UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75814 / September 2, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4186 / September 2, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31803 / September 2, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16776

In the Matter of **TABERNA CAPITAL MANAGEMENT, LLC MICHAEL FRALIN and RAPHAEL LICHT** **Respondents.**	**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**

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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Taberna Capital Management, LLC ("Taberna"), and Sections 4C and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, Section 9(b) of the Investment Company Act of 1940 ("Company Act"), and Rule 102(e) of the Commission's Rules of Practice against Michael Fralin ("Fralin") and Raphael Licht ("Licht") (collectively with Taberna, "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 over the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this 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 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that

Summary

These proceedings arise out of Taberna's multi-year effort to charge and retain certain fees (known as "Exchange Fees") in connection with restructuring transactions undertaken between Taberna's collateralized debt obligation ("CDO") clients (the "Taberna CDOs") and the issuers of the underlying obligations in the Taberna CDOs' portfolios. Between 2009 and 2012, Taberna, a wholly-owned indirect subsidiary of RAIT, retained over $15 million of Exchange Fees. As Taberna knew, the Exchange Fees should have gone to the CDOs, and retention of the Exchange Fees was impermissible under the governing documents for the Taberna CDOs. Moreover, the Exchange Fees created actual and potential conflicts of interest that Taberna failed to disclose to its clients, in violation of Taberna's fiduciary duty as an investment adviser, and to the investors in the Taberna CDOs, including on Taberna's Forms ADV. As described further below, Michael Fralin and Raphael Licht played key roles in the relevant misconduct. Fralin had responsibility for exchange negotiations and documentation that incorporated false and misleading language about Exchange Fees. Licht, a senior Taberna executive at the time, was among those who approved Taberna's collection of Exchange Fees. Licht also had a role in supervising Fralin's efforts to generate Exchange Fees, and also failed to ensure those fees were disclosed in Taberna's Forms ADV.

Respondents

1. **Taberna** is a Delaware limited liability company with a principal place of business in Philadelphia, PA. Taberna registered with the Commission as an investment adviser in 2008 and terminated this registration in January 2015. Taberna is an indirect subsidiary of RAIT, a Maryland, SEC-registered Real Estate Investment Trust listed on the New York Stock

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[1] The findings herein are made pursuant to Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

Exchange, whose primary business is investing in and managing real-estate related assets, as well as providing debt financing to real estate-related borrowers. Taberna's sole business was the management of the Taberna CDOs. Between 2010 and the end of 2014, Taberna sold or transferred the management rights to the Taberna CDOs. Taberna currently has no advisory clients.

2. **Michael Fralin**, age 40, is a resident of New York, New York. From 2007 through 2010, Fralin was employed by Taberna and RAIT, first as a Vice President, then a Managing Director, with responsibility for coordinating and negotiating restructuring transactions in the portfolios of the Taberna CDOs. Fralin continued to provide consulting services to Taberna until 2011. Prior to coming to Taberna and RAIT, Fralin worked as an attorney and as an investment banker. Fralin is a member of the New York bar and is currently practicing law.

3. **Raphael Licht**, age 47, is a resident of Philadelphia, Pennsylvania. From February 2009 to December 2014, Licht was the Chief Operating Officer of RAIT. From December 2006 to February 2009, Licht was the Chief Legal Officer and Chief Administrative Officer of RAIT. Licht joined Taberna in March 2005. Licht separated from RAIT and Taberna in December 2014. Licht is a member of the Pennsylvania bar and is currently self-employed as a real estate consultant.

Background

4. Taberna was established in 2003 for the purpose of managing a series of Collateralized Debt Obligations ("CDOs"). In 2006, RAIT acquired Taberna. At the time that RAIT acquired Taberna, Taberna was acting as the manager of seven CDOs – called in sequential order Taberna Preferred Funding I through VII. RAIT acquired Taberna with a view to continuing to issue and manage additional CDOs. Two additional domestic CDOs – Taberna VIII and IX – and two European CDOs –Taberna Europe CDO I and II – were issued after RAIT acquired Taberna (collectively Taberna I through IX and Taberna Europe CDO I and II are referred to as the "Taberna CDOs").

