UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11057 / April 28, 2022

SECURITIES EXCHANGE ACT OF 1934
Release No. 94819 / April 28, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 6008 / April 28, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20836

In the Matter of

Medley Management Inc.,
Brook B. Taube and
Seth B. Taube,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND SECTIONS 203(e), 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

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 Section 8A of the Securities Act of 1933 ("Securities Act"), Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against Medley Management Inc., Brook B. Taube and Seth B. Taube (collectively, "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 the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative And Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, and Sections 203(e), 203(f) and

203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

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

Summary

1. This case involves misrepresentations to investors by Medley Management Inc. ("MDLY"), its affiliate Medley LLC (Medley LLC and, together with MDLY, "Medley") and its co-CEOs, Brook Taube ("B. Taube") and Seth Taube ("S. Taube" and, together with B. Taube, "the Taubes"). Since at least August 2016, Medley negligently overstated an important financial metric, its assets under management ("AUM"), creating a misleading appearance of likely future growth. Specifically, Medley misleadingly included in AUM, as reported in its offering registration statements and periodic reports, the "commitment" amounts reflected in the investment management agreements of two fully non-discretionary Separately Managed Accounts (each, an "SMA"). Medley treated these "commitment" amounts as "uncalled committed capital," a component of its AUM calculation, despite the fact that these two SMA clients had no legal or practical obligation to make any investments pursuant to their "commitments." Based on the SMA clients' recent investments, as the Taubes knew, these SMA clients were unlikely to invest the full "commitment" amounts. By including the non-discretionary, and uncommitted, SMA "commitment" amounts in its AUM as "uncalled committed capital," while failing to provide disclosure necessary to make such disclosures not misleading, Medley overstated the capital it had available to invest and the extent to which its fee earning AUM ("FEAUM") was likely to increase in the years following the disclosure. This overstatement was material because FEAUM was the source of Medley's management fees, which were the largest and most predictable component of its revenues.

2. From August 2016 through February 2017, MDLY's operating affiliate, Medley LLC, raised approximately $122 million from retail investors based on offering registration statements that included the full amount of the non-discretionary SMA "commitments" in AUM and also described the SMAs as "new institutional capital commitments" with an anticipated investment period of 18 to 24 months. At the time of the offerings, however, these SMAs had been established for at least six months, and the amount invested had been far lower than expected given the "commitment" amounts. .

3. In June 2018, as Medley's FEAUM had been on a downward trajectory for almost three years, the Respondents proposed a transaction involving their two business development company ("BDC") clients. They proposed that the two BDCs should merge and the resulting BDC should purchase MDLY as a portfolio company. The proposal to the BDCs was an investment recommendation from investment advisers to their advisory clients, the BDCs. In an effort to convince their clients that owning their own investment adviser would benefit the BDCs, the Respondents provided the Special Committees established by the boards of the BDCs

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

with projections of Medley's positive future performance that lacked a reasonable basis, including regarding the projected investment of capital by the non-discretionary SMAs. The misleading projections provided to the Special Committees of the BDCs were then incorporated into calculations of the "expected" benefit to the BDCs of completing the proposed transaction. These misleading projections were included in the registration statements, joint proxy statement/prospectuses and related proxy materials for the proposed transaction.

4. Medley LLC and MDLY continued to include the full amount of the non-discretionary SMA "commitments" in reported AUM through the filing of their Forms 10-K for the year ending December 31, 2020, which were the last periodic reports filed by either entity. Although the two non-discretionary SMA clients extended the investment periods of their investment management agreements with Medley when they were set to expire in 2017 and subsequent years, neither client ever invested more than a small fraction of the "commitment" amounts.

5. Finally, as described in more detail below, MDLY and Medley LLC failed to maintain adequate disclosure controls and procedures as required by the Exchange Act rules for issuers with a class of securities registered under the Exchange Act. The Taubes also failed to evaluate the effectiveness of the entities' disclosure controls and procedures. They nevertheless signed quarterly certifications representing that they had done so.

6. As a result, Respondent MDLY willfully violated or caused violations of Section 17(a)(2) and 17(a)(3) of the Securities Act, Section 206(2) of the Advisers Act, Section 206(4) and Rule 206(4)-8 thereunder, Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, and Section 13(a) of the Exchange Act and Rules 12b-10, 13a-1, 13a-11, 13a-13, 13a-15(a), and 13a-15(b) thereunder. Respondents B. Taube and S. Taube willfully violated or caused violations of Section 17(a)(2) and 17(a)(3) of the Securities Act, Section 206(2) of the Advisers Act, Section 206(4) and Rule 206(4)-8 thereunder, Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, and Section 13(a) of the Exchange Act and Rules 12b-10, 13a-1, 13a-11, 13a-13, 13a-14(a), 13a-15(a) and 13a-15(b) thereunder.

Respondents

7. **Medley Management Inc.** is a Delaware corporation with its principal place of business in New York, NY. Following the company's initial public offering on September 23, 2014, the company registered its common stock (ticker symbol MDLY) under Section 12(b) of the Exchange Act. That stock traded on the New York Stock Exchange until its delisting on July 23, 2021. The company's common stock currently trades on the over the counter market. MDLY's only asset is its interest in Medley LLC, of which it owned approximately 20% until January 2021 and currently owns approximately 98%. Although MDLY had a Board of Directors, Medley Group LLC, which MDLY's co-CEOs controlled, had the power to replace members of MDLY's Board. As a result, MDLY was a "controlled company" for the purpose of compliance with certain corporate governance requirements for listing on an exchange. From the IPO through January 19, 2021, Medley Group LLC owned 97.5% of the voting interests in MDLY, but none of its economic interests. On January 19, 2021, after the individual unit holders of Medley LLC exchanged their units for Class A common stock of MDLY, the Medley LLC

unit holders continued to own 97.5% of the voting interests in MDLY, and also owned approximately 80% of its economic interests.

