HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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

DECLARATION OF LISA H. RUBIN IN SUPPORT OF RESPONDENTS' EXPEDITED PETITION TO THE COMMISSION FOR (A) AN ORDER EXTENDING THE 300-DAY RULE IN THIS PROCEEDING AND SETTING A DECEMBER 2016 HEARING DATE, (B) INTERLOCUTORY REVIEW OF HEARING OFFICER DETERMINATIONS, AND (C) AN ORDER APPLYING THE SEC'S AMENDED RULES OF PRACTICE TO THIS PROCEEDING

I, Lisa H. Rubin, under penalty of perjury, affirm as follows:

1. I am Of Counsel in the law firm of Gibson, Dunn & Crutcher LLP, attorneys for the above-referenced Respondents. I submit this declaration in support of Respondents' Expedited Petition to the Commission for (A) an Order Extending the 300-Day Rule in This Proceeding and Setting a December 2016 Hearing Date, (B) Interlocutory Review of Hearing Officer Determinations, and (C) an Order Applying the U.S. Securities and Exchange Commission's ("SEC") Amended Rules of Practice to This Proceeding. As detailed herein, based on my personal knowledge and a review of my firm's records, I understand that several witnesses that Respondents expect to call at trial are unavailable to prepare for and appear at a trial in late October and early November 2016, or have significant conflicts during this period.

2. Between July 18, 2016, and July 25, 2016, I learned that Respondents' expert Glenn Hubbard, the Dean of the Graduate School of Business at Columbia University, an adviser to the President of the Federal Reserve Bank of New York and the former Chair of the President's Council of Economic Advisers, has limited availability throughout the months of October and November 2016, including because he has expert reports due on October 3 and 11, is traveling on October 4-5 and October 17, and has board meetings on October 24 and 25, academic commitments on October 31 through November 3, and board and academic commitments the week of November 7.

3. On or about July 25, 2016, I learned that Respondents' expert J. Richard Dietrich, Professor of Accounting and Chair of the Department of Accounting and Management Information Systems at the Fisher College of Business at The Ohio State University, and a former Academic Fellow at the Office of the Chief Accountant at the SEC, is unavailable on October 24, 26, 28, and 31, and November 2, 4, 7, 9, 11, and 14 due to his teaching schedule at Ohio State, and is unavailable November 1 due to an academic obligation.

4. Between July 18, 2016, and July 25, 2016, I learned that Respondents' expert Marti Murray is unavailable throughout October and November 2016, including because she has to draft two expert reports that are due on October 28 and November 21, has to prepare for and attend expected depositions on October 31 and the last week in November, and has to prepare for and attend a trial in Cayuga County, Ohio at which she will be a testifying expert between November 7 and November 11.

5. On or about July 22, 2016, I learned that Respondents' witness Carl Schopfer, the Chief Operating Officer of MD Helicopters—one of the companies controlled and managed by

Ms. Tilton, who is its CEO, and to which the Zohar Funds are lenders—has work-related conflicts from October 14-18 and a vacation planned for October 21 through November 7.

6. On or about July 25, 2016, I learned that Respondents' witness Scott Whalen, the Director of Portfolio Management at Patriarch Partners LLC, is scheduled to be on vacation the last week in October and at a professional conference on November 9.

7. To the best of my knowledge, the SEC has not produced to Respondents any interview transcript or interview notes for witnesses Michael Craig-Schekman, Jeremy Hedberg, Matt Mach, John McDermott, Kevin O'Hagen, and David Aniloff.

8. To the best of my knowledge, the SEC has produced to Respondents handwritten notes, but no other interview notes and no interview transcript, for witnesses Ramki Muthukrishnan, Tim Walsh, and Steve Panagos.

9. Attached hereto as **Exhibit 1** is a letter from SEC Senior Trial Counsel Dugan Bliss to Administrative Law Judge Carol Fox Foelak, dated July 11, 2016.

10. Attached hereto as **Exhibit 2** is a letter from Randy M. Mastro to Administrative Law Judge Carol Fox Foelak, dated July 13, 2016.

11. Attached hereto as **Exhibit 3** is the Order of Administrative Law Judge Carol Fox Foelak, dated July 15, 2016.

12. Attached hereto as **Exhibit 4** is a letter from Randy M. Mastro to Administrative Law Judge Carol Fox Foelak, dated July 18, 2016.