5. A CDO is a special-purpose vehicle that issues debt to investors and uses the proceeds to invest in fixed income securities or loans. The CDO's debt is issued in different tranches that feature varying levels of risks and returns. The senior tranche is the highest rated and is first in the priority of repayment through what is called the CDO's "waterfall." Remaining proceeds then flow to the lower-rated junior tranches, and any proceeds remaining after the junior tranches are paid flows to the lowest, or "equity," tranche. Taberna invested in the equity tranche of most of the Taberna CDOs.

6. The Taberna CDOs invested primarily in real estate, mostly in the form of trust preferred securities ("TruPS") issued by real estate investment trusts ("REITs") that, in turn, invested in commercial and residential real estate. TruPS are a form of deeply subordinated debt issued by REITs. By virtue of their investment in the TruPS, the Taberna CDOs, and their investors, essentially functioned as lenders to the REITs that issued the TruPS ("TruPS Issuers").

7. The Taberna CDOs were each governed by an indenture, which, among other things, defined whether and how cash generated by the TruPS in the CDO's portfolio would be applied towards interest and principal payments owed to the CDO investors. Each indenture also provided for the engagement of a Collateral Manager for that CDO. Taberna was engaged by each CDO as Collateral Manager, pursuant to the terms of a Collateral Management Agreement ("CMA"). The indentures for each of the Taberna CDOs (generally, the "Indenture") were substantially similar, as were the CMAs.

8. Taberna's duties as Collateral Manager were defined in the CMA and the Indenture. Among those duties were various responsibilities relating to the disposition of collateral in the CDO's portfolio. Other provisions authorized Taberna to take specific actions with respect to exchanges. In particular, Section 6.16 of the Indenture authorized Taberna to instruct the Trustee to cause the CDO to enter into 'exchanges.' An exchange, in this context, means a transaction in which the CDO returns a TruPS Issuer's securities to that issuer in return for new securities and/or other consideration.

9. As an investment adviser, Taberna owed fiduciary duties to its CDO clients. Among other things, it was obligated to act in the best interests of its CDO clients and to disclose any material conflicts of interest that it had.

10. Taberna's compensation for acting as collateral manager of the Taberna CDOs was also defined in the CMA. Pursuant to the CMA, Taberna was entitled to a "Collateral Management Fee," to be paid by the CDO, as "compensation for the performance of its services and obligations as Collateral Manager under the terms of [the CMA]." As was typical for many CDOs, the Collateral Management Fee was broken out into a senior fee, paid at the top of the CDOs' waterfall, and a subordinated fee paid out at the bottom of the waterfall, only after other investors received their principal and interest. The CMA also provided that Taberna could accept fees for services provided to the TruPS Issuers. However, the Collateral Management Fee was intended as Taberna's exclusive compensation for undertaking its defined duties as Collateral Manager, including exchanges. Prior to 2009, Collateral Management Fees represented Taberna's primary source of income.

Taberna's Multi-Year Effort to Charge and Retain Exchange Fees

11. In the wake of the global financial crisis, many of the TruPS Issuers experienced severe financial difficulties due to their heavy exposure to the real estate market. These financial difficulties threatened the ability of the TruPS Issuers to continue to make payments on the TruPS in the portfolios of the Taberna CDOs. As a result, the performance of several of the Taberna CDOs suffered.

12. Starting in early 2008, TruPS Issuers began to approach Taberna seeking to restructure their obligations under the TruPS. The TruPS Issuers typically sought a period of relief from interest rate obligations on their outstanding debts, with the goal of enhancing the TruPS Issuer's ability to survive until the real estate market stabilized. Because the TruPS were subordinated debt, a bankruptcy by a TruPS Issuer would likely lead to little, if any, recovery to the CDOs that held the TruPS.