8. **Brook B. Taube**, 52, a resident of New York, NY, was at all relevant times the Co-Chief Executive Officer and Chief Investment Officer of MDLY and co-Chairman of MDLY's Board of Directors. He has previously held Series 3, 7 and 63 licenses. He currently holds approximately 32.8% of the voting interest, and 32.8% of the economic interest, in MDLY. From late 2015 through the present, B. Taube has received no compensation from MDLY for serving as its co-CEO. He received, however, pro rata income distributions from Medley LLC, including distributions of approximately $2 million per quarter from the second quarter of 2016 through the third quarter of 2018.

9. **Seth B. Taube**, 52, a resident of Larkspur, CA, was at all relevant times the Co-Chief Executive Officer of MDLY and co-Chairman of its Board of Directors. He was also Chief Executive Officer of Sierra Income Corporation. He has previously held Series 7 and 63 licenses. He currently holds approximately 14.8% of the voting interest, and 14.8% of the economic interest, in MDLY. From late 2015 through the present, S. Taube has received no compensation from MDLY for serving as its co-CEO. He received, however, pro rata income distributions from Medley LLC, including distributions of approximately $2 million per quarter from the second quarter of 2016 through the third quarter of 2018.

Relevant Entities

10. **Medley LLC** is a Delaware limited liability company, headquartered in New York, NY. At all relevant times, it acted as a holding company for entities that advised certain BDCs, private funds, and separately managed accounts. From August 4, 2016 through July 7, 2021, when they were delisted, Medley LLC's notes were registered under Section 12(b) of the Exchange Act. Until July 7, 2021, the entity's bonds were traded on the New York Stock Exchange under the ticker symbols MDLQ and MDLX. Until January 19, 2021, MDLY owned approximately 20% of Medley's LLC units. Certain executives of MDLY, including B. Taube and S. Taube, owned the remainder of Medley LLC's units, which were convertible at their discretion into shares of MDLY's common stock. On January 19, 2021, the executives exchanged their Medley LLC units for shares of MDLY. In March 2021, Medley LLC filed for Chapter 11 bankruptcy protection. On October 18, 2021, an order was entered confirming the Chapter 11 plan (the "Bankruptcy Plan"). Pursuant to the Bankruptcy Plan, Medley LLC would continue to operate for approximately six months and then wind down.

11. **Medley Group LLC** is a Delaware limited liability company, headquartered in New York, NY. It was formed in 2014 and, after the initial public offering of MDLY, owned 97.5% of the voting interests in MDLY. From the entity's inception through at least January 19, 2021, B. Taube and S. Taube owned at least 74% of Medley Group LLC's voting interests.

12. **Medley Capital Corp.** ("MCC"), n/k/a PhenixFin Corp., is a Delaware corporation headquartered in New York, NY that has elected to be regulated as a BDC. It has been an SEC reporting company since January 2011, with its common stock registered pursuant to Section 12(b) of the Exchange Act. From January 2011 through December 2020, MCC was externally managed by a subsidiary of Medley LLC, and its common stock traded on the New

York Stock Exchange under the symbol MCC. Effective January 1, 2021, MCC adopted an internalized management structure and changed its name. Its common stock now trades on the NASDAQ under the ticker symbol PFX.

13. **Sierra Income Corporation** ("Sierra") was a Maryland corporation headquartered in New York, NY that had elected to be regulated as a BDC. From April 2012 until February 25, 2022, Sierra had a class of securities registered under Section 12(g) of the Exchange Act and was an SEC reporting company, but it was not publicly-traded. Until February 25, 2022, when it was acquired by a publicly-traded, externally managed BDC, Sierra was externally managed by a subsidiary of Medley LLC.

Background

MEDLEY'S STRUCTURE AND ITS BUSINESS

14. In approximately 2006, Respondents B. Taube and S. Taube, along with other individuals, formed Medley LLC as an alternative asset management firm focused on credit-related investment strategies. Medley's core business was "direct lending"—specifically, raising capital from clients that was used to provide loans to middle-market companies seeking to borrow capital. As part of this core business, Medley had to identify, or "source," potential transactions; conduct due diligence on the potential investments; negotiate its terms; and then close the transaction.

15. By 2014, Medley's primary direct lending vehicles were its two BDCs, funds marketed primarily to retail investors that generally lent money to middle market companies in the U.S. The funds are regulated under the Investment Company Act of 1940 ("Investment Company Act"). Medley also managed several private funds in which institutional investors had limited partnership interests. Finally, it had accounts with institutional investors, typically referred to as "separately managed accounts" or "SMAs," for which Medley recommended investments consistent with the SMA clients' investment objectives and criteria.

16. Medley's major sources of revenue were management fees, which were charged quarterly, typically based on the amount of capital its clients had invested. It also earned performance or incentive fees when its clients' investments performed well.

17. Medley also had SMA clients, each of which only contributed cash when it was needed in order to fund a specific investment, and each of which only paid management fees on invested capital.