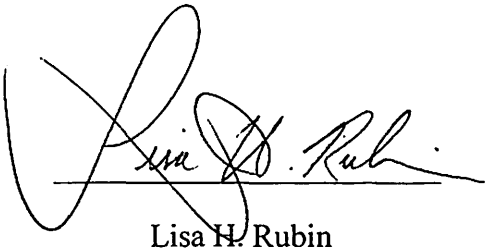
13. Attached hereto as **Exhibit 5** is a letter from SEC Senior Trial Counsel Dugan Bliss to Administrative Law Judge Carol Fox Foelak, dated July 18, 2016, reflecting the SEC's prediction that "the hearing will take three weeks."

14. Attached hereto as **Exhibit 6** is the Order of Administrative Law Judge Carol Fox Foelak, dated July 20, 2016.

15. Attached hereto as **Exhibit 7** is a letter from Randy M. Mastro to Administrative Law Judge Carol Fox Foelak, dated July 22, 2016.

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

Dated: New York, New York
July 25, 2016



Lisa H. Rubin

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
1961 STOUT STREET
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DIVISION OF
ENFORCEMENT

Direct Number: (303) 844.1089
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July 11, 2016

Via Email and Facsimile

Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 25049

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

Dear Judge Foelak:

We write to follow up on the Division's July 7, 2016 request for a telephonic prehearing conference to set a hearing date in this matter, and Respondents' July 8, 2016 response thereto.

The parties jointly propose a hearing date starting in early December (December 1, 2, or 5). The Division still believes the hearing will take three weeks and maintains its request for a telephonic prehearing conference to set a hearing date in this matter. The Division will make itself available at Your Honor's convenience.

Sincerely,

Dugan Bliss
Senior Trial Counsel

Attachment

cc via email:
Randy Mastro, Esq.
Lisa Rubin, Esq.
Susan Brune, Esq.

GIBSON DUNN

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July 13, 2016

VIA EMAIL AND FEDERAL EXPRESS

The Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 25049

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

Dear Judge Foelak:

I write on behalf of Lynn Tilton; Patriarch Partners, LLC; Patriarch Partners VIII, LLC; Patriarch Partners XIV, LLC; and Patriarch Partners XV, LLC (collectively "Respondents") to confirm our consent to the early December 2016 hearing date proposed in the Division of Enforcement's July 11, 2016 letter to Your Honor.

We also respectfully renew our request that Your Honor, after confirming the hearing date, schedule a pre-trial conference at which the parties may be heard in person in the near future. As new counsel, we appreciate Your Honor's consideration and look forward to appearing before Your Honor soon.

Respectfully submitted,

Randy Mastro

Randy M. Mastro

cc: Susan Brune, Esq.
Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3990/July 15, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16462

In the Matter of	:	
	:	
LYNN TILTON;	:	
PATRIARCH PARTNERS, LLC;	:	
PATRIARCH PARTNERS VIII, LLC;	:	ORDER
PATRIARCH PARTNERS XIV, LLC; and	:	
PATRIARCH PARTNERS XV, LLC	:	

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings on March 30, 2015. The hearing, expected to last about two weeks, was set to commence on October 13, 2015, and the prehearing schedule was established on May 7, 2015, with the consent of the parties, as follows:

June 5, 2015	Respondents' Motion for Summary Disposition
June 26, 2015	Division's Response to Motion for Summary Disposition
July 10, 2015	Respondents' Reply
July 10, 2015	Division's Expert Reports[1]
August 7, 2015	Division's Witness and Exhibit Lists and 3500 Materials
August 10, 2015	Respondents' Expert Reports, including Rebuttal Reports
August 17, 2015	Respondents' Witness and Exhibit Lists
August 31, 2015	Division's Rebuttal Expert Reports
September 18, 2015	Motions in Limine
September 25, 2015	Oppositions to Motions in Limine
October 5, 2015	Prehearing Briefs, Final Stipulations, and Prehearing Conference

Lynn Tilton, Admin. Proc. Rulings Release No. 2647, 2015 SEC LEXIS 1773 (A.L.J. May 7, 2015).

