

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 69425 / April 22, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3591 / April 22, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30474 / April 22, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15295

In the Matter of

**HARBORLIGHT CAPITAL
MANAGEMENT, LLC and
DEAN G. TANELLA,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 15(b) OF THE SECURITIES
EXCHANGE ACT OF 1934, SECTIONS
203(e), 203(f) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Dean G. Tanella (“Tanella”) and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against HarborLight Capital Management, LLC (“HCM”) and Tanella (collectively “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these

proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that

Summary

HCM, an unregistered investment adviser, and its principal, Dean G. Tanella, breached their fiduciary duty to one of HCM’s managed hedge fund-of-funds, the HarborLight Diversified Fund (“Diversified”), by directing Diversified to purchase a significant interest in the HarborLight FAB Fund 2, L.P. (“FAB 2”), an affiliated hedge fund-of-funds, for the purpose of satisfying significant pending redemption requests. Their conduct left Diversified and its limited partners invested in a distressed fund, which HCM then announced four months later that it was closing. FAB 2 investors have not received any distributions to date.

As of September 2008, HCM and Tanella managed approximately \$31 million invested in Diversified and the HarborLight FAB Fund, L.P. (“FAB”). Beginning in late September 2008, FAB had approximately \$2 million in assets segregated in a reserve due to impaired value and approximately \$3.8 million in remaining net assets. FAB faced a liquidity shortfall after several investors sought redemptions totaling more than fifty percent of the fund’s net assets. FAB had no access to liquidity to satisfy the requests because the remaining \$3.8 million in net assets were invested in three portfolio funds that had suspended redemptions, commenced orderly liquidation, or denied FAB’s request to redeem prior to the fund’s formal redemption period. Tanella and HCM subsequently formed FAB 2 and transferred FAB’s three portfolio funds that had not been segregated. Effective January 2009, all of FAB’s pending redemption requests were paid through FAB 2.

In an effort to create liquidity in FAB 2 to satisfy pending redemption requests, Tanella directed Diversified to make two investments in FAB 2 totaling \$2.35 million, then immediately used the \$2.35 million to pay the outstanding redemption requests. As a result of the two investments, Diversified owned over 60% of the troubled FAB 2 fund.

During this same period, HCM and Tanella also raised \$550,000 from new FAB 2 investors while failing to adequately disclose the fund’s risks. FAB 2’s offering materials did not disclose the fund’s mounting redemption requests and liquidity crisis, or that HCM would use new investor money to satisfy outstanding redemption requests rather than to purchase securities. HCM and Tanella also did not adequately disclose that FAB 2 was illiquid and in distress.

¹ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondents

1. **HCM**, a Delaware limited liability company formed in 2003 and based in Tampa, Florida, is an unregistered private fund adviser. HCM was previously registered with the Commission as an investment adviser until it withdrew its registration in 2005, because its assets fell below the level requiring registration. HCM was also previously registered with the State of Florida until 2008. HCM is the general partner of HarborLight Management L.P., a Delaware limited partnership that serves as the general partner to several of HCM's funds. HCM is wholly owned by Tanella and his wife.

2. **Dean G. Tanella**, age 52, was HCM's President and chief executive officer throughout the relevant time and controlled all aspects of HCM. From 2006 to 2009, Tanella also was the executive vice president of capital markets for GunnAllen Financial, Inc. ("GunnAllen"), a now defunct broker-dealer formerly based in Tampa, Florida. Tanella is currently the president of HarborLight Capital Group, a Florida corporation formed in January 2010 that acts as a placement agent for unaffiliated private offerings. Tanella is also a registered representative with International Assets Advisory, a registered broker-dealer located in Orlando, Florida.

Other Relevant Entities

3. **FAB**, a Delaware limited partnership formed in 2006, is a private fund-of-funds that invested in other funds that primarily held asset-backed securities. HCM was the fund's general partner and investment manager.

4. **FAB 2**, a Delaware limited partnership, is a private fund-of-funds formed after the assets of two of FAB's portfolio funds became potentially impaired. Tanella formed FAB 2 in October 2008 and transferred the unimpaired assets of FAB to FAB 2 effective January 2009. The impaired assets remained in FAB. HCM is FAB 2's general partner and investment manager.

5. **Diversified**, a Delaware limited partnership formed in 2003, is a private fund-of-funds that invested in a portfolio of approximately five to twenty private funds with diversified investment strategies. Diversified is organized in a master feeder structure and acts as the master fund for two feeder funds: Safe Harbor Canada, L.P. (a Delaware unregistered limited partnership with Canadian investors), and HarborLight Diversified Fund, Ltd. (a British Virgin Islands corporation and registered fund for U.S. non-taxable and foreign investors). Diversified also has individual U.S. investors. Diversified's general partner is HarborLight Management, L.P. and its investment manager is HCM.

