

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84329 / October 1, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-16776

In the Matter of

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

Respondents.

**ORDER APPROVING APPLICATION OF
FUND ADMINISTRATOR FOR
PAYMENT OF FEES AND EXPENSES
AND APPROVAL OF FUTURE FEES
AND EXPENSES**

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 Orders (the "Order")¹ against Taberna Capital Management, LLC ("Taberna"), Michael Fralin ("Fralin"), and Raphael Licht ("Licht") (collectively, the "Respondents"). 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.

On August 24, 2017, the Commission issued an Order establishing a Fair Fund (the "Fair Fund"), pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended (the "Fair Fund Order"), 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.²

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

² Order Establishing Fair Fund, Exchange Act Rel. No. 81477 (Aug. 24, 2017).

On November 20, 2017, the Commission issued an order appointing Rust Consulting, Inc. as the Fund Administrator of the Fair Fund and setting the administrator's bond at \$21.675 million.³

The Fair Fund Order contemplates the payment of taxes, fees, and expenses of a distribution will be paid from the Fair Fund.⁴ In accordance with Rule 1105(d) of the Commission's Rules on Fair Fund and Disgorgement Plans ("Commission's Rules"), 17 C.F.R. § 201.1105(d), the Fund Administrator has submitted to the Commission staff invoices for services rendered from November 20, 2017 through July 31, 2018, totaling \$114,750.13. The Commission staff has reviewed the Fund Administrator's invoices, confirmed that the services have been provided, and finds the fees and expenses of \$114,750.13 to be reasonable. The Commission staff has requested that the Commission authorize the Office of Financial Management ("OFM") to pay the Fund Administrator's current fees and expenses of \$114,750.13 from the Fair Fund.

Additionally, to expedite and streamline the process for future payments, the Commission staff has requested that the Commission authorize OFM, at the direction of the Assistant Director of the Office of Distributions, to pay the Fund Administrator's future fees and expenses, so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of approved cost proposal submitted by the Fund Administrator.

Accordingly, it is hereby ORDERED, pursuant to Rule 1105(d) of the Commission's Rules, 17 C.F.R. § 201.1105(d), that OFM pay the Fund Administrator's current fees and expenses of \$114,750.13 from the Fair Fund. Further, OFM is authorized to pay, at the direction of the Assistant Director of the Office of Distributions, any future fees and expenses of the Fund Administrator from the Fair Fund, so long as the total amount paid to the Fund Administrator, including the invoice to be paid, does not exceed the total amount of the approved cost proposal submitted by the Fund Administrator.

By the Commission.

Brent J. Fields
Secretary

³ See Order Appointing Fund Administrator and Setting Administrator Bond Amount, Exchange Act Rel. No. 82124 (Nov. 20, 2017).

⁴ Exchange Act Rel. No. 81477 (Aug. 24, 2017).