

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84725 / December 6, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-16776

In the Matter of

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

Respondents.

**NOTICE OF PROPOSED PLAN OF
DISTRIBUTION AND OPPORTUNITY
FOR COMMENT**

Notice is hereby given, pursuant to Rule 1103 of the United States Securities and Exchange Commission's ("Commission") Rules on Fair Fund and Disgorgement Plans ("Rules"), 17 C.F.R. § 201.1103, that the Division of Enforcement (the "Division") has submitted to the Commission a proposed plan of distribution (the "Plan") for the distribution of monies paid in the above-captioned matter.

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.

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

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, so that ordered civil penalties, including the approximately \$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 harmed investors.²

On November 20, 2017, the Commission issued an order appointing Rust Consulting, Inc. as the Fund Administrator of the Fair Fund.³

OPPORTUNITY FOR COMMENT

Pursuant to this Notice, all interested persons are advised that they may obtain a copy of the Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm>. Interested persons may also obtain a written copy of the Plan by submitting a written request to Catherine E. Pappas, Esq., United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103. All persons who desire to comment on the Plan may submit their comments, in writing, no later than thirty (30) days from the date of this Notice:

1. to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090;
2. by using the Commission’s Internet comment form (<http://www.sec.gov/litigation/admin.shtml>); or
3. by sending an e-mail to rule-comments@sec.gov.

Comments submitted should include “Administrative Proceeding File No. 3-16776” in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

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

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

THE PLAN

The Fair Fund holds approximately \$21.9 million, comprised of disgorgement, prejudgment interest, and civil money penalties paid by the Respondents, plus accrued interest. The Plan proposes to distribute the Net Fair Fund⁴ to Taberna CDO clients who suffered losses caused by Taberna's failure to distribute the Exchange Fees. Eligible Claimants will be identified through a claims process, as further described in the Plan.

By the Commission.

Brent J. Fields
Secretary

⁴ All capitalized terms used herein, but not defined, shall have the same meanings ascribed to them in the Plan.