<p>1</p> <p>2 INDEX</p> <p>3 EXHIBITS</p> <table border="0"> <thead> <tr> <th style="text-align: left;">NUMBER DESCRIPTION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>4 33 Form 1662</td> <td style="text-align: right;">5</td> </tr> <tr> <td>6 173 Subpoena</td> <td style="text-align: right;">6</td> </tr> <tr> <td>7 174 Background questionnaire</td> <td style="text-align: right;">8</td> </tr> <tr> <td>8 175 Zohar quarterly financial statement</td> <td style="text-align: right;">26</td> </tr> <tr> <td>9 1 Zohar indenture</td> <td style="text-align: right;">48</td> </tr> <tr> <td>10 160 Patriarch loan schedule</td> <td style="text-align: right;">53</td> </tr> <tr> <td>11 161 Patriarch loan payments</td> <td style="text-align: right;">53</td> </tr> <tr> <td>12 162 Karen Wu e-mail</td> <td style="text-align: right;">58</td> </tr> <tr> <td>13 32 Patriarch/Barclays e-mail</td> <td style="text-align: right;">64</td> </tr> <tr> <td>14 176 Bates # PAT 00019 - restructuring proposal</td> <td style="text-align: right;">66</td> </tr> </tbody> </table> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	NUMBER DESCRIPTION	PAGE	4 33 Form 1662	5	6 173 Subpoena	6	7 174 Background questionnaire	8	8 175 Zohar quarterly financial statement	26	9 1 Zohar indenture	48	10 160 Patriarch loan schedule	53	11 161 Patriarch loan payments	53	12 162 Karen Wu e-mail	58	13 32 Patriarch/Barclays e-mail	64	14 176 Bates # PAT 00019 - restructuring proposal	66
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10 160 Patriarch loan schedule	53																						
11 161 Patriarch loan payments	53																						
12 162 Karen Wu e-mail	58																						
13 32 Patriarch/Barclays e-mail	64																						
14 176 Bates # PAT 00019 - restructuring proposal	66																						
Page 4	<p>1 PROCEEDINGS</p> <p>2 MS. SUMNER: We are on the record at 9:47 on</p> <p>3 May 1st, 2014.</p> <p>4 Would you raise your right hand?</p> <p>5 (The witness complied.)</p> <p>6 Do you swear to tell the truth, the whole</p> <p>7 truth and nothing but the truth?</p> <p>8 THE WITNESS: I do.</p> <p>9 EXAMINATION BY MS. SUMNER:</p> <p>10 Q. Please state and spell your full name for the</p> <p>11 record.</p> <p>12 A. Rohit Chaku; R-O-H-I-T. C-H-A-K-U.</p> <p>13 Q. Mr. Chaku, my name is Amy Sumner. I'm a member</p> <p>14 of the staff with the Enforcement Division of the Denver</p> <p>15 regional office of the United States Securities and</p> <p>16 Exchange Commission. I'm also an officer of the</p> <p>17 Commission for purposes of this proceeding.</p> <p>18 This is an investigation by the United States</p> <p>19 Securities and Exchange Commission in the matter of</p> <p>20 Patriarch Partners to determine whether there have been</p> <p>21 violations of certain provisions of the federal</p> <p>22 securities laws. However, the facts developed in this</p> <p>23 investigation may constitute violations of other federal</p> <p>24 or state, civil or criminal laws.</p> <p>25 Prior to the opening of the record you were</p>																						

1 (Pages 1 to 4)