The prehearing steps through August 31, 2015, had been accomplished or waived by September 17, 2015, the date when the U.S. Court of Appeals for the Second Circuit stayed the

[1] Expert witnesses' direct testimony will be via expert report. The experts will present a brief summary of their testimony and be made available for cross examination.

proceeding. *Tilton v. SEC*, No. 15-2103, ECF No. 76. In June 2016, the court vacated its stay. *Tilton v. SEC*, No. 15-2103, 2016 U.S. App. LEXIS 9970, at *37 (2d Cir. June 1, 2016).[2]

In light of the passage of time, the parties may amend their previously filed witness and exhibit lists by August 12, 2016. The parties have suggested a hearing date in December 2016. However, a December 2016 hearing date is inconsistent with a timely resolution of this proceeding consistent with 17 C.F.R. § 201.360.[3] Accordingly, the parties should, by no later than July 22, 2016, propose an earlier hearing date in September 2016 as well as dates for the remaining prehearing steps.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

[2] The court ordered: "[O]ur stay on further proceedings by the SEC is VACATED." *Id.* On June 28, 2016, the court ruled on the Commission's motion for clarification: "it is hereby ORDERED that the stay is vacated, subject, however, to a continuation of the stay until July 6, 2016, to permit Tilton to file a motion seeking a stay from the Supreme Court and, if such a stay motion is timely filed, until the Supreme Court or a Justice thereof has definitely ruled on such a motion." *Tilton v. SEC*, No. 15-2103, ECF No. 125. No such motion was filed. On July 12, 2016, the court denied Tilton permission to file, together with Barbara Duka, appellee in *Duka v. SEC*, No. 15-2732 (2d Cir.), a joint petition for rehearing in response to the court's June 1, 2016, opinion. *Tilton v. SEC*, No. 15-2103, ECF No. 146.

[3] Recently, counsel who previously represented Respondents withdrew, and new counsel appeared for Respondents. However, such a change cannot be allowed to delay the proceeding.

GIBSON DUNN

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July 18, 2016

VIA EMAIL AND FACSIMILE

The Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 25049

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

Dear Judge Foelak:

I write as new counsel for Lynn Tilton, Patriarch Partners, LLC, Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, and Patriarch Partners XV, LLC (collectively, "Patriarch" or "Respondents") in response to Your Honor's order of last Friday afternoon rejecting the parties' joint request for a trial date starting in December 2016 and, instead, ordering the parties to agree upon a trial date starting in September 2016 -- less than two months from now.

With all due respect, we are surprised by Your Honor's refusal to grant the parties' joint request to commence this trial in December 2016, and even more surprised that Your Honor is ordering the parties to go to trial in this complex matter less than two months from now, starting in September 2016. We understand that the Commission's rules impose certain time limitations, but there is still time to issue an initial decision in this matter under a more reasonable schedule for the parties. Additionally, the Rules of Practice allow for an extension of time, including through applications directly to the Commission. We implore Your Honor to reconsider and endorse the parties' joint proposal of a December 2016 trial date, or, alternatively, ask for a conference with Your Honor on or before Wednesday, July 20, 2016, to address this crucially important timing issue.

As Patriarch's new counsel who first noticed our appearance here only 10 days ago, we want to be crystal clear about this: As a matter of fundamental fairness and due process, Patriarch cannot possibly get a fair hearing if forced to proceed to trial in less than two months; it has several experts and other witnesses critical to its defense unavailable on such short notice; and it has all parties' consent to a reasonable, orderly schedule that gets this enormously complex case to trial before year's end in December 2016. Yet Your Honor has now rejected that joint request, reasoning that a trial date less than five months from now is somehow "inconsistent with a timely resolution of this proceeding." Your Honor's Order also cites the "passage of time" during which the U.S. Court of Appeals for the Second Circuit stayed this proceeding pending its review of whether these types of SEC administrative tribunals are

even constitutional -- a question that a divided three-judge panel of that court ultimately concluded was premature to decide and that our clients have now asked that entire court to review en banc.

Under all of the surrounding circumstances -- including that the SEC has been pursuing this matter for more than six years -- we, as newly appointed counsel, should not be forced to go to trial on this hugely complicated, important and high-profile case in less than two months. A perception persists that these SEC administrative proceedings are fundamentally unfair and deny respondents due process. It is therefore even more imperative that this tribunal be particularly sensitive to such perceptions and concerns and afford us the time necessary and jointly requested to commence this trial.

