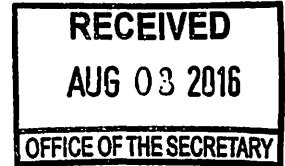


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of

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

Respondents.

OFFICE OF LITIGATION AND
ADMINISTRATIVE PRACTICE'S
OPPOSITION TO RESPONDENTS'
REQUESTS FOR THE ISSUANCE
OF SUBPOENAS TO PRODUCE
DOCUMENTS

The Office of Litigation and Administrative Practice (OLAP) within the Office of the General Counsel hereby objects to Respondents' Request for Issuance of a Subpoena Directed at the Securities and Exchange Commission (the "First Request") and Respondents' Second Request for Issuance of a Subpoena Directed at the Securities and Exchange Commission (the "Second Request") insofar as that Second Request is directed at the "Commission, and any and all divisions or units thereof . . . as well as any of its Commissioners or any other personnel" (Second Request, Definition 1).¹ As explained below, we respectfully request that consideration

¹ The General Counsel is authorized to "assert governmental privileges on behalf of the Commission in litigation where the Commission appears as a party or in response to third party subpoenas." 17 C.F.R. § 200.30-14(f). When subpoenas in administrative proceedings request documents from divisions and offices other than, or in addition to, the Division of Enforcement ("Division"), OLAP may appear to, among other things, protect privileged information or documents. *See, e.g., In the Matter of Putnam Inv. Mgmt., LLC*, A.P. File No. 3-11317, Rel. No. 613, 2004 WL 1175274, at *1 n.1 (SEC March 26, 2004) (OGC represents OCIE regarding motion to quash subpoena). OLAP has delegated authority to assert governmental privileges. OLAP understands that the Division intends to file a separate submission relating to the Second Request.

of the First Request be deferred pending the Commission's disposition of Respondents' July 25, 2016 Expedited Petition, determination of which might moot or significantly alter Respondents' perceived need for such discovery. We also request that, pursuant to Rule 232(b), Respondents be directed to tailor both of their requests to eliminate over-breadth and to avoid seeking the production of privileged material.²

I. Consideration of Respondents' First Request is Premature and, Separately, Seeks Documents Covered By Numerous Privileges.

Respondents filed an Expedited Petition to the Commission on July 25, 2016, seeking, among other things, an order applying the SEC's Amended Rules of Practice to this proceeding. (On July 29, 2016, the Division filed an opposition to the Expedited Petition.) Yet, in the First Request, Respondents seek documents related to the Commission's internal decisions about the adoption and timing of the Amendments to the Commission's Rules of Practice, which were approved by the Commission on July 13, 2016. Given the issues in Respondents' Expedited Petition that are presently pending before the Commission, entertaining Respondents' broad-ranging discovery requests concerning the Commission's Amended Rules would be premature. Consideration of the First Request should thus be postponed until after the Commission decides Respondents' Expedited Petition.

Separately, Respondents' First Request is overbroad, *see, e.g.*, First Request, Definitions ¶ 5, and, as it is aimed squarely at the agency's internal deliberations and decision-making, seeks documents protected by multiple privileges, *see, e.g.*, First Request, Requests 1-3, 5.

Accordingly, if Respondents would still like to pursue the requests related to the Amended Rules

² Rule 232(b) states that "[i]f after consideration of all the circumstances, the person requested to issue the subpoena determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires." 17 C.F.R. § 201.232(b).

after the Commission has disposed of their Expedited Petition, Respondents should be directed to recast their First Request consistent with Rule 232(b) to eliminate over-breadth and to avoid seeking the production of privileged materials. OLAP could then make tailored objections and assertions of privilege as warranted.

