

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16776

In the Matter of

**TABERNA CAPITAL MANAGEMENT,
LLC, MICHAEL FRALIN, AND
RAPHAEL LICHT**

Respondents.

PROPOSED PLAN OF DISTRIBUTION

Introduction

1. This proposed Plan of Distribution (the “Plan”) has been developed pursuant to Rule 1101 of the Securities and Exchange Commission’s Rules on Fair Fund and Disgorgement Plans (“Rules”), 17 C.F.R. § 201.1101. The Plan proposes a distribution of the funds collected in the above-referenced proceedings from Taberna Capital Management, LLC (“Taberna”), Michael Fralin (“Fralin”), and Raphael Licht (“Licht”) (collectively, the “Respondents”) to investors in certain Taberna collateralized debt obligation clients (the “Taberna CDOs”)¹ who suffered losses caused by Taberna’s charging and retention of certain fees (“Exchange Fees”) that should have been paid to the Taberna CDOs.

Background

2. On September 2, 2015, the Securities and Exchange Commission (the “Commission”) issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C, 15(b), and 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, Section 9(b) of the Investment Company Act of 1940, and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders (the “Order”)² against the Respondents. The Commission determined that, between 2009 and 2012, in connection with restructuring transactions undertaken between the Taberna CDOs and the issuers of the underlying

¹ The Taberna CDOs at issue include Taberna Preferred Funding I, Ltd., Taberna Preferred Funding II, Ltd., Taberna Preferred Funding III, Ltd., Taberna Preferred Funding IV, Ltd., Taberna Preferred Funding V, Ltd., Taberna Preferred Funding VI, Ltd., Taberna Preferred Funding VII, Ltd., Taberna Preferred Funding IX, Ltd., Taberna Europe I CDO P.L.C., and Taberna Europe II CDO P.L.C.

² Exchange Act Rel. No. 75814 (Sept. 2, 2015).

obligations in the Taberna CDOs' portfolios, Taberna retained Exchange Fees that should have been paid to the Taberna CDOs. The Commission further determined that the retention of Exchange Fees created actual and potential conflicts of interest that Taberna failed to disclose to its clients. The Commission found that Fralin and Licht, former officers of Taberna and its parent company, respectively, participated in the misconduct. The Commission ordered Taberna to disgorge \$13 million and pay prejudgment interest of \$2 million and a civil penalty of \$6.5 million, and Fralin and Licht to pay civil penalties of \$100,000.00 and \$75,000.00, respectively. The Commission established a disgorgement fund for the distribution of the \$15 million in disgorgement and prejudgment interest paid by Taberna to injured investors to compensate them for the harm they suffered because of the Respondents' violations.

3. On August 24, 2017, the Commission established a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, so that ordered civil penalties, including the \$6.6 million thus far collected from the Respondents and any future collections, could be added to the \$15 million in disgorgement and prejudgment interest, for the benefit of the injured investors (the "Fair Fund").³

4. To date, the Respondents have paid approximately \$21.6 million in disgorgement, prejudgment interest, and civil penalties into the Fair Fund. The Fair Fund is deposited in an interest bearing account at the United States Treasury Department's ("Treasury") Bureau of the Fiscal Service ("BFS"). All BFS fees will be paid by the Fair Fund. The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Plan is subject to approval by the Commission, and the Commission retains jurisdiction over implementation of the Plan.

Fund Administrator

5. The Commission has appointed Rust Consulting, Inc. ("Rust") as the fund administrator (the "Fund Administrator").⁴

6. The Fund Administrator has obtained a bond in the manner prescribed by Rule 1105(c) of the Rules, 17 C.F.R. § 201.1105(c), in the amount of \$21.675 million.

7. The Fund Administrator will be responsible for administering the Fair Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to identify and contact Potential Claimants (defined below); obtaining accurate mailing information for Potential Claimants; establishing a website and staffing a call center to address inquiries during the claims process; developing a claims database; preparing accountings; cooperating with the Tax Administrator for purposes of timely and accurately fulfilling the information reporting and withholding obligations of the Fair Fund in compliance with IRS regulations, including but not limited to the Foreign Tax Compliance Act; advising Potential Claimants of claim deficiencies and providing an opportunity to cure any documentary defects; taking

³ Order Establishing a Fair Fund, Exchange Act Rel. No. 81477 (Aug. 24, 2017).

⁴ Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 82124 (Nov. 20, 2017).

antifraud measures, such as identifying false, ineligible and overstated claims; making determinations under the criteria in the Plan as to Potential Claimant eligibility; advising Potential Claimants of final claim determinations; and disbursing the Fair Fund in accordance with the Plan.

8. All fees and expenses of the Fund Administrator will be paid by the Fair Fund. The Fund Administrator may submit an invoice for completed services to the Commission staff for filing with the Commission; upon approval of an application by the Commission, the Fund Administrator will be paid its reasonable fees and expenses for those services.