18. By early 2016, Medley's had two SMA clients, SMA Clients 1 and 2, that had established non-discretionary SMA accounts—that is, Medley did not have discretion over the client's assets and, in accordance with its written agreements with the clients, had to obtain the client's approval for any proposed investment before Medley could call capital to fund that investment. Although the investment management agreements for these non-discretionary SMAs included the term "capital commitment," under the SMA agreements, the clients had no obligation to invest with Medley. These clients could reject proposed deals for any—or no—reason and had no obligation to fund any deals at all. These agreements also included an

investment period, which was essentially the period during which Medley would show the client potential deals.

Relationship Between MDLY and Medley LLC

19. In 2014, MDLY was formed as a holding company that would own approximately 20% of Medley LLC's LLC units and would have 100% voting power over that entity. It also would be the managing member of Medley LLC. Medley Group LLC, which was owned by the same Medley executives who owned the other LLC units of Medley LLC, would own voting stock in MDLY that entitled it to 97.5% of the voting power over MDLY, while unaffiliated shareholders would own a different class of common stock that entitled them to 100% of the economic interest in MDLY. MDLY conducted its initial public offering in September 2014, through a registered initial public offering of its common stock. After the IPO, the Taubes held over 74% of Medley Group LLC's voting interests and, accordingly, controlled MDLY.

20. After it conducted its own registered offering in 2016, discussed below, Medley LLC's financial statements were consolidated into MDLY's. Their periodic reports were identical in all relevant respects.

21. Generally, AUM is a metric used in the asset management industry to reflect the value of assets for which an adviser provides investment advice. There is no rule, regulation or accounting standard that governs the definition of AUM.[2] Instead, each publicly-traded asset manager includes in its disclosures an explanation of how it defines AUM. In all of its registration statements and periodic reports, Medley defined AUM to include the net asset value of its funds and client accounts (including SMAs), their "drawn and undrawn debt," and their "uncalled committed capital."

22. Medley also reported in its disclosures its FEAUM, which was defined as "the assets under management on which we directly earn base management fees."

23. On quarterly earnings calls for each quarterly reporting period in 2016 and the first quarter of 2017, B. Taube referred to the difference between Medley's AUM and its FEAUM as the uninvested capital—i.e., "dry powder"—available to Medley to invest.

Changes in Medley's Prospects and Investment Strategies

24. At all relevant times, Medley's core business was direct lending. By 2015, however, increased competition among lenders led borrowers to insist on lower pricing. Subsequently, attractive deals became harder to find and direct lending became less lucrative. For the year-end 2015, Medley for the first time, reported a decline in its FEAUM. That decline continued year-over-year and quarter-over-quarter (with the exception of one quarter) through year-end 2020, the last period for which Medley LLC and MDLY filed periodic reports.

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[2] While there is no standard definition of AUM for the purpose of a publicly-traded asset managers' registration statements and periodic reports, all investment advisers registered with the Securities and Exchange Commission must calculate and disclose their "regulatory AUM" in filings with the Commission on Form ADV and in disclosures to their advisory clients based on specific instructions provided in the Form ADV.

25. In addition, beginning in 2015 and 2016, certain loans that Medley had originated for its BDCs and SMA Client 1 began to show signs of impairment, indicating that they might not be repaid. Medley had to write down the values of certain holdings of MCC, its only publicly-traded BDC client. MCC reported below-market returns, and by early 2015, it was trading at prices that were lower than its net asset value. Under the Investment Company Act, BDCs are generally unable to issue and sell shares of their common stock at a price below their net asset value ("NAV") without receiving prior approval from its shareholders.

26. Further, raising capital for the non-traded Sierra BDC had become more difficult because of MCC's poor publicly-reported performance and because Sierra BDC's performance also began to decline, as evidenced by the fact that it cut its dividend in October 2016.

27. Although Medley continued to raise some capital for existing and new private funds with a direct lending strategy, and for Sierra, it was unable to do so at the rates it had experienced from 2010 through 2014. As a result, Medley began to attempt to diversify its investing strategies. These attempts, however, were generally unsuccessful in creating new revenue for Medley.

Agreements for Two Non-Discretionary SMAs Contained "Commitment" Amounts That Had No Practical or Legal Significance

28. In late 2015 and early 2016, Medley signed investment management agreements for two non-discretionary SMAs, which collectively had purported "commitment" amounts of $1.05 billion. Pursuant to the SMA agreements, the clients were not obligated to invest in any Medley-proposed deals. Both agreements provided that Medley was entitled to call capital to fund an investment only after the client had approved that specific investment.

29. The Taubes were aware of the terms of these non-discretionary SMA agreements and that amounts set forth in the agreements would be included as part of Medley's AUM.

New Agreement with SMA Client 1 in Late 2015

30. Until 2016, Medley had just one SMA relationship, "SMA Client 1." SMA Client 1 was itself an investment adviser, providing investment advisory services to a collection of affiliated insurance companies. SMA Client 1 entered into SMA agreements with Medley in 2010, 2012, January 2014, and July 2014. Each agreement had a set investment period and, although all but the first agreement was explicitly non-discretionary, contained a "commitment" amount.

31. In late 2015, SMA Client 1's first three SMAs were no longer making new investments, and the investment period of its July 2014 investment management agreement was scheduled to expire on December 31, 2015. The July 2014 SMA agreement set forth a "maximum aggregate capital commitment," on behalf of a group of affiliated insurance companies, of $525 million. Of the $525 million maximum "commitment" in the existing SMA, approximately $300 million had been invested when the parties began negotiating, in October 2015, to extend the investment period of the existing agreement or establish a new one.