As Your Honor has noted, we are new counsel for Respondents. Earlier this month, we noticed our appearance in this matter in good faith, replacing prior counsel after the Second Circuit's ruling lifting the stay of this proceeding but at a time when the fairness of the SEC's administrative proceedings is under attack in federal courts across this country. Indeed, less than an hour before we received Your Honor's ruling rejecting the parties' joint request, our clients filed a petition for rehearing en banc by the entire Second Circuit of their constitutional challenge to this proceeding, and they intend to pursue their appellate rights all the way to the Supreme Court if need be.

Our appearance also coincides with the Commission's acknowledgement of the criticism leveled against the SEC's administrative proceedings, including that, for too long, they have lacked the hallmarks of due process required before a deprivation of one's livelihood or property. For example, in a recent interview with the *Wall Street Journal*, Commission Chair Mary Jo White noted that the SEC's Rules of Practice for administrative proceedings had not been "modernized" for nearly a decade and reflected on the need to ensure that such administrative proceedings convey fairness both in reality and in appearance. *Mary Jo White Explains the New SEC Rules*, Wall St. J., Nov. 24, 2015, http://www.wsj.com/articles/mary-jo-white-explains-the-new-sec-rules-1448302777. And just last Wednesday, the Commission attempted to address the perception that its existing rules are unfair by unanimously adopting a number of substantial amendments. *See* Amendments to the Commission's Rules of Practice, Release No. 34-78319, July 13, 2016, https://www.sec.gov/rules/final/2016/34-78319.pdf. While those amendments do not go far enough to rectify the fundamental unfairness of proceedings like this one, they at least will afford respondents the ability to take up to seven depositions (without regard to a witness's availability for trial) and to request related document discovery. However, these new discovery-related rules will not be applied automatically to litigants whose initial pre-hearing conferences have been held or whose cases are pending and have not been stayed as of the effective date. *Id.*

As Your Honor knows, everything in this case is receiving intense public scrutiny. What the

public will see with this ruling accelerating this case to trial will look like a rush to judgment to target someone with the temerity to challenge the constitutionality of these SEC proceedings. That unintended consequence of this ruling will serve no party's interest here.

There are a host of reasons that Your Honor's latest scheduling order warrants reconsideration.

First, this case is tremendously complex. Although, as new counsel, we are still familiarizing ourselves with the entire voluminous record, we understand that the prospective trial evidence (to say nothing of the enormous investigative record) includes nearly 1,000 trial exhibits, at least two dozen proposed trial witnesses, and 11 expert reports that were exchanged among the parties last summer but not yet presented to Your Honor. In particular, the 11 expert reports focus on an array of technical issues, including:

- The structure and operation of the Zohar CLOs, including their categorization of loans;
- The authority invested in the collateral manager and others under the pertinent transaction documents;
- GAAP compliance of the impairment analyses in the Zohar funds' financial statements;
- The proper calculation of the Zohar funds' monthly overcollateralization ratio tests;
- The disclosure of the Zohar Funds' strategies to investors and the availability of information sufficient to enable investors to monitor the performance of the loans held by the Zohar funds and their own investments; and
- The amounts paid to certain Respondents in subordinated collateral management fees and preference share distributions.

In light of these complexities—with which Your Honor may not yet be fully familiar—a September 2016 hearing date strikes us as premature, infeasible and unfair under all of the surrounding circumstances.

Second, Your Honor's order requiring the parties to go to trial in September 2016 puts the cart before the horse in this important sense: At the time the Second Circuit stayed this proceeding on September 17, 2015, Your Honor had not yet ruled on Respondents' fully-briefed motion for summary disposition. Indeed, that important and potentially dispositive motion remains sub judice to this day, yet its resolution would define the scope of this trial

and potentially narrow it, if not obviate the need for it altogether. Scheduling a September 2016 trial does not appear to give Your Honor any meaningful time to consider and resolve that motion, especially given the many other pre-trial motions (described below) that will also require rulings.

Third, both sides requested a December 2016 hearing date for wholly legitimate reasons, separate and apart from the fact that we are new trial counsel appearing for the first time 10 days ago to replace prior counsel after the Second Circuit's decision and we understandably need more time to prepare for trial than the few weeks afforded in Your Honor's directive. Most significantly, a number of Respondents' witnesses are unavailable to be prepared for and to appear at a September 2016 hearing, or have significant conflicts during this period, including but not limited to three of Respondents' five experts:

- Respondents' expert Glenn Hubbard, Dean of the Graduate School of Business at Columbia University, an adviser to the President of the Federal Reserve Bank of New York, and a former Chair of the President's Council of Economic Advisers, who, due to a September 2016 trial in Guernsey at which he is testifying and other professional commitments, is unavailable throughout the months of August and September 2016;

- Respondents' expert Marti Murray, who, due to expert reports due in two separate matters at the end of August and the end of September, and a deposition in a third matter during the first two weeks of September, reported that it would be "impossible" for her to testify at a trial in this matter in September; and

- Respondents' expert Mark Froeba, who, for family reasons, has plans to be in Wisconsin for several weeks in early-to-mid August through early September.