13. As the Collateral Manager, Taberna was authorized to negotiate such restructurings on behalf of the Taberna CDOs. Restructurings could potentially take several forms: amendment, whereby the terms of the TruPS would be changed on a negotiated basis; redemption or prepayment, whereby the TruPS Issuer would redeem some or all of the TruPS, typically at a deep discount to their par value; or an exchange pursuant to Section 6.16 of the Indenture, as described above.

14. In a typical restructuring, including a typical exchange transaction, Taberna's responsibilities included negotiating transaction terms and documents; assessing the financial condition of the TruPS Issuer; valuing the TruPS held by the Taberna CDOs; and evaluating the consideration being offered by the TruPS Issuer as part of the restructuring, such as cash, amended debt terms, or, in the case of exchanges, new securities. In undertaking these activities, Taberna was acting in its capacity as Collateral Manager to the Taberna CDOs. The TruPS Issuers were Taberna's counterparties, and Taberna was not retained by the TruPS Issuers – and did not render any services to them – in connection with the restructurings.

15. In connection with several restructurings in 2008 which were not exchanges, Taberna negotiated a fee to be paid by the TruPS Issuer directly to the Taberna CDOs that held the restructured TruPS as part of consideration for the CDO agreeing to the restructuring. Such fees were paid into the waterfall of the CDOs pursuant to the provisions of the Indenture defining Interest Proceeds as including ". . . all amendments and waiver fees, all late payment fees and all other fees and commissions received during the related Due Period," and defining Principal Proceeds as including ". . .any other payments received with respect to the Collateral and not included in Interest Proceeds."

16. Initially, Taberna believed that neither the Indenture nor the CMA authorized it to charge TruPS Issuers fees in connection with exchange transactions. Starting in February 2009, Taberna reconsidered its position regarding charging such fees and Taberna then insisted that TruPS Issuers pay a fee ("Exchange Fee") directly to Taberna as consideration for Taberna's willingness to consider exchange transactions executed on behalf of the Taberna CDOs. Between 2009 and 2012, Taberna executed over fifty exchange transactions in which it collected gross Exchange Fees totaling more than $17 million. After paying third-party expenses for lawyer fees, outside advisers, or other third party costs, Taberna retained over $15 million in Exchange Fees. RAIT senior executives approved of Taberna's plan to retain Exchange Fees, and the Exchange Fees were recognized as fee income by RAIT.

17. Taberna typically sought an Exchange Fee of approximately 1% of the value of the exchanged securities, paid directly to Taberna by the TruPS Issuer. The 1% figure was not calculated in relation to actual costs incurred by Taberna in connection with the exchanges. In fact, the Exchange Fees greatly exceeded Taberna's actual out-of-pocket costs associated with the exchanges.

18. The Exchange Fees Taberna collected were significant to Taberna's business, which had been impacted by the financial crisis, and replaced some of the revenue lost when the Taberna CDOs, due to their declining performance, ceased paying subordinated management fees to Taberna. In 2009, for example, Taberna's Exchange Fees revenues actually exceeded the management fees paid by the Taberna CDOs. In May 2009, senior Taberna and RAIT

executives participated in a presentation to the RAIT Board of Trustees discussing the declining income faced by Taberna. That presentation identified as a "New Source of Fee Income" for 2009 the transformation of "our TruPS workouts into fee for service revenue."

Taberna Attempted to Obscure the Nature of the Fees by Referring to Them as Payment of "Third Party Costs"

19. In connection with exchanges, Taberna executed transaction documents on behalf of the Taberna CDOs, including term sheets and exchange agreements. Taberna acted to ensure that some of these documents were either silent on fees or mischaracterized fees as compensation only for third party expenses.