32. B. Taube led Medley's negotiations with SMA Client 1 in late 2015. Despite the fact that SMA Client 1 had only invested $300 million of the $525 million of the maximum aggregate capital commitment in its first investment management agreement with Medley, he repeatedly encouraged SMA Client 1 to agree to a new SMA with a maximum "commitment" amount of $800 million—more than double the amount that the client had invested in its existing SMA, which had a similar 18-month investment period. After initially expressing reluctance to include such a large "commitment," SMA Client 1 ultimately agreed to B. Taube's request; the new agreement, with the requested $800 million maximum amount, was executed in November 2015.

33. Notwithstanding the use of the term "commitment" in the SMA agreement, as both parties knew, SMA Client 1 had made no legal or practical commitment to invest any particular amount.

34. B. Taube knew that Medley would include the new "commitment" in its reported AUM. In addition to knowing that the agreement did not create a legal obligation on the part of the SMA Client 1 to invest, B. Taube also did not request, or direct others at Medley to request information that would have supported the determination that, notwithstanding its failure to meet the $525 million "commitment" in the June 2014 agreement, SMA Client 1 was likely to be offered and to approve investments at a rate sufficient to meet the $800 million "commitment" in the new agreement.

35. Given that SMA Client 1 had failed to meet the "commitment" in its expiring management agreement and that the new SMA agreement would continue to require client approval for each investment, and having failed to take any steps to determine that the client could be expected to approve more deals going forward, no one at Medley had a reasonable basis to expect that the full amount of SMA Client 1's $800 million "commitment" would be invested within the agreement's stated investment period. Nevertheless, as discussed below, Medley included the $800 million in its AUM calculation, for the purposes of its disclosures to MDLY and Medley LLC investors, as "uncalled committed capital."

Agreement with SMA Client 2

36. In late 2015 and early 2016, Medley negotiated an SMA with SMA Client 2. SMA Client 2 was also itself an investment adviser, providing investment advisory services to two affiliated insurance companies.

37. As part of its negotiations with SMA Client 2 prior to the opening of the account, Medley employees prepared talking points, which stated that the proposed SMA would be non-discretionary and that the "commitment" amount set forth in the SMA agreement "does not matter since it is a non-discretionary SMA." B. Taube approved the talking points.

38. In January 2016, Medley and SMA Client 2 signed an agreement for a non-discretionary SMA with a 24-month investment period, from January 1, 2016 through December 31, 2017, for which management fees would be paid only on invested capital. The agreement reflected a "capital commitment" of $250 million.

39. Notwithstanding the use of that term in the SMA agreement, as both parties knew, SMA Client 2 had made no legal or practical commitment to invest any particular amount.

40. Despite the fact that SMA Client 2, like SMA Client 1, had complete control over whether to commit capital for deals, and had not provided Medley with any representation or estimate of the volume of deals they expected to approve, Medley included the $250 million in its AUM calculation as "uncalled committed capital."

Minimal Investing by the Non-Discretionary SMAs in the First Half of 2016

41. Not only did SMA Clients 1 and 2 not have any obligation to invest the purportedly "committed" amounts set forth in their SMA agreements, but the actual rate at which these clients approved investments fell far below the amounts that would have been required for full deployment of their "commitments" during the investment periods of their SMAs.

42. As the Taubes knew, by early 2016, the investments Medley had chosen for SMA Client 1's previous and active SMAs had started to experience increased rates of delinquent payments, and reduced internal rates of return, compared with the portfolio's performance in previous years. As a result, Medley placed some of the loans in SMA Client 1's portfolio on "non-accrual" status.[3] On April 12, 2016, B. Taube informed S. Taube by email that SMA Client 1 had reduced the amount it was willing to invest per deal because of the increased rate at which loans were being placed on non-accrual status.

43. As the Taubes also knew, because of the increased competition in direct lending, it was becoming difficult to source deals that met the SMAs' yield and other criteria.

44. In the first half of 2016, SMA Client 1 approved investments totaling approximately $15 million of the $800 million that the client had "committed" to investing over eighteen months. From the signing of SMA Client 2's agreement in January 2016, through June 30, 2016, that client did not invest in any deals through its SMA.

45. From June through July of 2016, as Medley LLC prepared to issue bonds to retail investors, and as MDLY prepared to issue periodic reports that included the SMA clients' "commitments" in reported AUM, the Taubes were aware that the non-discretionary SMA clients had approved very few investments in the first half of 2016.

THE MEDLEY LLC BOND OFFERINGS

46. Medley LLC, the operating company and sole asset of MDLY, conducted a series of four registered offerings of "baby bonds" from August 2016 through February 2017. "Baby bonds" are bonds issued in increments of $25 that typically are marketed to retail investors. The baby bonds were, from issuance until approximately July 2021, traded on the NYSE under the

[3] Consistent with industry practice, Medley generally placed loans on non-accrual status when principal and interest payments were past due by 90 days or more, or when there was reasonable doubt that it would collect principal or interest.

ticker symbols MDLX and MDLQ. Altogether, Medley raised approximately $122 million through these "baby bond" offerings.

Emphasis on AUM and "Dry Powder" Leading Up to Bond Offerings

47. On January 25, 2016, at the Taubes' direction, Medley put out a press release announcing that it had "over $5 billion of AUM and over $1.5 billion in capital available to invest …." Over $1 billion of that amount was the purported committed amounts of the non-discretionary accounts.