Moreover, Ms. Tilton will be attending a trial beginning August 9, 2016 in Delaware Chancery Court, in which certain Respondents are defendants, and is scheduled to be deposed on August 30, 2016 in an insurance coverage litigation relating to this matter. Similarly, Patriarch employee Carlos Mercado, who is expected to be a fact witness for both sides, will be deposed in that same insurance coverage matter on September 8, 2016. In-house counsel with responsibility for this matter also will be deposed in the above-referenced insurance coverage matter on September 9, 2016, and, in total, will need to oversee preparation for and the defense of four total Patriarch depositions between late August 2016 and September 26, 2016, when fact discovery closes. And three of Respondents' witnesses in this proceeding no longer work for Patriarch or any of its affiliates, cannot be compelled by Respondents to attend a September 2016 hearing, and are not even in regular contact with Respondents or their counsel. Their schedules will also need to be taken into account.

In addition to Respondents' scheduling conflicts, the Division has its own, including Mr. Bliss's October 1, 2016 wedding, making a trial starting during the latter half of September 2016 impossible on the Division's end.[1] This is why the Division has advised us that, given Your Honor's order, it intends to request a September 6, 2016 hearing date -- less than two months from now. Therefore, Your Honor's ruling shoehorns the parties into an early September trial date that neither of them wants. It not only disregards both sides' interests in adequately preparing for trial in this extremely complex matter but also fails to take into account the availability of counsel, experts and fact witnesses alike. Considering the almost 10-month duration of the Second Circuit's stay and that it was lifted less than two weeks ago, it should surprise no one that Respondents' experts, in particular, might have new and different commitments. Indeed, due to their trial and deposition testimony in other matters, academic schedules, and other professional obligations, certain of Respondents' experts are not available until mid-November, which is among the reasons we sought a December 2016 date in the first place. No one, least of all those experts, could have foreseen a September 2016 trial date in a case of this magnitude and complexity.

Fourth, in refusing a proposed consensual trial schedule of December 2016, Your Honor states that our firm's appearance as new counsel "cannot be allowed to delay the proceeding." Order at 2 n.3. Considerations of due process are particularly acute, however, where, as here, the case is an enforcement action based on an investigation that the SEC undertook for more than five years before any charges were filed, yet new counsel is being expected to go to trial in a matter of weeks. That is why scheduling requests of new counsel, even absent the consent opposing counsel has given here, have been routinely granted in SEC administrative proceedings,[2] as well as in federal courts. Indeed, when I spoke last Friday to Dugan Bliss, lead counsel for the Division of Enforcement, even he expressed his surprise at Your Honor's denial of our proposed joint schedule on consent and described it as unusual. And he further said that the Division would consent to our request for a conference with Your Honor on this scheduling issue.

Fifth, there is an additional—and significant—reason that denying us more time to prepare is unjust: the consequences to Respondents of any loss at trial are catastrophic and dwarf those of other recent SEC administrative proceedings, individually or cumulatively. The amount that the Division seeks in disgorgement from Ms. Tilton -- at least $208 million -- is nearly

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[1] There are additional dates in September 2016 with which lawyers representing Respondents also have scheduling conflicts, but will not detail here as we remain hopeful that an appropriate hearing date ultimately will be scheduled.

[2] *See, e.g., In Re Harrison Sec., Inc.*, Release No. 611 (Oct. 7, 2003) at 4 (granting request to postpone hearing pursuant to Rule 161(b) because new attorneys should be given "a reasonable opportunity to become familiar with the issues before the hearing starts").

seven times more than the $32 million ordered in disgorgement and penalties in all SEC administrative proceedings combined during fiscal year 2015. By contrast, there is no exigency compelling the immediate trial of this case. Ms. Tilton is not a registered investment adviser, the Patriarch entities are no longer registered investment advisers, and no Patriarch entity serves as a collateral manager to any of the Zohar funds, having resigned those positions in February 2016. As no Respondent is managing the Zohar funds, they pose no risk of any alleged ongoing or future harm to any Zohar Fund investors.