20. For example, in the template Taberna typically sought to use for exchanges, the section describing the fee in the term sheets Taberna provided to the TruPS Issuers was titled "Third Party Costs," and read "In connection with the exchange offer described herein, Taberna will engage (a) outside legal counsel to draft and negotiate the documents evidencing the new securities and (b) one or more financial advisory and/or due diligence firms to provide financial analysis, underwriting and other due diligence services solely with respect to the issuance of the new securities" and then described the Exchange Fee as being paid "to cover the foregoing third party costs incurred by Taberna in connection with the new securities." Thus, this language misrepresented that the fee was limited to third party costs, when it was not. For virtually every exchange, there were no third-party "financial advisory and/or due diligence firms" retained at all.

21. As part of the exchange process, Fralin would provide the exchange documents to an informal committee composed of Licht and others for review and approval. On at least one occasion, in early May 2009, a senior manager on this committee apparently noticed this third party cost language was false and misleading and suggested it be altered. Nothing was done in response, however, and substantially similar language was used in dozens of subsequent transactions over the next two years.

The Exchange Fees Created Actual and Potential Conflicts of Interest

22. Taberna's decision to charge Exchange Fees created actual and potential conflicts between Taberna's interests and the interests of the CDOs and the CDO investors. For instance, because Taberna retained fees paid in connection with exchanges, and not other types of restructurings, Taberna had an incentive to steer TruPS Issuers interested in a restructuring towards doing an exchange, irrespective of what form of restructuring might be most advantageous to the Taberna CDOs. Similarly, Taberna threatened some TruPS Issuers that it would walk away from certain exchange negotiations if the issuers did not agree to pay an Exchange Fee to Taberna, again irrespective of whether the exchange would benefit Taberna's clients, the Taberna CDOs. Taberna, however, recommended both exchanges and restructurings during the relevant period, and did not receive a fee in connection with every exchange.

23. Typically, the exchanges provided for a longer payment period at a reduced interest rate, but with an increased principal amount greater than the original underlying

securities. This often had the effect of at least temporarily allowing continued payments to the CDOs.

24. In some restructurings, the distressed TruPS Issuers were focused on preserving their limited available cash assets, and had a maximum amount of cash available for such exchanges. From the perspective of the TruPS Issuer, it was irrelevant whether that cash went to the Taberna CDOs, as consideration for an exchange, or to Taberna, in the form of an Exchange Fee, so long as the TruPS Issuer was receiving the relief it was seeking. Moreover, given the distressed condition of the TruPS Issuers, some exchanges involved the Taberna CDOs accepting less than the full value of the TruPS it was giving up. Therefore, in seeking Exchange Fees in those instances, Taberna effectively reduced the amount of cash available to the Taberna CDOs to bring their recovery in the exchange closer to the full value of what the CDOs were giving up.

25. In one example of the way in which the conflict manifested itself, Taberna knowingly waived a fee owed by one TruPS Issuer to several of the Taberna CDOs in favor of a new fee, payable directly to Taberna. In this case, the TruPS Issuer ("Issuer A"), pursuant to the terms of a prior restructuring in 2009, had an outstanding obligation to pay Taberna's CDO clients $250,000. When Issuer A approached Taberna to seek a new restructuring transaction in early 2010, Issuer A resisted paying an additional fee to Taberna due to the drain it would cause on Issuer A's limited available resources. Taberna was ultimately only able to obtain its 1% fee by agreeing to waive the $250,000 payment that Issuer A owed Taberna's CDO clients. Taberna recognized that it was giving up a substantial right belonging to its client; one Taberna executive referred to waiving the payment owed to the CDOs as "a huge give." Nevertheless, Taberna proceeded with the transaction without disclosing the conflict presented by waiving the fee owed to the CDO in order to collect payment for itself.

