

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97388 / April 27, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-16776

In the Matter of	:	ORDER AUTHORIZING THE TRANSFER
TABERNA CAPITAL	:	TO THE U.S. TREASURY OF FUNDS
MANAGEMENT, LLC,	:	REMAINING IN THE FAIR FUND AND ANY
MICHAEL FRALIN, AND	:	FUNDS RETURNED TO THE FAIR FUND IN
RAPHAEL LICHT,	:	THE FUTURE, DISCHARGING THE FUND
Respondents.	:	ADMINISTRATOR, CANCELING THE FUND
	:	ADMINISTRATOR'S BOND, AND
	:	TERMINATING THE 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 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 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 \$13,000,000.00 and pay prejudgment interest of \$2,000,000.00 and a civil penalty of \$6,500,000.00, 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 \$15,000,000.00 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.

On August 24, 2017, the Commission issued an Order Establishing a Fair Fund, establishing a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 so that the ordered civil penalties could be added to the \$15,000,000.00 in disgorgement and

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

prejudgment interest, plus any interest accrued on those funds, for the benefit of the injured investors.²

On November 20, 2017, the Commission appointed Rust Consulting, Inc. as the fund administrator for the Fair Fund (the “Fund Administrator”) and set the administrator’s bond amount at \$21,675,000.00.³

On December 6, 2018, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”),⁴ pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (“Commission’s Rules”),⁵ and simultaneously posted a Proposed Plan of Distribution (the “Proposed Plan”). The Notice advised all interested persons that they may obtain a copy of the Proposed Plan from the Commission’s public website at <http://www.sec.gov/litigation/fairfundlist.htm> or by submitting a written request to Catherine E. Pappas, Senior Advisor, United States Securities and Exchange Commission, One Penn Center, 1617 JFK Blvd., Ste. 520, Philadelphia, PA 19103. The Notice also advised that all persons desiring to comment on the Proposed Plan could submit their comments, in writing, within 30 days of the Notice. The Commission received two comments on the Proposed Plan during the comment period. On May 2, 2019, after thorough review and substantial consideration of the comments received, the Commission issued an order approving the Proposed Plan as modified therein,⁶ and simultaneously posted the approved Modified Plan of Distribution (the “Plan”).

The Plan set forth a methodology for allocating the Fair Fund, less taxes and administration fees and expenses, to Taberna CDO clients who suffered losses caused by Taberna’s failure to distribute the Exchange Fees. Any remaining funds are to be returned to the Commission for transfer to the U.S. Treasury and the Fair Fund terminated, subject to the Commission’s approval of the Fund Administrator’s final accounting.

As ordered by the Commission, the Fund Administrator distributed a total of \$13,517,935.02 from the Fair Fund pursuant to the Plan.⁷ The Fund Administrator successfully distributed the entirety to the intended recipients, resulting in the compensation of all investors eligible for a distribution under the Plan for 100% of their losses, plus reasonable interest.

The Respondents paid approximately \$21.6 million in disgorgement, prejudgment interest, and civil penalties, into the Fair Fund. The Fair Fund earned \$1,102,875.72 in interest and paid federal and local taxes of \$295,636.15, investment fees of \$2,865.01, tax administration fees of \$29,788.19, and fund administration fees and costs of \$399,590.71. The Fair Fund has a remaining balance of \$8,481,415.04.

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

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

⁴ Exchange Act Rel. No. 84725 (Dec. 6, 2018).

⁵ 17 C.F.R. § 201.1103.

⁶ See Order Approving Modified Plan of Distribution, Exchange Act Rel. No. 85762 (May 2, 2019).

⁷ Exchange Act Rel. Nos. 93026 (Sept. 16, 2021) and 93704 (Dec. 2, 2021).

Paragraph 62 of the Plan provides that the Fair Fund is eligible for termination and the Fund Administrator 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 U.S. Treasury.

The Commission staff has confirmed that the Fund Administrator has completed the distribution process in accordance with the Commission's orders; that all taxes, fees, and expenses have been paid; and that the Commission holds all amounts remaining in the Fair Fund. The final accounting, which was submitted to the Commission for approval, as required by Rule 1105(f) of the Commission's Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, has been approved.

Accordingly, it is ORDERED that:

- A. The remaining funds in the amount of \$8,481,415.04, and any funds returned to the Fair Fund in the future, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934, 15 U.S. Code § 78u6(g)(3);
- B. The Fund Administrator is discharged;
- C. The Fund Administrator's bond is canceled; and
- D. The Fair Fund is terminated.

By the Commission.

Vanessa A. Countryman
Secretary