Page 45	Page 47
<p>1 four or three to a one or two, as a substitute for par 2 value you will effectively use the lesser of market 3 value and cost with the intent being generally that 4 market value is the overriding factor there. 5 Q. Is the valuation of the assets something that is 6 important to you as an investor? 7 A. Yes. 8 Q. Why is that? 9 A. It will help us estimate ultimate recovery on 10 that asset, which impacts the ultimate recovery on our 11 ownership. 12 Q. Is valuation of the assets important to you 13 independent of the OC ratio? 14 A. Yes. 15 Q. Why is that? 16 A. For the same reason, that it will ultimately 17 provide guidance in terms of the overall recovery to the 18 portfolio company, that loan which directly impacts the 19 ultimate recovery on our investment. 20 Q. Do you have an understanding of how Patriarch 21 determines the categorization to which it places the 22 assets? 23 A. Only to the extent the guidance provided within 24 the indenture. 25 Q. Do you have understanding of what the indenture</p>	<p>1 A. Yes. 2 Q. Why is that? 3 A. Because the indenture is there to govern 4 basically how the structure and deal operates and really 5 provide protections for all investors, senior investors 6 specifically who have spent time bargaining for certain 7 rights and protection within -- forwarded within the 8 operating documents of the indenture; and so it is very 9 important that the manager especially adhere to those 10 operating documents properly. 11 Q. Do you think that the categorization is 12 subjective or do you believe that it's objective? 13 A. I believe it is objective. 14 Q. And why do you think that? 15 A. There's certain objective points where very 16 clearly if discussions are being had of a restructuring, 17 whether it's within inside or outside of a bankruptcy 18 proceeding or other official proceeding, it cannot be a 19 category 4. There is definitive guidelines for 20 insolvency proceedings and court processes that 21 establish which categories it can also be in. 22 Q. Other than insolvency, are there other 23 circumstances that you recall? 24 A. I believe if the manager has an idea that the 25 loans are going to be structured they will become more</p>
Page 46	Page 48
<p>1 says on this topic? 2 A. I believe that it's effectively within the 3 manager's discretion. The idea is that the category 4 4 assets are sort of current pay obligations and 5 performing assets without any really known credit issues 6 that would give rise to believe that those assets had a 7 chance of becoming riskier and down the line 8 recategorized as a category 3, 4 -- sorry, 3, 2 or 1; 9 and with each level of category reflecting an increased 10 level of credit riskiness and insolvency down to 11 category 1 being more or less the worst category. 12 Q. Where did you come to that understanding? 13 A. From the indenture definition, various categories 14 in the indenture. 15 Q. Do you believe that the categories of assets in 16 the Zohar deal, the categorization, is governed by the 17 terms of the indenture? 18 A. Yes. 19 Q. And why do you think that? 20 A. I think the definitions sort of speak for 21 themselves in terms of really providing guidance in 22 terms of certainly the spirit and within the framework 23 of the definitions and how they're supposed to operate. 24 Q. Is it important to you as an investor that a 25 collateral manager follow the terms of the indenture?</p>	<p>1 credit risky; and if conversations are being had around 2 restructuring the loans they objectively cannot be 3 within category 4. 4 Q. I'm handing your a document that's previously 5 been marked Exhibit No. 1. 6 (Indicating.) 7 This is a copy of the Zohar 1 indenture. 8 (Discussion off the record.) 9 BY MS. SUMNER: 10 Q. I'd like to talk to you in a little more depth 11 about the categorization and your testimony that you 12 think it is an objective type of test based on the 13 indenture. So I don't know where the best place for you 14 to start is, but I can tell that you on page 10 is where 15 the different categories appear. 16 Maybe you could explain to me why you think that 17 the categorization is an objective type measure, or 18 specifically what in the indenture leads you to think 19 that? 20 A. Sure. So, I think I would point to the 21 definition of category 4 where there is definite 22 guidelines in terms of a collateral debt obligation not 23 being -- well, affirmatively being current and not an 24 insolvency collateral obligation as well as no events of 25 default occurring; and I think most importantly, prong,</p>

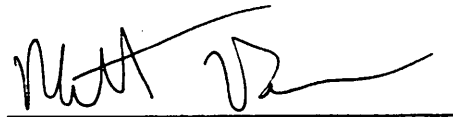
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on this 17th day of June 2015, in the manner indicated below:

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Matthew T. Warren