26. Taberna was on notice that its conduct with respect to Exchange Fees was inconsistent with the practices of other CDO managers. Taberna often negotiated restructuring transactions alongside another CDO manager ("Manager A"), who was Taberna's main competitor in this space. Manager A informed Taberna in early 2009 that Manager A was not retaining Exchange Fees. This information was conveyed to Taberna's senior management. In response, a senior Taberna executive said in an email, "We have different needs than [Manager A]. We need fee income, not just expense reimbursement."

27. Ultimately, Taberna retained over $15 million in net Exchange Fees to which it was not entitled.[2] The fees were paid directly to Taberna, and flowed through to its corporate parent, RAIT. Taberna itself was not a registered broker-dealer under Section 15(b) of the Exchange Act. Moreover, Taberna's affiliated broker-dealer, RAIT Securities LLC, played no role in the exchanges or exchange fee program. At one point, Taberna apparently considered using a registered broker-dealer, but opted not to, based on a belief that the structure would be "too complicated."

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2 In 2012, in connection with the settlement of a dispute relating to Taberna VIII, Taberna paid to that CDO $2 million to reimburse it for exchange fees it had retained.

Taberna's Failure to Disclose Its Exchange Fee Practices and the Resulting Conflicts of Interest to Clients and Investors

28. Taberna did not tell its clients or the investors in the Taberna CDOs that it was retaining Exchange Fees.

29. Directors of the CDO vehicles did not receive full and accurate descriptions of the fees that Taberna was retaining.

30. Taberna also knew that fees were not disclosed in information included in regular reports from the CDO trustee to investors.

31. Taberna wrote a regular report to investors in each Taberna CDO called the "State of the CDO" report. These State of the CDO reports included detailed, narrative descriptions of the exchange transactions that had taken place. Taberna understood that the purpose of the narrative descriptions was to provide Taberna's justifications for doing the exchanges.

32. Taberna knew that investors were interested in Taberna's reasons for exchanges. The representative of the senior investors in a number of the CDOs asked whether Taberna received fees in connection with exchange work. It appears that Taberna provided, in 2009 and 2010, an ambiguous and non-specific response to that representative's questions. Moreover, at least one other investor also asked Taberna about Exchange Fees and Taberna declined to respond. Taberna was also aware that another manager's proposal to collect fees similar to the Exchange Fees was publicly criticized by investors, at least one of whom referred to the effort as "an illegal fee grab."

33. Notwithstanding this known investor interest in Taberna's motivations for exchanges, Taberna considered disclosing the Exchange Fees in State of the CDO reports but decided not to do so.

34. Taberna also made direct misrepresentations to investors in consent requests. Certain exchanges required the consent of the investors in the participating Taberna CDO(s). To obtain investor consent, investors were sent a summary of the exchange terms, as drafted by Taberna. As with other transaction documents, Taberna included in these consent solicitations a description of Exchange Fees, typically stating that the TruPS Issuer agreed to pay a certain amount "to cover outside legal costs...and to cover underwriting, placement and other due diligence costs." This language failed to disclose that, after legal costs were paid, Taberna would receive the remainder of the fee.

Taberna's Inaccurate Forms ADV

35. As a registered investment adviser, Taberna was required to file Form ADV with the Commission. In this form, Taberna was required to identify, among other things, its sources of compensation in connection with advice it provided to its clients, potential conflicts of interests it had, and how it dealt with such conflicts. Between 2009 and 2012, Taberna filed numerous Forms ADV that failed to disclose the Exchange Fees, failed to describe the conflict of interest raised by the Exchange Fees, and falsely and misleadingly described Taberna's compensation for managing the Taberna CDOs. Clients and investors were thus unaware of the

existence, nature, and extent of the conflict raised by Taberna's retention of Exchange Fees from TruPS Issuers.

36. For example, Part II, Item 13.A of Form ADV required the adviser to answer the question "Does the applicant . . . have any arrangements, oral or in writing, where it is paid cash by . . . a non-client in connection with giving advice to clients?"[3] Exchange fees, which were paid by non-clients (the TruPS Issuers) in connection with giving advice about whether to accept the exchange offer to clients (the Taberna CDOs), were responsive to this item. Taberna did not disclose the Exchange Fees as required by Item 13.A.