Tax Administrator

9. **Tax Administrator**. The Commission has appointed Miller Kaplan Arase LLP as the tax administrator for the Fair Fund (the “Tax Administrator”).⁵ The Tax Administrator is required to administer the Fair Fund as a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is responsible for, among other things, all income tax related reporting and compliance requirements, including but not limited to the preparation and filing of tax returns and compliance with the Foreign Tax Compliance Act.

10. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund in accordance with its Revised 2017-2018 Engagement Letter Agreement with the Commission. All taxes and the fees and expenses of the Tax Administrator will be paid by the Fair Fund.

Definitions

11. As used in the Plan, the following definitions apply:
- a) *Alternative Payment Amount*. The dollar amounts per \$1,000 face value of each Security that the Expert has determined should have been distributed to each Security, in each quarter during the Recovery Period.
 - b) *Alternative Payment Schedule*. An alternative payment schedule created by the Expert for each Taberna CDO reflecting the Exchange Fees that should have been paid to that Taberna CDO and the impact of those fees through the Waterfall for that CDO.
 - c) *Claim Form*. The form designed by the Fund Administrator and approved by Commission staff for the filing of claims in accordance with the Plan. The Claim Form will require, at a minimum, sufficient documentation of transactions in the Securities such that eligibility under the Plan can be determined, and the tax identification number of the Potential Claimant. Claim Forms will be available on the website established in connection with

⁵ Order Appointing Tax Administrator, Exchange Act Rel. No. 81244 (July 27, 2017).

the Fair Fund. Claimants may also request a Claim Form from the Fund Administrator via mail, email, or by calling the toll-free number established for the Fair Fund

- d) *Claims Packet.* The materials relevant to submitting a claim that may be provided to Potential Claimants known to the Fund Administrator or to those who request such materials through a website or otherwise. These materials will include a copy of the Plan Notice and Claim Form (together with instructions for completion of the Claim Form).
- e) *Deficiency Notice.* The notice sent by the Fund Administrator via United States First Class Mail to all Potential Claimants whose claims are deficient in one or more ways (*e.g.*, failure to provide required information or documentation). The Deficiency Notice will advise the Potential Claimant of the reason(s) for the deficiency, notify the Potential Claimant of the opportunity to cure such deficiency, and provide instructions regarding what is required to do so. The Deficiency Notice shall be sent within sixty (60) days of the Filing Deadline. The deadline to cure deficiencies shall be thirty (30) days from the date of the Deficiency Notice.
- f) *Determination Notice.* The notice, sent by the Fund Administrator by United States First Class Mail to each Potential Claimant who submitted a Claim Form, setting forth the Fund Administrator's conclusion concerning eligibility of such claim. In the event the claim is denied, the Determination Notice will state the reason(s) for such denial and notify the Potential Claimant of their opportunity to request reconsideration of their claim. The Determination Notices shall be mailed within one hundred twenty (120) days of the Filing Deadline.
- g) *Distribution Payment.* A payment to an Eligible Claimant in accordance with the Plan.
- g) *Eligible Claimant.* A Potential Claimant (other than Excluded Parties) who purchased or held one or more of the Securities during the Recovery Period and who is determined by the Fund Administrator to be eligible under the Plan for a Distribution Payment.
- h) *Eligible Loss Amount.* For a given Harmed Security held by an Eligible Claimant, the sum of Quarterly Loss Amounts over the Holding Period.
- i) *Excluded Parties.* The Respondents and any assigns, heirs, spouses, parents, dependents or controlled entities of any of the Respondents; and the Fund Administrator, its employees, and those persons assisting the Fund Administrator in its role as Fund Administrator. The Claim Form will require all Potential Claimants to certify that they are not an Excluded Party.

- j) *Expert.* Cynthia L. Jones, CFA, Vice President of Monument Economics Group, and her staff at Monument Economics Group.
- k) *Filing Deadline.* The date established in accordance with the Plan by which a Claim Form must be postmarked or, if not sent by U.S. Mail, received by the Fund Administrator to avoid the barring of any right of a Potential Claimant to participate in the distribution of the Fair Fund. The Filing Deadline shall be ninety (90) days after the Fund Administrator mails the Claims Packets. Claim Forms postmarked or, if not sent by U.S. Mail, received after the Filing Deadline will *not* be reviewed and evaluated, unless the Commission staff so directs the Fund Administrator.
- l) *Harmed Securities.* Those Securities that sustained a loss as a result of the improper withholding of Exchange Fees, as determined in accordance with the Plan. A schedule of Harmed Securities is attached as Exhibit A.
- m) *Holding Period.* The period of time during which an Eligible Claimant held a Harmed Security during the Recovery Period.
- n) *Incremental Payment Amount.* For a Harmed Security, the difference in any quarter between the Alternative Payment Amount and the amount actually paid to investors (expressed per \$1,000 of face value).
- o) *Net Fair Fund.* The assets of the Fair Fund, including investment income, less amounts expended or reserved for tax obligations and the fees and costs of administering the Fair Fund in accordance with the Plan.
- p) *Plan Notice.* A written notice from the Fund Administrator to Potential Claimants informing them of the Plan and its eligibility requirements, explaining how to submit a claim and how to obtain a copy of the approved Plan and Claim Form by request or from the Fair Fund website, and identifying ways to submit a claim.
- q) *Potential Claimants.* Individuals and entities, or their lawful successors, identified by the Fund Administrator as having possible claims to recover from the Fair Fund under the Plan, or asserting that they have possible claims to recover from the Fair Fund under the Plan.
- r) *Quarterly Loss Amount.* For each quarter of the Holding Period for a Harmed Security, the Incremental Payment Amount for the Harmed Security multiplied by the face value of holdings of the Harmed Security and divided by \$1,000.