Sixth, notwithstanding Your Honor's apparent belief that the "remaining prehearing steps" are so few in number and small in significance that a September 2016 trial date would be feasible, that is definitely not the case. Respondents were planning and still intend to file many motions prior to trial. Those submissions include but are not necessarily limited to the following:

- Motions to dismiss, based on the arguments raised in the appellate proceedings and other indicia of the unconstitutionality and illegality of these SEC administrative proceedings, among other grounds;
- Motions to add certain experts as trial witnesses;
- Motions for additional discovery, based on application of the SEC's new rules, adopted just last week;
- A range of other motions challenging the manner of presentation of expert testimony, the lack of discovery concerning certain of the Division's witnesses, and other motions necessary to preserve Respondents' rights, including in any appeal, and demonstrate the inherent absence of due process for Respondents;
- Motions in limine relating to the evidence to be adduced at trial, including expert testimony;
- The pre-hearing briefing contemplated in Your Honor's scheduling orders; and
- Motions, pursuant to Rules 161 and 900 of the Rules of Practice, to extend the hearing date due to the substantial prejudice to Respondents from a September 2016 hearing, the unusual complexity of this case, and the potential issue preclusive effects of a ruling in this matter on pending civil litigations relating to the Zohar funds.

In other words, there are a host of issues still to be addressed before this matter should go to trial, and they certainly cannot be adequately addressed in a manner that comports with due process in the few weeks Your Honor has allowed.

Seventh, Your Honor has previously expressed concerns about "truncated timelines" in SEC administrative proceedings. As a recent report by the Commission's Office of Inspector General ("OIG") noted, Your Honor was interviewed by the OIG about bias in SEC administrative proceedings. That interview occurred during the pre-trial phase of this case and days before the Second Circuit issued its 10-month stay here. Rather than denying that SEC administrative proceedings are biased, Your Honor, among others, apparently identified "systemic causes" of that bias, including "the rules of practice (which the SEC has recently proposed to amend), limited access by respondents to discovery and the investigative case file, and truncated timelines." U.S. Securities and Exchange Commission, Office of Inspector General, *Report of Investigation*, Case # 15-ALJ-0482-I, at 20 (citing September 14, 2015 interview with ALJ Foelak). Given Your Honor's concern that "truncated timelines" in SEC administrative proceedings may affect fairness for all respondents, we are simply asking for fairness in the scheduling of this case.

Finally, we are not understanding the rush. There is additional time to resolve this case even under the existing schedule (obviously, not counting the period of any court-imposed stay), and the SEC's Rules of Practice permit extensions of time under circumstances such as these. We also understand from Division counsel and our firm's own experience that such extensions are readily available and routinely granted.

Accordingly, we respectfully implore Your Honor to reconsider and endorse the December 2016 trial date jointly proposed by the parties, or alternatively, to schedule a conference on or before Wednesday, July 20, to address this crucial issue. This letter will, of course, be followed by a formal motion for reconsideration, and in the alternative, for certification for interlocutory appeal, pursuant to the SEC's Rules of Practice, as well as other motions, including directly to the Commission, to extend the time frame for deciding this matter. But given the time exigencies here, we wanted to bring this critically important issue to Your Honor's attention immediately. And we also hope Your Honor will understand that we feel so strongly about this, and are expressing ourselves so frankly in this letter, precisely because

forcing our clients to have to go to trial in September 2016, just a few weeks from now, is fundamentally unfair and wholly inconsistent with due process.

Respectfully,

Randy M. Mastro

cc: Susan Brune, Esq.
Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
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DIVISION OF
ENFORCEMENT

Direct Number: (303) 844.1089
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July 18, 2016

Via Email and Facsimile

Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 25049

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

Dear Judge Foelak:

We write to follow up on the Your Honor's July 15, 2016 Order (the "Order").

The parties are unable to reach an agreement on a hearing date in September, as directed by the Order. The Division requests a hearing date starting September 6, 2016[1] and requests a telephonic conference as soon as possible to set the hearing date. The Division still believes the hearing will take three weeks.

Sincerely,

Dugan Bliss
Senior Trial Counsel

cc via email:
Randy Mastro, Esq.
Lisa Rubin, Esq.
Susan Brune, Esq.