Fralin

37. Fralin was a Managing Director of Taberna during some of the relevant period. He was responsible for handling restructuring negotiations with the TruPS Issuers, and would present proposed exchanges to the informal committee, including Licht and Fralin's immediate supervisors at Taberna. The exchanges and other restructuring transactions occupied most of his time at Taberna.

38. Fralin viewed part of his job responsibilities as maximizing Taberna's Exchange Fee income. Because he had a background as an attorney and an investment banker, he was given some autonomy to do so. In his own words, "[m]ost of the fees [generated in 2009] were purely based on my hard work and determination." Notwithstanding this, the exchanges had to be approved by Fralin's immediate supervisors at Taberna.

39. Fralin sought, and in early 2010 obtained, from his managers at Taberna a compensation structure for himself under which Fralin would receive some portion of Exchange Fees that he helped Taberna collect while still employed by Taberna. This structure gave Fralin a personal incentive to complete exchanges he was then working on, and earn Exchange Fees for Taberna, prior to his departure in the middle of 2010.

40. Fralin was responsible for drafting language in exchange transaction documents that mischaracterized Exchange Fee payments as compensation to Taberna for actual third party costs. Fralin knew that this false and misleading language was sent to or seen by representatives of the CDOs and of the CDOs' investors. He also knew or should have known that the language was misleading. On multiple occasions, recipients of the documents outside of Taberna indicated to Fralin their understanding that the fee described in the document was meant as compensation for Taberna's actual costs incurred.

41. Fralin also knew that investors wanted to know whether Taberna was collecting fees, because they asked him and others at Taberna. He helped draft and review the descriptions of the exchanges in the State of the CDO reports, which did not disclose the Exchange Fees.

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3 Form ADV was amended effective September 19, 2011. Thereafter, the same disclosure was required by Item 14.A of Part 2 of Form ADV.

Licht

42. Licht served as the Chief Administrative Officer and Chief Legal Officer of Taberna and RAIT until February 2009, and additionally as Chief Operating Officer and General Counsel of Taberna from 2009 until December 31, 2014. As an officer of Taberna, he reviewed and approved certain exchange transactions, including the Exchange Fees.

43. In addition to helping to supervise Fralin's day-to-day negotiation of exchange transactions, Licht personally negotiated some exchanges and Exchange Fees. He also helped to negotiate Fralin's compensation structure, described above, through which Fralin was paid a portion of the Exchange Fees he helped arrange.

44. Licht was also aware of language Fralin used in certain exchange transaction documents that mischaracterized Exchange Fees as compensation for third party costs.

45. Licht failed to ensure that Taberna's disclosures to clients and investors about exchanges – including disclosures in the State of the CDO reports – disclosed the Exchange Fees. Licht knew that the representative of the senior investors in several of the CDOs wanted to know about Exchange Fees and Taberna's reasons for undertaking the exchanges, because it asked him, among other Taberna personnel, whether Taberna was collecting Exchange Fees.

46. Licht also played a role in the drafting and review of Taberna's materially inaccurate Forms ADV, which included misleading descriptions of Taberna's compensation and, as Licht knew, did not include references to Taberna's collection of Exchange Fees. He was listed as a principal of Taberna on certain of the ADV filings.

<u>Violations</u>

47. As a result of the conduct described above, Respondent Taberna willfully violated Section 15(a) of the Exchange Act, which prohibits a person from effecting any transactions in, or inducing or attempting to induce the purchase or sale of, securities unless registered with the Commission as a broker or dealer.

48. As a result of the conduct described above, Taberna willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for an investment adviser to employ any device, scheme or artifice to defraud clients or to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. Fralin and Licht willfully[4] aided and abetted and caused Taberna's violations of Section 206(2).