- s) *Recovery Period.* The period(s) during which a Harmed Security must have been purchased or held in order to be considered for eligibility under the Plan, as follows:

CDO	<u>Purchased or Held</u>	
	From Quarterly Period Ending	To Quarterly Period Ending
Taberna Preferred Funding I, Ltd.	7/6/2009	1/5/2017
Taberna Preferred Funding II, Ltd.	8/5/2009	2/6/2017
Taberna Preferred Funding III, Ltd.	8/5/2009	2/6/2017
Taberna Preferred Funding IV, Ltd.	5/5/2009	2/6/2017
Taberna Preferred Funding V, Ltd.	2/5/2009	2/6/2017
Taberna Preferred Funding VI, Ltd.	5/5/2009	2/6/2017
Taberna Preferred Funding VII, Ltd.	5/5/2009	2/6/2017
Taberna Preferred Funding IX, Ltd.	8/5/2009	2/6/2017
Taberna Europe CDO I PLC	8/5/2009	2/6/2017
Taberna Europe CDO II PLC	11/9/2009	11/8/2016

- t) *Summary Notice.* The notice published in print or internet media pursuant to ¶13(h) below. Such notice (the text of which shall be approved by the staff of the Commission) shall include, at a minimum, a statement of the purpose of the Fair Fund and the Plan, the means of obtaining a Claims Packet, and the Filing Deadline.
- u) *The Securities.* All classes of the Taberna CDOs, identified by a unique CUSIP or (for Europe) identification number.
- v) *Waterfall.* The payment scheme that defines the order in which interest and principal payments are distributed to the various Securities in the Taberna CDOs. The Waterfall for each Security is defined in the respective Taberna CDO's prospectus.

Identification of and Notification to Potential Claimants

12. The Fund Administrator, within fifteen (15) days of Commission approval of the Plan, will use its best efforts to mail Plan Notices to the brokerages, custodial banks, and other institutions ("Nominal Holders") that may have records of investors in the Taberna CDOs and holdings at relevant times. The Fund Administrator will request that these entities, to the extent that they were record holders for beneficial owners of one or more of the Securities:

- a) Notify the respective beneficial owners of receipt of the Plan Notice within fourteen (14) days of the date of the Plan Notice so that beneficial owners may timely file a claim; and/or
- b) Provide to the Fund Administrator within fourteen (14) days of the date of the Plan Notice a list of last known names and addresses for all beneficial owners

for whom the record holders purchased one or more of the Securities during the Recovery Period so that the Fund Administrator can communicate with them directly.

13. Within forty-five (45) days of Commission approval of the Plan, the Fund Administrator shall:

- a) create a mailing and claims database, created through the broker/nominee solicitation process, of the Potential Claimants;
- b) run a National Change of Address search to retrieve updated addresses for all records in the database, thereby ensuring updated mailing information for Potential Claimants;
- c) mail by United States First Class Mail a Claims Packet to any beneficial owners identified through the efforts described in ¶12, any additional Potential Claimant known to the Fund Administrator, as well as any additional Nominal Holders that may hold Securities in “street name” as nominees for the benefit of their customers who are the beneficial owners of one or more of the Securities;
- d) establish and maintain a website dedicated to the Fair Fund. The Fair Fund’s website, located at www.TabernaFairFund.com, will make available a copy of the Claims Packet, the approved Plan, provide information regarding the claims process and eligibility requirements for participation in the Fair Fund in the form of frequently asked questions, and provide such other information that the Fund Administrator believes will be beneficial to Potential Claimants;
- e) provide a copy of the approved Plan and Plan Notice to the Commission staff and request that the Commission staff establish a link to the Fair Fund’s website on the Commission webpage dedicated to this administrative proceeding, located at <https://www.sec.gov/divisions/enforce/claims/taberna.htm>;
- f) establish and maintain a traditional mailing address and an email mailing address, which will be listed on all correspondence from the Fund Administrator and posted on the Fair Fund’s website;
- g) establish and maintain a toll-free telephone number for Potential Claimants to call to speak to a representative of the Fund Administrator during its regular business hours or, outside of such hours, to hear prerecorded information about the Fair Fund. The Fund Administrator will advise the Commission staff of the toll-free number, post the number on the Fair Fund’s website, and include the number on all correspondence; and

- h) publish a copy of a Summary Notice, approved by Commission staff, in a manner and through media deemed appropriate by the Fund Administrator and acceptable to the Commission staff.