[1] The Division requests a September 6, 2016 hearing date for three reasons: (1) it will provide for timely resolution of this proceeding consistent with 17 C.F.R. § 201.360; (2) during September, one of the Division's investor witnesses is only available to testify September 6, 7, or 8; and (3) lead counsel for the Division (undersigned) is getting married on October 1, 2016.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4004/July 20, 2016

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	: : : : : :	ORDER

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on March 30, 2015. The OIP alleges that Respondents violated the antifraud provisions of the Investment Advisers Act of 1940 (Advisers Act) in their operation of three collateral loan obligation funds by reporting misleading values for the assets held by the funds and failing to disclose a conflict of interest arising from Lynn Tilton's undisclosed approach to categorization of assets. The proceeding was stayed by order of the U.S. Court of Appeals for the Second Circuit between September 17, 2015, and June 2016. *See Tilton v. SEC*, No. 15-2103, 2016 U.S. App. LEXIS 9970, at *37 (2d Cir. June 1, 2016); *Tilton v. SEC*, No. 15-2103, ECF Nos. 76, 125. Upon the court's vacating the stay, the undersigned ordered the parties to propose a hearing date in September 2016. *Lynn Tilton*, Admin. Proc. Rulings Release No. 3990 (A.L.J. July 15, 2016) (July 15 Order). Under consideration are various letters and motions following the July 15 Order.

On consideration of the letters and motions and given schedule conflicts of counsel and/or certain witnesses for a hearing starting in September 2016, the hearing will be set to commence October 24, 2016, with the following prehearing schedule:

August 15, 2016: Amended Witness and Exhibit Lists
September 12, 2016: Motions in Limine
September 19, 2016: Oppositions to Motions in Limine
October 17, 2016: Prehearing Briefs and Final Stipulations
October 19, 2016: Final Prehearing Conference

Delaying the hearing until December 2016, as the parties request, is inconsistent with 17 C.F.R. §§ 201.161, .360. The reasons advanced by Respondents are unpersuasive. This case involves a single individual respondent and four related entities, charged with violations of Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-8. More than five months elapsed from the institution of this proceeding until the time this proceeding was stayed in September 2015, with

the hearing originally scheduled to commence on October 13, 2015. Most of the prehearing steps had already been completed, as noted in the July 15 Order. The Second Circuit vacated its stay order on June 1, 2016, thus making the parties aware that this proceeding would soon continue.

Respondents' hiring new counsel and intent to file a large number of prehearing motions are not an adequate basis for substantial delay. It is also unnecessary for Respondents to file numerous motions simply to preserve issues, such as constitutional issues, for appeal; they may simply note such objections for the record. As to Respondents' concerns about the schedules of hearing participants, the parties can use available means, including use of subpoenas, to compel attendance of witnesses, or can make arrangements for expert witnesses to appear by video conference if necessary.

Finally, Respondents' request for certification of the July 15 Order for interlocutory review patently fails to meet the standards of 17 C.F.R. § 201.400(c) and must be denied. Respondents are warned that filing further frivolous motions may subject counsel to sanctions or limits on the number of permissible filings. *See* 17 C.F.R. § 201.111(d), .180.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

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July 22, 2016

VIA EMAIL AND FACSIMILE

The Honorable Carol Fox Foelak
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 26049

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

Dear Judge Foelak:

I write as Respondents' new counsel regarding Your Honor's July 20, 2016 Order requiring the hearing of this case to commence on October 24, 2016.

While we appreciate that Your Honor is no longer requiring a September 2016 hearing, as previously ordered, Your Honor has apparently now ordered this October 2016 trial date -- rather than the December 2016 trial date jointly requested by the parties -- because, as Your Honor noted, the 300-day rule precludes a later trial date, absent relief from the Commission, which we understand is routinely granted when requested. In moving for a December 2016 trial date, we also requested that Your Honor ask the Chief Administrative Law Judge to seek that relief from the Commission, but Your Honor has apparently denied that request, even though it may well prove necessary to seek that relief from the Commission later under this new schedule contemplating a multi-week trial starting on October 24, 2016. And because we continue to believe strongly that, as a matter of fundamental fairness and due process, this case cannot be tried before December 2016, we intend to petition the Commission for permission to seek direct interlocutory review of the trial date, as now ordered by Your Honor, and for relief from the 300-day rule. *See, e.g.*, *In re McDuff*, Release No. 78066 (June 14, 2016) ("The Commission may at any time review an interlocutory ruling on any issue, whether on its own initiative or at a party's urging, even absent certification by a law judge.") Indeed, every communication we have sent to Your Honor since we first noticed our appearance as Respondents' new counsel two weeks ago—including, but not limited to, the related July 19 motions—has been animated by our concern for fundamental fairness and due process, the cornerstones of any adjudicatory proceeding.

Moreover, while we respect Your Honor's ruling, we respectfully disagree with Your Honor's characterization of our motion for certification as "patently fail[ing]" to meet the Commission's standards for certification for interlocutory review, as reflected in the Rule 400(c) of the Commission's Rules of Practice. *In re Tilton*, Release No. 4004 (July 20,

2016) at 1. That rule, as Your Honor knows, permits a hearing officer to certify a ruling for interlocutory review where the ruling (i) "involves a controlling question of law as to which there is a substantial ground for difference of opinion; and (ii) an immediate review of the order may materially advance the completion of the proceeding." 17 C.F.R. § 201.400(c). Surely, certifying for interlocutory review an order setting a trial date that denies our clients adequate time to prepare their defense, precludes them from calling key expert and fact witnesses, and thereby deprives them of due process would "materially advance the completion of the proceeding," because this deprivation of due process, if left to stand, would require reversal of any resulting decision and a rehearing of the case. The "controlling question of law" here is whether the trial schedule that Your Honor has ordered affords Respondents the due process rights to which they are entitled under the U.S. Constitution. We therefore consider our motion to have been consistent with the letter, spirit and intent of Rule 400(c), and we intend to put this critically important issue before the Commission.

Further, as the Commission recently clarified, there are also "extraordinary circumstances that are appropriate for interlocutory review but that do not involve issues that meet the standards of Rule 400(c)." *McDuff*, Release No. 78066, at 5. We believe that the trial schedule set by Your Honor, even as now modified, presents such "extraordinary circumstances."

Finally, while I reiterate that we respect Your Honor's ruling, I am surprised and troubled by the reference in Your Honor's latest order that "filing further frivolous motions may subject counsel to sanctions." In the more than 30 years that I have been practicing law -- including service as a federal prosecutor in the Southern District of New York, as a federal court-appointed Special Master who conducted administrative proceedings, as Deputy Mayor of New York City, as Chair of two Mayoral Charter Revision Commissions, and currently, as co-chair of Gibson Dunn's Litigation Group -- I have never been personally sanctioned or threatened with sanctions by any court or tribunal anywhere. Yet Your Honor has now raised that prospect less than two weeks after we first appeared as new counsel of record in response to our related applications on one issue and one issue alone -- setting this case for trial in December 2016, as the parties jointly proposed to Your Honor. That additional time, we believe, is absolutely necessary in order to ensure our clients due process and fundamental fairness in the presentation of their trial defense against the serious charges they face in this enforcement action. And now, we, as new counsel, have been threatened with sanctions if we make "further frivolous motions," even though the only motions we have made in the two weeks since first noticing our appearance relate directly to the trial date as a matter of due process, which goes to the fundamental fairness of everything that happens in this case going forward.

Of course, our ethical obligation is to zealously advocate on behalf of our clients. Yet now, we face potential sanctions for filing future motions, which could have a chilling effect upon the exercise of our client's due process rights. Surely, that could not have been Your Honor's intent, but just as surely, it is the effect. Indeed, these very SEC administrative proceedings remain the subject of intense constitutional debate, and the record created here will be scrutinized for its fairness in affording these Respondents due process. Also, while we appreciate Your Honor's view that it should be sufficient for us to "preserve issues, such as constitutional issues, for appeal . . . simply [by] not[ing] such objections for the record," we respectfully submit that federal courts ultimately will resolve those important questions and may have a different view, depending upon the issue. So we, as responsible, ethical counsel, will have to file motions as we deem necessary to assert and protect our clients' rights. We hope, despite Your Honor's admonition, that Your Honor will understand that we do so in good faith and in the highest traditions of our profession as zealous advocates on behalf of our clients, even if Your Honor continues to rule against us on the merits of our applications.

Respectfully,

Randy M. Mastro/LHK

Randy M. Mastro

cc: Susan Brune, Esq.
Dugan Bliss, Esq.
Nicholas Heinke, Esq.
Amy Sumner, Esq.