Background

6. HCM is the investment manager of Diversified and FAB, which are two funds-of-funds that together had approximately 150 investors and \$31 million in assets as of September 30, 2008. Each of the funds paid HCM fees for its management services.

7. Diversified was a multi-strategy fund-of-funds with approximately \$25 million in assets invested in as many as twenty underlying hedge funds as of 2008. Diversified's stated objective was to provide investors with "capital appreciation and absolute returns over the long term that will exceed those of broad U.S. equity market indices, with lower volatility and risk of loss than those indices."

8. FAB was a single strategy fund-of-funds with approximately \$6 million in assets as of 2008 invested in portfolio funds focused on asset-backed securities. FAB's stated investment objective was "to provide investors with capital appreciation and moderate absolute returns over the long term regardless of the overall direction of the equity markets." FAB further sought to provide investors a return of 7% to 10% net of all fees and was "targeted as a conservative return instrument with risk parameters similar to two times the 90-Day US Treasury [bill]," which is a proxy for risk-free returns. FAB's offering documents permitted withdrawals (subject to certain limitations) on the first day of each calendar quarter beginning four quarters after admission to the Fund and upon at least 60 days' prior written notice.

9. HCM issued to FAB's investors monthly statements prepared by its internal accountant based on monthly value estimates received from FAB's and Diversified's portfolio funds. HCM also provided investors with monthly updates and quarterly newsletters, which Tanella drafted and signed. The newsletters provided fund performance figures for the month and year to date, and compared the returns to the S&P 500 index. Tanella also included in the newsletters commentary on broad market conditions and generalized statements about each fund.

FAB's Holdings

10. In approximately September 2008, HCM received information that the assets of two of FAB's five portfolio funds may have become impaired. These two funds represented approximately 33% of FAB's assets. HCM established an "ABL Reserve" in FAB to segregate these at-risk portfolio funds. The ABL Reserve was illiquid and non-redeemable by FAB's investors.

11. FAB's three remaining and unimpaired portfolio funds consisted of Capstone Cayman Special Purpose Fund, L.P. ("Capstone") (valued at approximately \$1.7 million), Palm Beach Multi-Strategy, L.P. ("PBMS") (valued at approximately \$1.3 million), and Stillwater Asset Backed Fund II, L.P. ("Stillwater") (valued at approximately \$700,000).

12. In mid-October 2008, Tanella formed a new fund-of-funds, FAB 2, and transferred FAB's ownership interests in PBMS, Capstone, and Stillwater from FAB to FAB 2, effective January 1, 2009. Tanella invited existing FAB investors to consent to becoming limited partners of FAB 2. All FAB investors who did not already have pending redemption requests agreed to become limited partners of FAB 2.

Liquidity Issues

13. Starting in September 2008, FAB began receiving significant redemption requests from investors. On September 30, 2008, FAB's largest investor requested a full redemption of

approximately \$743,000. That same day, HCM requested full redemptions from each of FAB's unimpaired portfolio funds for the next available redemption date.

14. FAB continued to receive redemption requests through the remainder of 2008. For instance, in early October 2008, three FAB investors requested redemptions totaling an additional \$660,000. Then on December 29, 2008, two additional FAB investors requested redemptions totaling approximately \$519,000. By January 6, 2009, FAB had approximately \$2.1 million in outstanding redemption requests, which represented approximately 55% of FAB's unimpaired portfolio funds.

15. HCM was not able to access liquidity from any of FAB's portfolio funds to satisfy the redemption requests. On November 26, 2008, PBMS notified HCM that it had formally suspended all redemptions. In early December 2008, Stillwater informed HCM that it would not be able to satisfy HCM's request for early redemption.² On December 29, 2008, Capstone notified HCM that it was both suspending redemptions and commencing liquidation proceedings.

Use of Diversified's Assets to Satisfy FAB Redemptions

16. On January 12, 2009, Tanella and HCM caused Diversified to invest \$1,650,000 in FAB 2 and its legacy holdings transferred from FAB. Over the next two days, Tanella used Diversified's entire investment to pay pending redemption requests.

17. On April 7, 2009, Tanella directed Diversified to invest another \$700,000 into FAB 2. The following day, FAB 2 paid a pending redemption request of \$680,000.

18. At the time of each of Diversified's two investments, FAB 2 was illiquid and in distress. For instance, two of FAB's three portfolio funds of asset-backed securities (Capstone and PBMS) had suspended redemptions. Furthermore, HCM had not received any performance reports from PBMS since September 2008, and Tanella had concerns about PBMS's future performance.

19. Four months after Diversified's investments in FAB 2, Tanella announced the voluntary wind down of all HCM-managed funds. FAB 2's investors have not received any distribution payments to date.

Inadequate Disclosures to FAB 2 Investors

20. Prior to closing HCM's funds, Tanella and HCM also attempted to generate liquidity by soliciting new investors for FAB 2. Tanella and HCM prepared a Private Offering Memorandum ("POM") for FAB 2, dated October 30, 2008, stating that FAB 2 is "a conservative return instrument with risk parameters similar to two times the 90-Day US Treasury" with the objective of generating returns of 7% to 10% net of all fees. Tanella also prepared investor presentation materials that mirrored these claims, which HCM utilized to solicit new investors.

² Stillwater's official redemption terms allowed redemptions on an annual basis based on the date of investment, which for FAB was not until February 2009. Stillwater never actually redeemed FAB's investment. In November 2009, Stillwater formally suspended redemptions and commenced liquidation of the fund.

21. The FAB 2 POM included pro forma results and claimed that the fund had “no operating history prior to January 2009 upon which investors may evaluate the potential performance of the fund and its portfolio managers.” In fact, FAB 2’s entire portfolio had been transferred from FAB and had measurable past performance results.

22. In November 2008, Tanella contacted a prospective investor and touted HCM’s funds, and FAB 2 in particular. Tanella provided this investor with a copy of FAB 2’s POM. This investor made two investments of \$150,000 each in FAB 2 – one in December 2008 and one in January 2009. Tanella did not inform this investor that his entire investment would be used to satisfy existing redemption requests rather than to purchase securities and that two of FAB 2’s portfolio funds had suspended redemptions or announced liquidation. This investor stated that he would not have invested if he had known this information.

23. HCM and Tanella also raised \$250,000 for FAB 2 from another new investor. Similarly, HCM used this investor’s money solely to satisfy outstanding redemption requests, not to make additional investments.

Inadequate Disclosures to All FAB Investors

24. Between November 2008 and July 2009, HCM sent monthly newsletters and quarterly commentaries prepared by Tanella that touted FAB’s performance in comparison to the major benchmarks and presented a generally positive outlook on the fund’s future performance. None of the newsletters disclosed the growing number of investor redemption requests (approximately 55% of FAB’s value as of December 2008) or the total lack of accessible liquidity from the portfolio funds needed to satisfy the requests.

25. FAB’s November 2008 monthly newsletter, which HCM distributed in December 2008, reported excellent lending opportunities in the asset backed lending space but did not disclose the problems with FAB’s specific investments in the asset backed lending space. In fact, by November 30, 2012, Tanella and HCM had concerns with the future performance of PBMS, FAB’s largest portfolio fund, which had suspended redemptions. Furthermore, at the time, FAB was facing \$1.4 million in redemption requests that it had no ability to satisfy.

26. FAB’s December 2008 monthly newsletter, which HCM distributed in January 2009, reported that “‘hedge fund scares’ recently fueled by the media have also caused large redemption requests from many ABL (asset-backed lending) funds.” Tanella and HCM, however, omitted that FAB itself was facing large redemption requests totaling 55% of its assets.

27. In August 2009, Tanella announced the voluntary wind down of all HCM-managed funds. FAB 2 investors have not received any distribution payments to date.

Violations

28. Because of the conduct described above, HCM and Tanella willfully³ violated Section 206(2) of the Advisers Act by engaging in transactions, practices or courses of business which operated as a fraud or deceit upon any client or prospective client, including managed accounts.

29. Because of the conduct described above, HCM and Tanella willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which prohibit fraudulent conduct by advisers to “pooled investment vehicles” and specifically prohibit misleading statements to investors or prospective investors in those pools. Scienter is not required to establish a violation of Section 206(4) and Rule 206(4)-8.

Undertaking

30. Respondent Tanella has undertaken to provide to the Commission, within thirty (30) days after the end of the twelve month suspension period described below, an affidavit that he has complied fully with the sanctions described in Section IV below.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the protection of investors to impose the sanctions agreed to in Respondents’ Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondents cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder;
- B. Respondent HCM is censured;
- C. Respondent Tanella be, and hereby is, suspended from association with any broker, dealer, investment adviser, municipal securities dealer, or transfer agent for a period of twelve months;
- D. Respondent Tanella be, and hereby is, prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or

³ A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of twelve months;

E. Respondent Tanella be, and hereby is, suspended from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock for a period of twelve months; and

F. Respondents HCM and Tanella shall, jointly and severally, pay a total of \$64,072 in disgorgement, \$6,543 in prejudgment interest, and \$200,000 in civil money penalties to the Securities and Exchange Commission. Payment shall be made in the following installments: (1) \$20,000 shall be due and payable within 10 days of the entry of this Order; (2) an additional \$168,000 shall be due and payable within six months of the entry of this Order; and (3) the final \$82,615 shall be due and payable within one year of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg, Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying HarborLight Capital Management, LLC, and Dean G. Tanella as Respondents in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Chad Alan Earnst, Assistant Regional Director, Asset Management Unit, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

G. Respondent Tanella shall comply with the undertaking enumerated in Paragraph 30 above.

By the Commission.

Elizabeth M. Murphy
Secretary