49. As a result of the conduct described above, Taberna willfully violated, and Respondent Fralin willfully aided and abetted and caused Taberna's violation of, Section 206(4)

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[4] As used herein with respect to Fralin and Licht, 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 Act.'" *Id*. (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

of the Advisers Act and Advisers Act Rule 206(4)-8, which prohibit any fraudulent, deceptive, or manipulative act, practice, or course of business by an investment adviser to any investor or prospective investor in a pooled investment vehicle.

50. As a result of the conduct described above, Taberna willfully violated, and Licht willfully aided and abetted and caused Taberna's violation of, Section 207 of the Advisers Act, which makes it unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed under the Advisers Act or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

Undertakings

Taberna undertakes to the following:

A. Taberna shall not act or seek to act as an investment adviser, as defined in section 202(a)(11) of the Advisers Act for a period of three (3) years following the date of the Order.

B. Within ten (10) days of the entry of the Order, to have posted prominently on RAIT's principal website a summary of this Order and hyperlink to the entire Order. The hyperlink shall be maintained for a period of twelve (12) months from the entry of this Order.

C. Within thirty (30) days of the entry of the Order, to provide a copy of the Order to the current managers of the Taberna CDOs (to the extent known to Taberna), along with a cover letter requesting that the current managers provide notice to each Taberna CDO of the existence of the Order, and further requesting that the current managers post a hyperlink to the Order on any website maintained to communicate with investors in the Taberna CDOs.

D. To cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Taberna shall: (i) produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Staff subject to any restrictions under the law of any foreign jurisdiction; (ii) use its best efforts to cause its officers, employees, and directors to be interviewed by the Staff at such time as the Staff reasonably may direct; (iii) provide any certification or authentication of business records of the company as may be reasonably requested by the Staff; and (iv) use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Staff.

E. To certify, in writing every six (6) months from the date of this Order, and continuing for three years after the date of this Order, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s) and provide written evidence of compliance in the form of a narrative. The Commission staff may make reasonable requests for further evidence of compliance, and Taberna agrees to provide such evidence. The certification and supporting material shall be submitted to Reid A. Muoio, Assistant Director in the Division of Enforcement ("Division") (100 F St., NE, Washington, DC 20549) with a copy to the Office of Chief Counsel of the Enforcement Division (100 F St., NE, Washington, DC 20549).

Michael Fralin undertakes to the following:

A. To cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Fralin undertakes:

i. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;

ii. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

iii. That in connection with any testimony of Fralin to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Fralin

a. agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, Alan R. Friedman, Esq., Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036; and

b. agrees that any such notice or subpoena for his appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

In determining whether to accept the Offers, the Commission has considered these undertakings.

IV.

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

Accordingly, pursuant to Sections 4C, 15(b), and 21C of the Exchange Act, Sections 203(e), 203(f), and 203(k) of the Advisers Act, Section 9(b) of the Company Act, and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Taberna cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act, Sections 206(1) 206(2), 206(4), and 207 of the Advisers Act, and Advisers Act Rule 206(4)-8.

B. Fralin 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 Advisers Act Rule 206(4)-8.

C. Licht cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 207 of the Advisers Act.

D. Fralin be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;
>
> with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission. Any reapplication for association by Fralin will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Fralin, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

E. Licht be, and hereby is:

> barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and
>
> prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter;
>
> with the right to apply for reentry after two (2) years to the appropriate self-regulatory organization, or if there is none, to the Commission. Any reapplication for association by Licht will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered

against Licht, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

F. Fralin is denied, pursuant to Rule 102(e) and 102(e)(1)(iii) of the Commission's Rules of Practice, the privilege of appearing or practicing before the Commission as an attorney for five (5) years from the date of the Order.