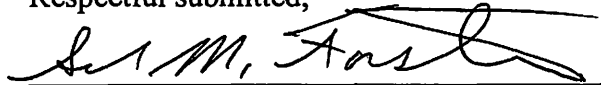
II. Respondents' Second Request Seeks Materials Covered by Multiple Privileges

Respondents' Second Request is overbroad and ill-defined, *see, e.g.*, Second Request, Definitions ¶ 4, and the nonpublic documents it seeks are protected by multiple privileges, *see, e.g.*, Second Request 3-5, 7-10. It seeks a broad range of documents relating to entities involved in this matter, including all documents between Commissioners or their staffs and the Division of Enforcement "relating to any of the Respondents, the *Tilton* Matter or the Zohar Funds." *See* Second Request ¶ 5, p. 7; *see also* Second Request, Definition 1 (defining terms "'you,' 'your,' and 'Commission' to mean 'individually and/or collectively, United States Securities & Exchange Commission and any and all divisions or units thereof, including but not limited to the Division of Enforcement, the Office of General Counsel, and the Office of the Secretary, as well as any of its Commissioners or any other personnel'"). Indeed, as just one example, Request 5 goes to the heart of the Commission's consideration and deliberation concerning the case against Respondents, directly implicating the protections afforded by the deliberative process privilege, and seeks legal advice or documents prepared in anticipation of litigation that are classic attorney-client and work-product protected material. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975) (deliberative process privilege); *Dow Jones & Co. v. Dep't of Justice*, 917 F.2d 571, 573 (D.C. Cir. 1990) (deliberative process privilege); *SEC v. Somers*, No. 3:11-cv-00165-H, 2013 WL 4045295, at *2 (D. Kan. Aug. 8, 2013) (deliberative process privilege); *In re Sealed Case*, 737 F. 2d 94, 98-99 (D.C. Cir. 1984) (attorney-client privilege); *Judicial Watch*,

Inc. v. Dep't of Justice, 306 F. Supp. 2d 58, 74 (D.D.C. 2004) (attorney-client privilege); *Linder v. Calero-Portocarrero*, 183 F.R.D. 314, 324 (D.D.C. 1998) (attorney-client privilege); *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947) (work-product doctrine); *Schiller v. NLRB*, 964 F. 2d 1205, 1208 (D.C. Cir. 1992) (work-product doctrine); *SEC v. Cavanaugh*, No. 98 Civ. 1818(DLC), 1998 WL 132842, at *2 (S.D.N.Y. Mar. 23, 1998) (work-product doctrine); *In re Sealed Case*, 856 F.2d 268, 272 (D.C. Cir. 1988) (law enforcement privilege); *Tuite v. Henry*, 181 F.R.D. 175, 176 (D.D.C. 1998) (law enforcement privilege). OLAP respectfully requests that the Second Request be rejected as drafted and that Respondents be directed consistent with Rule 232(b) to tailor their Second Request to eliminate over-breadth and avoid seeking the production of privileged materials.³

August 3, 2016

Respectful submitted,



SAMUEL M. FORSTEIN
Assistant General Counsel

MATTHEW S. FERGUSON
General Attorney

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Securities and Exchange Commission
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³ If a subpoena is issued in the future, we reserve the right to apply to move to quash or modify the subpoena under Commission Rule of Practice 232(e).

CERTIFICATE OF SERVICE

On August 3, 2016, I served the foregoing by causing to be sent true and correct copies as shown below:

Honorable Carol Fox Foelak (by email)
Administrative Law Judge
Securities and Exchange Commission
100 F Street NE
Mailstop 2585
Washington, DC 20549

Office of the Secretary (original, plus three copies) (hand delivery)
Securities and Exchange Commission
100 F Street NE
Mail Stop 1090
Washington, DC 20549

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

August 3, 2016

Office of the Secretary
Securities and Exchange Commission
100 F Street NE
Mail Stop 1090
Washington, DC 20549
By Hand Delivery



Re: *In the Matter of Lynn Tilton; Patriarch Partners, LLC; et al.*, AP File No. 3-16462

Dear Mr. Fields,

I enclose the original and three copies of the Office of Litigation and Administrative Practice's Opposition to Respondents' Requests for the Issuance of Subpoenas in the above captioned matter.

Sincerely,

Matthew S. Ferguson