14. The Commission staff retains the right to review and approve any material posted on the Fair Fund's website.

15. Persons may also obtain a copy of the Plan on the Commission's public website at <https://www.sec.gov/litigation/fairfundlist.htm>.

16. The Fund Administrator will promptly provide a Claims Packet to any Potential Claimant upon request made prior to the Filing Deadline.

17. Promptly upon identification, the Fund Administrator will mail Claims Packets to any additional institutions identified through the efforts described in ¶12 that may have records of investors in the Taberna CDOs and holdings at relevant times. The Fund Administrator will request that these entities, to the extent that they were record holders for beneficial owners of one or more of the Securities:

- a) Notify the respective beneficial owners of receipt of the Claims Packet within fourteen (14) days of the date of the Claims Packet so that beneficial owners may timely file a claim; and/or
- b) Provide to the Fund Administrator within fourteen (14) days of the date of the Claims Packet a list of last known names and addresses for all beneficial owners for whom the record holders purchased one or more of the Securities during the Recovery Period so that the Fund Administrator can communicate with them directly.

18. The Fund Administrator will attempt to locate any Potential Claimant whose mailing is returned as undeliverable by the U.S. Postal Service, including an advanced address search, if and as feasible, and will document all such efforts. The Fund Administrator shall promptly re-mail any returned undeliverable mail for which the U.S. Postal Service has provided a forwarding address. Additional efforts by the Fund Administrator to identify new addresses for returned undeliverable mail will be conducted as necessary and economically reasonable after consultation with the Commission staff. The Fund Administrator, with Commission staff approval, may engage a third-party search firm to conduct more rigorous searches for persons who mailing is returned as undeliverable; all such costs shall be paid by the Fair Fund.

Claims Process

19. In all materials that refer to the Filing Deadline, the Filing Deadline will be clearly identified as ninety (90) days after the mailing of the Claims Packets. To avoid being barred from asserting a claim, each Potential Claimant must submit to the Fund Administrator a Claim Form reflecting such Potential Claimant's claim postmarked on or before the Filing Deadline or, if not sent by U.S. Mail, received on or before the Filing Deadline. The burden will

be on the Potential Claimant to ensure that his or her Claim Form has been properly and timely postmarked or, if not sent by U.S. Mail, received. A claim that is postmarked or, if not sent by U.S. Mail, received after the Filing Deadline will not be accepted unless the Filing Deadline is extended by the Fund Administrator after consultation with the Commission staff.

20. The burden to prove receipt of the claim by the Fund Administrator will be upon the Potential Claimant; therefore Potential Claimants will be instructed to submit their claims in a manner that will enable them to prove timely receipt of the claim by the Fund Administrator.

21. Claim Forms must be properly filled out per the instructions in the Claims Packet, and must be accompanied by such documentary evidence as the Fund Administrator deems necessary or appropriate to substantiate the claim. Without limitation, this information may include third-party documentary evidence of purchases and dispositions of one or more of the Securities, as well as holdings of one or more of the Securities, at relevant dates.

22. All claims and supporting documentation necessary to determine a Potential Claimant's eligibility to receive a distribution from the Fair Fund under the terms of the Plan must be verified by a declaration executed by the Potential Claimant under penalty of perjury under the laws of the United States. The declaration must be executed by the Potential Claimant, unless the Fund Administrator accepts such declaration from someone authorized to act on the Potential Claimant's behalf, whose authority is supported by such documentary evidence as the Fund Administrator deems necessary.

23. The Fund Administrator will review all claim submissions and determine the eligibility of each Potential Claimant to participate in the Fair Fund by reviewing claim data and supporting documentation (or lack thereof), verifying the claim, and calculating each Potential Claimant's loss pursuant to the Plan. Each Potential Claimant will have the burden of proof to establish the validity and amount of his or her claim, and that they qualify as an Eligible Claimant, including the burden to certify that they are not an Excluded Party. The Fund Administrator will have the right to request, and the Potential Claimant will have the burden to promptly provide to the Fund Administrator, any additional information and/or documentation deemed relevant by the Fund Administrator. Any additional information supplied to the Fund Administrator must be postmarked or, if not sent by U.S. Mail, received no later than the deadline set for responses in the Fund Administrator's request and, in the absence of any stated deadline, no later than the deadline set in ¶26 for requests for reconsideration.

24. Potential Claimants will be able to contact the Fund Administrator via the toll-free telephone number, an email address, or using traditional mail to request copies of the Claim Form, ask questions about how to complete and file the Claim Form, and inquire about their claim.

25. Within sixty (60) days of the date of the Filing Deadline, the Fund Administrator will send a Deficiency Notice to each Potential Claimant that submitted a Claim Form whose claims are deficient. Any Potential Claimant with a deficient claim will have thirty (30) days from the date of the Deficiency Notice to cure any deficiencies identified in the Deficiency

Notice; any submission postmarked or, if not sent by U.S. Mail, received more than thirty (30) days from the date of the Deficiency Notice will not be accepted.

26. Within one hundred twenty (120) days of the date of the Filing Deadline, the Fund Administrator will send a Determination Notice to all Potential Claimants who submitted a Claim Form. The Fund Administrator will consult with the Commission staff regarding claim rejections before the issuance of Determination Notices. Any Potential Claimant seeking reconsideration of a denial of a claim must send a request for reconsideration (“Request for Reconsideration”) to the Fund Administrator in writing within thirty (30) days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Potential Claimant is requesting reconsideration of their claim. Any request for reconsideration postmarked or, if not sent by U.S. Mail, received more than thirty (30) days from the date of the Determination Notice will not be accepted.

27. A Potential Claimant who has failed to file a Claim Form in a timely manner, who has failed to cure a deficiency identified in a Deficiency Notice in a timely manner, or who has failed to request reconsideration in a timely manner, is not permitted to object to the barring or denial of his or her claim.

28. The Fund Administrator may, in its sole discretion, consider disputes of any nature presented by Potential Claimants, and will consult Commission staff as appropriate. The Determination Notice will constitute the Fund Administrator’s final ruling regarding the status of the claim, unless the Potential Claimant is notified in writing that the determination has been revised in response to the Request for Reconsideration. Any such notice of reconsideration shall be sent by the Fund Administrator within sixty (60) days of the date of the Determination Notice.

29. The Fund Administrator will have the authority, in its sole discretion, to waive technical claim deficiencies and approve claims on a case by case basis, or in groups of claims. All determinations made by the Fund Administrator in accordance with the Plan in any dispute, request for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

30. The Potential Claimant has the burden of notifying the Fund Administrator of a change in his or her current address and other contact information, and of ensuring that such information is properly reflected in the Fund Administrator’s records.

31. After the Fund Administrator has completed the process of analyzing the claims and determining the amounts to be distributed as provided in the Plan, and prior to the distribution of funds from the Net Fair Fund, the Fund Administrator shall engage an independent, third-party firm, acceptable to the Commission staff, to perform a set of agreed upon tasks, review a statistically significant sample of claims and ensure accurate and comprehensive application of the Plan. The Fund Administrator shall provide the Commission staff with the results of that review together with any written analysis or reports related to the review and, upon request, shall make the firm available to the Commission staff to respond to questions concerning the review.

32. The recipient of one or more of the Securities as a gift, inheritance, devise, or operation of law will be eligible to file a Claim Form and participate in the distribution of the Fair Fund to the extent the original purchaser would have been eligible under the terms of the Plan. Only one claim may be submitted with regard to the same transactions in one or more of the Securities, and in cases where multiple claims are filed by the donor and donee, the donee claim will be honored assuming it is supported by proper documentation.

33. Claims on behalf of a retirement plan covered by Section 3(3) of ERISA, 29 U.S. C. § 1002(3), which do not include Individual Retirement Accounts, and such plan's participants, are properly made by the administrator, custodian or fiduciary of the plan and not by the plan's participants. The Fund Administrator will distribute any payments on such claims directly to the administrator, custodian, or fiduciary of the retirement plan. The custodian or fiduciary of the retirement plan will distribute any payments received in a manner consistent with its fiduciary duties and the governing account or plan provisions.

Distribution Methodology

34. This methodology is designed to compensate Eligible Claimants who suffered losses caused by Taberna's failure to distribute Exchange Fees that should have been paid to the Taberna CDOs.

35. Based on the Commission's investigation, the Exchange Fees summarized below were withheld from each of the Taberna CDOs during the period beginning March 2009 through November 2012.

Taberna I	\$1,657,022	Taberna VI	\$1,272,961
Taberna II	\$2,316,996	Taberna VII	\$ 705,375
Taberna III	\$1,960,283	Taberna IX	\$1,570,983
Taberna IV	\$1,686,779	Taberna Eur I	\$ 447,053
Taberna V	\$1,403,017	Taberna Eur II	\$ 154,178

36. The Expert, in consultation with the Commission staff, identified the calendar quarters in which the Exchange Fees should have been distributed to the CDOs and created a schedule of quarterly Exchange Fees withheld from each of the Taberna CDOs. For example, if an Exchange Fee was received by Taberna in the first month of a quarter, it would have been paid to the Taberna CDO at the end of that quarter.

37. Through an analysis of the Taberna CDO offering documents and trustee reports, the Expert, in consultation with the Commission staff, re-created for each Taberna CDO its Waterfall.

38. The Expert then created the Alternative Payment Schedule for each Taberna CDO. Using the Alternative Payment Schedule, the Expert calculated the Alternative Payment Amount and the Incremental Payment Amount for each Security during each quarter.

39. An Eligible Claimant's Eligible Loss Amount is calculated separately for each Harmed Security held by the Eligible Claimant as the sum of the Quarterly Loss Amounts over the Holding Period.

- a) Not all of the Securities were harmed. The Expert, in consultation with the Commission staff, determined which of the Securities within each Taberna CDO were harmed by the failure of Taberna to pay the Exchange Fees to that Taberna CDO. For example, based on the Waterfall for a particular Taberna CDO, some of the lower priority Securities would not have received a distribution even if the Exchange Fees had been paid to the Taberna CDOs.
- b) In some instances, the distribution of Exchange Fees in the Alternative Payment Schedule resulted in a payment of principal in a quarter, reducing the outstanding face value of that Security and the interest paid in subsequent quarters. As a result, there were quarters in which the Alternative Payment Amount was less than the amount of interest actually received and, thus, the Incremental Payment Amount was negative.
- c) If a Harmed Security was held for less than a full quarter, the Quarterly Loss Amount for that quarter will be adjusted based on the number of Holding Period days relative to the total days in the quarter.
- d) If the aggregated Quarterly Loss Amount on a Harmed Security for an Eligible Claimant is less than zero (\$0.00), the Eligible Loss Amount on that Harmed Security for that Eligible Claimant will be set to zero (\$0.00).
- e) If feasible, reasonable interest will be calculated for each Eligible Claimant on the Incremental Payment Amount in each quarter of the Holding Period of the Harmed Security, compounded quarterly through the approximate date of the distribution ("Reasonable Interest").

40. Distribution: Subject to ¶41 below, each Eligible Claimant will receive a Distribution Payment equal to the amount of his, her, or its Eligible Loss Amount and, if sufficient funds, Reasonable Interest. If an Eligible Claimant invested in multiple Harmed Securities, that Eligible Claimant's Distribution Payment will be the sum across Harmed Securities of that Eligible Claimant's Eligible Loss Amounts. If the Net Fair Fund is not sufficient to pay the full Eligible Loss Amount for all Eligible Claimants, then each Eligible Claimant will receive a Distribution Payment equal to his, her, or its Eligible Loss Amount multiplied by the ratio of the Net Fair Fund to the sum of Eligible Loss Amounts of all Eligible Claimants ("*Pro-Rata Share*").

41. Minimum Distribution Amount: If a preliminarily determined Eligible Claimant's calculated Distribution Payment is less than \$10.00, that claimant will be deemed ineligible for a Distribution Payment under the Plan and the funds will be distributed to Eligible Claimants whose Distribution Payments are greater than \$10.00.

Establishment of Escrow Account

42. The Fund Administrator will establish an escrow account (the “Escrow Account”) at a United States commercial bank (the “Bank”) that is acceptable to the Commission staff. The Escrow Account shall be established pursuant to an escrow agreement (the “Escrow Agreement”) to be provided by the Commission staff, in the name of and bearing the Employer Identification Number (“EIN”) of the Qualified Settlement Fund as described above. The Fund Administrator shall also establish with the Bank a separate deposit account (the “Deposit Account”) (e.g., controlled distribution account, managed distribution account, linked checking account or investment account) for the purpose of funding Distribution Payments to be distributed to Eligible Claimants by the Fund Administrator pursuant to the Plan. The name of such account shall be in the following form: Taberna Fair Fund (EIN XX-XXXXXXX), as custodian for the benefit of investors allocated a distribution pursuant to the Plan in *Taberna Capital Management, LLC, et al.*, Administrative Proceeding File No. 3-16776.

43. During the term of the Escrow Agreement, if invested, the Escrow Account shall be invested and reinvested in short-term Treasury securities backed by the full faith and credit of the United States Government or an agency thereof, of a type and term necessary to meet the cash liquidity requirements for payments to Eligible Claimants, and tax obligations, including investment or reinvestment in a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit, or in money market mutual funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct obligations of the United States government. All interest earned will accrue for the benefit of the Fair Fund.

44. Prior to the receipt of any funds in the Escrow Account, the Bank will provide to the Fund Administrator an attestation, in a form acceptable to the Commission staff, that all funds in the Escrow Account will be held for the Fair Fund and that the Bank will not place any lien or encumbrance of any kind upon the funds. The Fund Administrator will be the signatory on the Escrow Account, subject to the continuing jurisdiction and control of the Commission.

45. Upon transfer from the BFS, all funds shall remain in the Escrow Account, separate from bank assets, pursuant to the Escrow Agreement until needed to satisfy a presented check. All checks presented for payment or electronic transfer will be subject to “positive pay” controls before they are honored by the Bank. The “positive pay” system provides protection against fraud arising from counterfeit or altered checks. The “positive pay” system will require, at a minimum, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the payee list prior to honoring such checks. In each instance, funds will be transferred from the Escrow Account to the Deposit Account on the Bank’s confirmation that a presented check matches the relevant “positive pay” criteria.

46. The Fund Administrator shall provide duplicate bank and/or investment statements on any accounts established by the Fund Administrator to the Tax Administrator on a monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

Distribution of the Fair Fund

47. The Fund Administrator, in consultation with the Commission staff and the Tax Administrator, shall determine the Net Fair Fund by retaining a prudent reserve to pay any taxes, fees and expenses payable in connection with the Fair Fund and the Plan, as well as a reasonable contingency for potential unforeseen issues.

48. The Net Fair Fund will be distributed to Eligible Claimants as provided under the terms of the Plan. The sum of an Eligible Claimant's Eligible Loss Amounts for all CDOs, as determined in accordance with the distribution methodology above, will be used to determine the amount of their Distribution Payment.

49. The Fund Administrator shall distribute the Net Fair Fund to all Eligible Claimants only after all timely submitted Claim Forms have been processed and all Potential Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to contest or cure pursuant to the procedures set forth above, and after a Commission Order to Disburse has issued.

50. The Fund Administrator may make one or more distributions to Eligible Claimants pursuant to the Payee List process described below. With respect to distributions after the initial distribution, and unless otherwise determined by the Fund Administrator in consultation with the Commission staff, each distribution will be made in accordance with the Plan but limited to those Eligible Claimants that negotiated the distribution checks issued in the immediately preceding distribution, or received electronic payments.

51. Within one hundred eighty (180) days of the date of the Filing Deadline, the Fund Administrator shall prepare a final payee list ("Payee List") that includes the names and addresses and Eligible Loss Amounts of Eligible Claimants.

52. The Fund Administrator will also provide a "Reasonable Assurance Letter" as to the completeness and accuracy of the Payee List.

53. Upon receipt and review of the Payee List and Reasonable Assurance Letter, the Commission staff will obtain authorization from the Commission to disburse consistent with Rule 1101(b)(6) of the Rules, 17 C.F.R. § 201.1101(b)(6). Upon issuance of an order to disburse by the Commission, Commission staff will direct the transfer of funds to the Escrow Account. The Fund Administrator shall then use its best efforts to commence mailing Distribution Payment checks or effect wire transfers within fifteen (15) business days of the release of the funds into the Escrow Account (the "Initial Issue"). All efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and the issuance of Distribution Payments.

54. All Distribution Payments will be issued by the Fund Administrator from the Deposit Account. All checks will bear a stale date of ninety (90) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. All such funds will remain in the Net Fair Fund. Except as

otherwise provided in this Plan, an Eligible Claimant's claim shall be extinguished if he, she or it fails to negotiate his, her, or its check by the stale date. If a check reissue has been requested before the stale date, such request is governed by ¶56. All Distribution Payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each recipient and that the recipient should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that checks will be void after ninety (90) days; and (d) the contact information for the Fund Administrator, to be used in the event of any questions regarding the distribution. Any such communication shall be submitted to the Commission staff and the Tax Administrator for review and approval. The Fair Fund distribution checks, on their face or the accompanying mailbag, shall clearly indicate that the money is being distributed from a Fair Fund established by the Commission to compensate investors for harm as a result of securities law violations.

55. Electronic or wire transfers may be utilized at the discretion of the Fund Administrator to transfer approved Distribution Payments over \$25,000 and/or on behalf of twenty (20) or more Eligible Claimants. Wire transfers will be initiated by the Fund Administrator using a two-party check and balance system, whereby completion of a wire transfer will require an authorization by two members of the Fund Administrator's senior staff.

Post Distribution: Returned and Uncashed Checks

56. The Fund Administrator shall reissue checks to Eligible Claimants, upon the receipt of a valid, written request from the Eligible Claimant. Such reissued checks will be void after sixty (60) days from the issuance and no check will be reissued more than ninety (90) days from the Initial Issue.

57. As soon as practicable, the Fund Administrator will perform an advanced address search for checks that are returned as undeliverable, using the resources described above, ¶18, to the extent such search is feasible, and will reissue such checks so long as the new address is received within ninety (90) days from the Initial Issue. Furthermore, the Fund Administrator will take additional steps, as necessary, to follow-up on the status of uncashed checks at the request of Commission staff and will reissue such checks if necessary, within ninety (90) days after the Initial Issue.

58. A residual within the Fair Fund will be established for any amounts remaining after all assets have been disbursed. The residual may include, among other things, funds reserved for future taxes and for post distribution contingencies, amounts from Distribution Payment checks that have not been cashed, amounts from Distribution Payment checks that were not delivered or accepted upon delivery, and tax refunds. Upon completion of all distributions under the Plan, the Fund Administrator shall remit the residual to the Commission for transfer to Treasury after the Commission approves the final accounting.

Accountings and Termination of the Fair Fund

59. Once the Fair Fund has been transferred from the BFS to the Bank, the Fund Administrator will provide an accounting to the Commission staff during the first ten (10) days after the end of each quarter on a standardized accounting form provided by the Commission staff. Each accounting shall detail all monies earned or received and all monies spent in connection with the administration of the Plan during the reporting period.

60. Upon completion of all distributions pursuant to the Plan, the Fund Administrator shall make arrangement for the payment of taxes and administration fees and expenses, transfer all remaining funds to the Commission, and submit a final accounting to the Commission on the standardized accounting form provided by the Commission staff. The Fund Administrator also shall submit a final report to the Commission staff summarizing the distribution, including disbursed amounts; returned or unnegotiated payments; outreach efforts, costs, and results; final distribution statistics, including statistics regarding distributions to individuals and entities; and such other information requested by the Commission staff.

61. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (a) a final accounting, in a Commission standard accounting format provided by the Commission staff, has been submitted by the Fund Administrator for approval, and has been approved, by the Commission; (b) all taxes, fees and expenses have been paid; and (c) any amount remaining in the Fair Fund has been received by the Commission for transfer to Treasury. The Commission staff shall seek an order from the Commission, as appropriate, approving the final accounting, terminating the Fair Fund, canceling the Fund Administrator's bond, discharging the Fund Administrator, and transferring any amount remaining in the Fair Fund and any amounts returned to the Fair Fund in the future to Treasury.

Miscellaneous

62. All fees and expenses associated with the administration of the Plan and/or the Fair Fund will be paid by the Fair Fund, first from the interest earned on the funds, and if the interest is not sufficient, from the corpus of the Fair Fund.

63. When administering the Plan, the Fund Administrator, and/or each of its designees, agents and assistants, shall be entitled to rely on all outstanding rules of law; and any orders issued by the Commission, the secretary by delegated authority, or an Administrative Law Judge; and/or any investor information provided by Commission staff.

64. The Fund Administrator will take reasonable and appropriate steps to distribute the Net Fair Fund according to the Plan and to effectuate the general purposes of the Plan. The Fund Administrator will inform Commission staff of any changes needed to this Plan. Upon approval by the Commission staff, the Fund Administrator may implement immaterial changes to this Plan to effectuate its general purposes. If a change is deemed to be material by Commission staff, Commission approval is required by amending this Plan prior to implementation of the change.

65. The Fund Administrator will maintain all documents, including documents in any media, for six (6) years after approval of the final accounting. Pursuant to Commission staff's direction, the Fund Administrator will either turn over to the Commission or destroy all documents six (6) years after the approval of the final accounting.

Notice and Comment Period

66. The Notice of the Proposed Plan of Distribution and Opportunity for Comment ("Notice") will be published on the Commission's website at <http://www.sec.gov/litigation/fairfundlist.htm>. Any person wishing to comment on the Plan must do so in writing by submitting their comments to the Commission within thirty (30) days of the date of the Notice: (a) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (b) by using the Commission's Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or (c) by sending an email to rule-comments@sec.gov. Comments submitted by email or via the Commission's website should include "Administrative Proceeding File Number 3-16776" in the subject line. Comments received will be publicly available. Persons should only submit comments that they wish to make publicly available.

Attachment A: Schedule of Harmed Securities

ATTACHMENT A

**Taberna Preferred Funding
Eligible Securities**

CDO	Class	CUSIP
Taberna Preferred Funding I, Ltd.	A-1A	87330PAA0
Taberna Preferred Funding I, Ltd.	A-1B	87330PAB8
Taberna Preferred Funding I, Ltd.	C-1	87330PAF9
Taberna Preferred Funding I, Ltd.	C-2	87330PAG7
Taberna Preferred Funding I, Ltd.	C-3	87330PAH5
Taberna Preferred Funding I, Ltd.	D	87330PAJ1
Taberna Preferred Funding II, Ltd.	A-1A	87330UAA9
Taberna Preferred Funding II, Ltd.	A-1B	87330UAB7
Taberna Preferred Funding II, Ltd.	A-1C	87330UAC5
Taberna Preferred Funding II, Ltd.	A-2	87330UAD3
Taberna Preferred Funding III, Ltd.	A-1A	87330WAA5
Taberna Preferred Funding III, Ltd.	A-1C	87330WAC1
Taberna Preferred Funding III, Ltd.	A-2A	87330WAD9
Taberna Preferred Funding III, Ltd.	A-2B	87330WAL1
Taberna Preferred Funding III, Ltd.	B-1	87330WAE7
Taberna Preferred Funding III, Ltd.	B-2	87330WAF4
Taberna Preferred Funding IV, Ltd.	A-1	87330YAB9
Taberna Preferred Funding IV, Ltd.	A-2	87330YAC7
Taberna Preferred Funding IV, Ltd.	A-3	87330YAD5
Taberna Preferred Funding IV, Ltd.	B-1	87730YAE3
Taberna Preferred Funding IV, Ltd.	B-2	87330YAK9
Taberna Preferred Funding V, Ltd.	A-1LA	87331BAA0
Taberna Preferred Funding V, Ltd.	A-1LAD	87331BAB8
Taberna Preferred Funding VI, Ltd.	A-1A	87331AAA2
Taberna Preferred Funding VI, Ltd.	A-1B	87331AAB0
Taberna Preferred Funding VI, Ltd.	C	87331AAF1
Taberna Preferred Funding VII, Ltd.	A-1LA	873315AA3
Taberna Preferred Funding IX, Ltd.	A-1LA	87331XAA2
Taberna Preferred Funding IX, Ltd.	A-1LAD	87331XAC8
Taberna Preferred Funding IX, Ltd.	A-1LB	87331XAH7
Taberna Europe CDO I PLC	A-1	BCC0URET9
Taberna Europe CDO II PLC	A-1	BCC0ZMWW0