G. Licht is denied, pursuant to Rule 102(e) and 102(e)(1)(iii) of the Commission's Rules of Practice, the privilege of appearing or practicing before the Commission as an attorney for two (2) years from the date of the Order.

H. Fralin, after five (5) years from the date of the Order, and Licht, after two (2) years from the date of the Order, may request that the Commission consider his application to resume appearing and practicing before the Commission as an attorney. The application should be sent to the attention of the Office of the General Counsel.

I. With respect to such an application by either Fralin or Licht (whichever is making such an application, "Applicant"), in support of such an application, Applicant must provide a certificate of good standing from each state bar where Applicant is a member.

J. In support of such an application, Applicant must also submit an affidavit truthfully stating, under penalty of perjury:

1. that Applicant has complied with the Order;

2. that Applicant:

   a. is not currently suspended or disbarred as an attorney by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession; and

   b. since the entry of the Order, has not been suspended as an attorney for an offense involving moral turpitude by a court of the United States (or any agency of the United States) or the bar or court of any state, territory, district, commonwealth, or possession, except for any suspension concerning the conduct that was the basis for the Order;

3. that Applicant, since the entry of the Order, has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice; and

4. that Applicant, since the entry of the Order:

    a. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, except for any finding concerning the conduct that was the basis for the Order;

    b. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;

    c. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, to have committed an offense involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and

    d. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof, with having committed an offense involving moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

K. If Applicant provides the documentation required in Paragraphs I and J, and the Commission determines that he truthfully attested to each of the items required in his affidavit, he shall by Commission order be permitted to resume appearing and practicing before the Commission as an attorney.

L. If Applicant is not able to truthfully attest to the statements required in Subparagraphs J(2)(b) or J(4), Applicant shall provide an explanation as to the facts and circumstances pertaining to the matter and the Commission may hold a hearing to determine whether there is good cause to permit him to resume appearing and practicing before the Commission as an attorney.

M. Taberna shall pay disgorgement of $13,000,000, prejudgment interest of $2,000,000, and a civil penalty of $6,500,000 to the Securities and Exchange Commission. Fralin shall pay a civil penalty of $100,000 to the Securities and Exchange Commission in four installments, with $25,000 due within ten (10) days of the entry of the Order, $25,000 due 90 days after the entry of the Order, $25,000 due 180 days after the entry of the Order, and $25,000 due 270 days after the entry of the Order. Licht, within ten (10) days of the entry of the Order, shall pay a civil penalty of $75,000 to the Securities and Exchange Commission. If any payment is not made by the date 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 and/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 Taberna, Fralin, or Licht (as appropriate) as Respondent 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 Michael Osnato, Unit Chief, Complex Financial Instruments Unit, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

N. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents each agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

O. A fund (the "Disgorgement Fund") shall be established for the distribution of the disgorgement and interest referenced in paragraph M above (the "Disgorgement Amounts"). The Disgorgement Fund shall be distributed pursuant to a distribution plan (the "Plan") to be administered in accordance with the Commission's Rules of Practice Governing Fair Funds and Disgorgement Funds. A Fund Administrator (the "Administrator") shall be appointed by the Commission. The Administrator will prepare, in coordination with Commission staff, the Plan to distribute the Disgorgement Fund to the injured parties in the amounts necessary to compensate them for the harm they suffered as a result of Taberna's violations. The Plan shall be subject to

Commission approval. Commission staff shall seek the appointment of a tax administrator in regard to the Disgorgement Fund as the fund constitutes a qualified settlement fund ("QSF") under section 468B(g) of the Internal Revenue Code (IRC), 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. Taxes, if any, and related administrative expenses shall be paid from the Disgorgement Fund. After the Commission makes the foregoing payments, any remaining funds consisting of the Disgorgement Amounts shall be remitted to the general fund of the United States Treasury subject to Exchange Act Section 21F(g)(3).

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents Fralin and Licht, and further, as to Respondents Fralin and Licht, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary