

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 81477 / August 24, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-16776

In the Matter of

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

Respondents.

ORDER ESTABLISHING A FAIR FUND

On September 2, 2015, 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 Orders¹ against Taberna Capital Management, LLC ("Taberna"), Michael Fralin ("Fralin"), and Raphael Licht ("Licht") (the "Order"). The Commission determined that, between 2009 and 2012, in connection with restructuring transactions undertaken between the Taberna collateralized debt obligation clients (the "Taberna CDOs") and the issuers of the underlying obligation in Taberna CDOs' portfolios, Taberna retained certain fees ("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 as a result of the Respondents' violations. The Commission also ordered the appointment of a Fund Administrator to prepare a

¹ Securities Act Rel. No. 75814 (Sept. 2, 2015).

distribution plan to compensate injured parties for the harm they suffered as a result of Taberna's violations.

The Commission currently holds more than \$21,600,000, comprised of \$15 million in disgorgement and prejudgment interest, \$6.6 million in civil penalties, and accrued interest. The Commission staff has determined that funds in addition to those currently in the Disgorgement Fund will be necessary to pay the taxes, fees, and expenses of a distribution and, as appropriate, to compensate harmed investors.

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

Accordingly, IT IS HEREBY ORDERED, that pursuant to Section 308(a) of the Sarbanes-Oxley Act, as amended, a Fair Fund is established for the disgorgement, prejudgment interest, and civil penalties ordered from the Respondents in this matter, and any interest accrued on those funds.

By the Commission.

Brent J. Fields
Secretary