48. The Taubes considered the $5 billion AUM threshold a significant achievement that would assuage investor concerns about Medley's declining FEAUM.

49. One financial adviser, who had recommended MDLY to his firm's clients, emailed B. Taube upon seeing the press release, stating: "In this environment especially—this is truly phenomenal. Congratulations."

50. When calculating its AUM for purposes of MDLY's periodic report and earnings release for the first quarter of 2016, released in May 2016, Medley included the full amounts "committed" by SMA Clients 1 and 2. For the purpose of the AUM calculation, these amounts were treated as "uncalled committed capital," despite the fact that Medley was not entitled to call capital under these agreements unless and until the client had approved a specific investment, and despite the fact that neither client had told anyone at Medley that it promised or expected to invest anything close to the full amount of its non-discretionary "commitment."

51. On its Form 10-Q for the first quarter of 2016, the most recent periodic report available before the first bond offering, Medley reported AUM of $5.012 billion and FEAUM of $3.169 billion. In the first quarter earnings release, S. Taube was quoted as saying: "In the past two quarters we have raised over $1 billion in our institutional business. We remain well-positioned to capitalize on both the retail and institutional fund flows and expect continued growth in both going forward." During the earnings call for the first quarter of 2016, when an analyst asked when management expected to be able to invest the "dry powder" in its SMA mandates, B. Taube responded that it could vary, but said, "I would put a pin in 18 to 24 months."

52. Nothing in the periodic report, press release or earnings call disclosed the fact that the $1 billion of capital "raised" in the past two quarters, and over $1 billion of Medley's reported AUM, consisted of non-discretionary "commitments" from SMA clients who had given Medley no reason to expect that they would invest the full amount of their "commitments" within the investment period of their SMA agreements.

53. Nothing in the periodic report, press release or earnings call disclosed the fact that the non-discretionary SMA clients whose "uncalled committed capital" had been included in the AUM and characterized as promising "dry powder" had approved in the first quarter of 2016, in one case, just $15 million in investments and in the other, no investments.

Misleading Statements in the Bond Offering Registration Statements

54. In connection with each offering of the baby bonds, Medley LLC filed a series of registration statements (collectively, the "Bond Offering Registration Statements"), on Forms S-1 and S-1/A, with the Commission. B. Taube and S. Taube signed each Form S-1 and authorized Medley LLC's Chief Financial Officer to sign any amendments to that registration statement on their behalf. The first registration statement was declared effective on August 4, 2016, the last on February 14, 2017. The Bond Offering Registration Statements were misleading in a number of respects.

55. The Bond Offering Registration Statements calculated Medley's AUM as including the "uncalled committed capital" from SMA Clients 1 and 2. The over $1 billion of non-discretionary "commitments" represented more than 20% of Medley's reported approximately $5 billion AUM, and roughly half of its "dry powder" available for future investment.

56. Despite the fact that non-discretionary SMAs represented a significant component of its reported AUM, neither the Bond Offering Registration Statements, nor any of the public disclosures by MDLY that preceded them, disclosed that Medley had non-discretionary SMAs. Because discretionary SMAs are more common than non-discretionary SMAs for alternative asset managers, a reader of the Bond Offering Registration Statements reasonably would have believed that all of Medley's reported AUM represented capital over which Medley had investment discretion.

57. By the time the first of the Bond Offering Registration Statements was declared effective on August 4, 2016, SMA Client 1 and 2's SMAs had been in place for at least two quarters. But SMA Client 2 had invested nothing, and SMA Client 1 had approved approximately $15 million out of its $800 million "commitment," over a six month period. If the SMAs continued to approve investments at that pace, they would not invest their full "commitment" amounts during their twenty-four and eighteen-month investment periods, respectively.

58. Nothing in the definition of AUM, in the risk factor section of the Bond Offering Registration Statements, or in any other part of the Bond Offering Registration Statements, disclosed that Medley was including, in its reported $5 billion AUM, over $1 billion of "commitments" from clients who were not contractually obligated to fund any particular amount and whose behavior indicated they were not on track to invest, and did not intend to invest, the full amounts of the "commitments" that had been included in AUM.

59. The Bond Offering Registration Statements also misleadingly emphasized, in the "Prospectus Summary" section near the beginning of the document, the amount of "new institutional capital" raised since September 2015 and the growth rate in Medley's AUM. In the same section, the document suggested that the new capital could be invested within 18 to 24 months and that FEAUM would increase as that occurred. These statements were misleading without the additional disclosure that over $1 billion of the new capital consisted of non-discretionary SMAs that, given the activity to date, were unlikely to invest their full "commitment" amounts.

60. The risk factor disclosures in the Bond Offering Registration Statements focused on risks relating to Medley's corporate structure and on risks common to many alternative asset managers. Despite the fact that approximately 20% of Medley's reported AUM, and almost 50% of its "dry powder," consisted of non-discretionary "commitments" by clients who were not on track to fully invest their "commitment" amounts, the risk factors contained no disclosure concerning those SMA accounts. Although Medley disclosed certain risks that were relevant to private funds and to non-discretionary SMAs, such as the risk that the client would terminate an agreement or fail to comply with a contractual obligation to contribute capital, none of the risk factors discussed the risks unique to the non-discretionary SMAs—most significantly, that the clients had no obligation to approve investments and that, if they declined to do so, all or a significant portions of the amounts included in AUM with respect to their SMA relationships might never be invested and, accordingly, might never become FEAUM.

61. After the registration statements were declared effective, Medley LLC conducted "teach-in" presentations to the brokers and financial advisers that were being encouraged to market the Medley LLC bonds to their clients. B. Taube spoke at, and approved the slides for, these presentations, which continued to emphasize that Medley's significant uninvested AUM constituted "dry powder" that positioned Medley well to increase its revenue in the future.

62. For example, the deck for the first offering stated: "With significant dry powder, we expect growth in Fee Earning AUM [] over time." These materials also stated that Medley's AUM was "not subject to traditional outflows" and that Medley had a "[p]redictable and growing earnings stream."

63. By the time the last of the Bond Offering Registration Statements was declared effective, SMA Clients 1 and 2 had continued to invest only minimally through their Medley accounts. SMA Client 1 was two-thirds of the way through the investment period set forth in its agreement with Medley, and it had invested only $44 million of its $800 million "commitment" amount, or an average of $11 million per quarter. SMA Client 2 was halfway through its 24-month investment period and had invested only $37 million of its $250 million "commitment." Nothing in the last registration statement, or any of MDLY or Medley LLC's other registration statements or other public disclosures, warned investors of the likelihood that the actual investments by these SMA clients would fall far short of their "commitment" amounts. The low investment rates of the non-discretionary SMA clients was widely known throughout Medley and was discussed a senior management off-site meeting in December 2016, which B. Taube attended.

64. B. Taube participated in the negotiations with SMA Client 1 to establish its most recent SMA with an $800 million "commitment," and he knew that SMA Client 2 had been told that specific amount of its agreement was unimportant because its SMA was non-discretionary. He also knew that the non-discretionary and uncommitted "commitment" amounts from SMA Clients 1 and 2 had been included in the $5 billion AUM and $1 billion of "new institutional capital commitments" highlighted in the registration statement and teach-in deck for the bond offerings. Finally, he knew that the non-discretionary clients were not approving investments at a rate consistent with their "commitments," which made it unlikely that their commitments would be fully invested within the 18 to 24 months suggested by the SMA agreements and by the Bond Offering Registration Statement's Prospectus Summary disclosure. He was negligent in allowing

Medley LLC to raise capital based on registration statements, which he signed, that omitted these material facts.

65. S. Taube also was negligent in allowing Medley LLC to raise capital based on the misleading and incomplete disclosures in the Bond Offering Registration Statements, which he signed. He knew that the non-discretionary SMAs represented a significant component of Medley's reported AUM, and he had a duty to ensure that its disclosures on significant matters were complete and accurate. As co-CEO, he was aware that investing in the SMAs had been slow, and he knew that the registration statements included the SMA "commitments" in AUM without disclosing their non-discretionary nature or the fact that the non-discretionary SMA clients were approving only a minimal number of investments in their Medley accounts.

CONTINUED DECLINE IN MEDLEY'S BUSINESS IN 2017 AND EARLY 2018

Medley's Unsuccessful Efforts to Launch Interval Funds

66. Over the course of 2015 and 2016, as the FEAUM in its core direct lending strategy declined steadily, B. Taube and S. Taube recognized that diversifying Medley's investment strategies would be critical to Medley's future growth.

67. Beginning in late 2016, as part of its diversification effort, Medley attempted to launch two interval funds. These funds were expected to receive a "seed" investment of $25 to $100 million from an institutional investor, after which they would be marketed broadly to retail investors.

68. The first interval fund was Sierra Total Return Fund ("STRF"). S. Taube was the CEO of STRF. With the exception of $2 million of seed capital from a related party, Medley never raised any capital for STRF. S. Taube received reports from STRF's distributor indicating that many brokers were declining to market STRF to their investors, for reasons that included STRF's failure to secure a meaningful seed investment from an institutional investor, as well as the poor performance of the Sierra BDC.

69. In late 2016, Medley began preparing to raise capital for another interval fund, Sierra Opportunity Fund ("SOF"). A draft registration statement was filed on October 31, 2016, but the registration statement was never finalized or declared effective. Medley never found a seed investor or distributor for SOF.

70. In April 2018, after learning how much it was costing MDLY to maintain STRF as a fund with only $2 million of related-party capital, B. Taube directed MDLY personnel to shut STRF down.

Continued Minimal Investing by Non-Discretionary SMAs

71. In 2017 and the first half of 2018, SMA Clients 1 and 2 continued to invest only minimal amounts through their Medley accounts.

72. SMA Client 1's low rate of investing was related to the performance of its existing Medley portfolio. The rate of return on its portfolio went from about 15% in mid-2016

to less than 10% in mid-2018. The percentage of SMA Client 1's portfolio on non-accrual status increased from 14% at the beginning of 2017 to 25.4% by mid-2018.

73. In 2017, the rate at which SMA Client 1 approved investments decreased further. The client approved approximately $6.25 million of investments per quarter that year. If the investment period of the SMA had expired as originally planned on June 30, 2017, the total amount invested would have been $61.2 million, or less than 10% of its "commitment" of $800 million.

74. In May 2017, SMA Client 1 agreed to extend the investment period of its active SMA agreement for another 12 months. SMA Client 1 invested approximately $3 million per quarter in the first half of 2018.

75. SMA Client 2 invested approximately $4.1 million per quarter over the first 18 months of its 24-month SMA. In December 2017, having approved investments of only $32.5 million out of the $250 million "commitment" in its 24-month SMA, SMA Client 2 agreed to extend the investment period of its SMA for another 24 months, from December 31, 2017 to December 31, 2019.

76. By the end of June 2018, SMA Client 1 had invested approximately $80.9 million of its $800 million "commitment," which at that point had been in place for more than two-and-a-half years. SMA Client 2 had invested approximately $48.9 million of its $250 million "commitment," which had been in place for nearly two-and-a-half years.

Poor Performance and Declining FEAUM

77. Not only did Medley's non-discretionary SMA clients continue to reject deals, but the performance of Medley's BDC clients continued to deteriorate in 2017 and the first half of 2018.

78. As a result of the poor performance of its clients' investments, Medley had to mark down the value of certain assets held by its clients, which lowered the FEAUM on which it could earn management fees. In addition, it struggled to raise new capital for its private funds, and it was unable to raise capital for either of its BDC clients. As a result, Medley's reported FEAUM declined from $3.19 billion at the end of 2016 to $2.96 billion at the end of the first half of 2018.

THE PROPOSED THREE-WAY MERGER

The Failed Third-Party Merger and Proposed Related-Party Transaction

79. Against this backdrop, from approximately June 2017 through April 2018, Medley retained multiple investment banks to assist it in finding a third-party buyer for its business. It engaged with numerous potential purchasers, a number of which conducted due diligence. These sales efforts ultimately failed.

80. In May 2018, less than a month after the most likely third party purchaser terminated negotiations, MDLY and the Taubes proposed a complex three-way merger in which

its two BDC clients, Sierra and MCC, would merge with one another and then acquire MDLY. Under the merger proposal, the combined BDC would continue to pay management fees to MDLY, and MDLY would use those fees to service its debt and other financial obligations. At the same time, the surviving entity would enter into lucrative compensation agreements with B. Taube, S. Taube and other executives.

81. After spending more than a month analyzing the proposed transaction and preparing materials with the assistance of its bankers, the Taubes proposed it to their BDC clients in mid-June 2018. Each BDC established a Special Committee of its Board of Directors (the "Special Committees") to consider the proposed transaction, and each of the Special Committees retained counsel and financial advisors to assist it.

82. On July 5, 2018, MDLY, MCC and Sierra submitted a memorandum to the Commission's Division of Investment Management outlining the proposed transaction in preparation for submitting a more formal application for exemptive relief. In a footnote, the memorandum stated that "STRF has not raised any capital to date and is expected to be liquidated" in connection with the proposed three-way merger.

83. A merger agreement was signed on August 9, 2018. The same day, Medley and the BDCs issued press releases and an investor presentation, both of which had been drafted by Medley. Both of these documents stated that the transaction was expected to be accretive to the "earnings" and/or net investment income ("NII") of the BDCs.[4] They also stated that growth in Medley "would" or was "expected" to occur, and that it would add to the NII and net asset value of the combined entity over time. The expected accretion of NII was one of four items identified in the investor presentation under the heading "Transaction Rationale."

Medley's Unreasonable Projections

84. In June 2018, in an effort to convince the Special Committees established by the Boards of the BDCs that the proposed surviving entity would benefit from owning MDLY, MDLY provided them with projections of its future performance from the second half of 2018 through 2021.

85. The projections, which were developed by B. Taube, among others, and reviewed by S. Taube, showed MDLY reversing its trend of decreasing FEAUM from 4Q15 through June 2018. The projections showed that MDLY would increase its FEAUM beginning in the second half of 2018 based, in significant part, on substantial future investment by the two non-discretionary SMAs, which up to that point had invested a small fraction of their SMA "commitment" amounts. The projections also included an assumption that Medley would be able to successfully raise significant capital for one or both of the interval funds for which they had unsuccessfully been trying to raise capital for over a year.

86. The Taubes knew that the financial advisors to the Special Committees were relying on the accuracy of the projections they had received from MDLY's management and were not building their own models of MDLY's future performance. The financial advisors to

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[4] NII, or the difference between investment income and expenses, is a key metric for BDC investors because it closely correlates with cash available for distribution to shareholders.

the Special Committees were advised that the projections "reflected the best currently available estimates and judgments" of MDLY's management about its future performance.

87. The projections assumed that FEAUM for SMA Client 1 would increase almost $40 million per quarter beginning in the third quarter of 2018. This amount reflected net FEAUM growth, which would require the client to invest even more than $40 million per quarter so that, as existing investments matured and the proceeds were distributed to the client, FEAUM would still increase by that amount. But as the Taubes knew, SMA Client 1 had approved only approximately $81 million of investments, or about $8 million per quarter, over the more than two-and-a-half years from the fourth quarter of 2015 through the second quarter of 2018.

88. The projections' assumption that SMA Client 1 would more than double its historical rate of investing beginning in the third quarter of 2018 was particularly unreasonable given the poor performance in its existing portfolio in 2017 and the first half of 2018.

89. The projections assumed that FEAUM for SMA Client 2 would increase by approximately $12 million per quarter beginning in the third quarter of 2018. This amount also reflected net FEAUM growth. But as the Taubes knew, SMA Client 2 had approved only approximately $49 million of investments, or less than $5 million per quarter, over the two-and-a-half years from the first quarter of January 2016 through the second quarter of 2018.

90. The projections about future investment by the non-discretionary SMA clients lacked a reasonable basis. Although both clients had extended the investment period for their existing SMAs, both had invested at very low rates compared with the size of their purported "commitments," and neither had given Medley any reason to expect that they would invest more rapidly, if at all, going forward.

91. Despite the fact that Medley planned to liquidate STRF and had not completed registration of SOF, Respondents included them in the projections they provided to their BDC Clients. The projections included STRF along with SOF on a single line captioned "SOF/STRF," and they predicted that Medley would raise $25 million per quarter, beginning in the fourth quarter of 2018, for these two funds combined. Medley did not have a reasonable basis to believe, for the purpose of the projections it provided to the Special Committees, that either fund would be able to raise new capital in the fourth quarter of 2018. STRF had failed to raise capital despite having an effective registration statement and an active distribution agreement in place for over a year; Medley was making plans to shut it down. SOF, meanwhile, did not even have an effective registration statement or a distribution agreement in place.

Respondents' Misleading Investment Advice to Their BDC Clients

92. Because the Respondents were each engaged in the business of providing advice to the clients regarding securities for compensation, they were investment advisers. Their proposal to their BDC clients that they should purchase MDLY was investment advice.

93. As discussed above, expected growth in NII, a key metric for BDC investors, was one of the key benefits that Medley represented the transaction would have for its BDC clients. Projected growth in Medley, which would be a subsidiary of the combined entity after the transaction, was a critical component of the projected increase in NII.

94. To support its claims that Medley would grow and ultimately prove a valuable asset of the proposed combined entity, Medley provided its clients with projections of its performance over the next several years. These projections predicted a dramatic turnaround in Medley's business, in contrast with the negative trend over at least the previous two-and-a-half years. In particular, the projections included assumptions about rates of investing by the SMAs, and capital raise activity by SOF/STRF, that clearly lacked a reasonable basis given Medley's failure to invest significant amounts of SMA capital, or to raise any unaffiliated capital for SOF/STRF, over the previous couple of years.

95. These misleading projections were used by MDLY, and later by the financial advisors to the BDCs, to analyze the potential benefits to the BDC clients of the proposed three-way merger. Among other calculations, MDLY and the financial advisors used the numbers provided by Medley in the projections to calculate the expected increase to NII. To perform these calculations, they combined the projected performance of MCC, Sierra and MDLY to arrive at an NII for the proposed combined entity, and compared that with the projected NII of each BDC if it were to continue as a separate entity.

96. In the slide deck that accompanied the initial proposal from Medley's management to MCC's Special Committee, Medley represented that MDLY's management expected the transaction to be "financially compelling to MCC shareholders," in part because it would be "10.9% accretive to 2019E net investment income (NII) per share." Similarly, Medley represented to Sierra that MDLY's management expected the transaction to be "financially compelling to [Sierra] shareholders," in part because it would be "12.9% accretive to 2019E net investment income (NII) per share."

97. As investment advisers to the BDCs, the Respondents had an affirmative obligation to provide to their clients all material information concerning the investment recommendation. Respondents did not inform their BDC clients that the projections used to support their recommendation were misleading because they used assumptions that lacked a reasonable basis.

December 2018 Proxy Statement for the Proposed Three-Way Merger

98. On November 6, 2018, Sierra, as the acquiring company, filed a preliminary proxy statement for the proposed transaction, and a registration statement for the issuance of securities by the proposed surviving entity, on Form N-14. The same day, MDLY filed a "going private" transaction statement on Schedule 13E-3. These filings were signed by B. Taube and S. Taube, among others. On December 21, 2018, MDLY filed an amended version of the Schedule 13E-3, also signed by B. Taube and S. Taube. The amendment included various attachments, including a presentation from a financial advisor to MDLY's Board of Directors that included high-level projections of MDLY's future growth. Also on December 21, 2018, MDLY, MCC and Sierra each filed a joint combined proxy statement and prospectus for the proposed transaction, pursuant to which Sierra offered shares of the proposed combined entity to the existing shareholders of MDLY and MCC. The November 6, 2018 registration statement and the December 21, 2018 joint combined proxy statement and prospectus (collectively, the "Proxy Statements") contained substantially identical information about Medley's business and the expected benefits to the BDC shareholders from the proposed transaction.

99. As discussed in paragraph 83 above, MDLY and the BDCs all filed an investor presentation deck, pursuant to Rule 425 under the Securities Act, the day the merger was announced. A number of other filings, including press release and conference call transcripts that discussed the proposed merger were also filed by MDLY and the BDCs on or after August 9, 2018.

100. The Proxy Statements included projections of MDLY's performance over the next four years. Although they did not include the level of detail that had been provided to the Special Committees, they included projections of increased FEAUM, revenues, core net income, core EBITDA, and free cash flows—all of which were based on the misleading projections that had been shared with the Special Committees, which had incorporated unreasonable assumptions about the SMAs and the interval funds. The projections showed steady increases year-over-year for each metric. Respondents were negligent in including these projections, which did not have a reasonable basis, in the Proxy Filings.

101. The Proxy Statements and related Rule 425 communications also included predictions of the "expected" increase to NII for each of the BDCs that would result if the transaction was consummated. Although these amounts were calculated by the financial advisors to the BDCs, they incorporated the unsupported projections provided by Respondents. Respondent MDLY was negligent in filing a proxy statement and related communications that included predictions of "expected" increases to NII based on unsupported projections, and the Taubes were negligent in approving the inclusion of those predictions without the additional information necessary to make those predictions not misleading.

102. On a conference call for MCC shareholders, S. Taube stated that the transaction "will be accretive to the net investment income, for both Medley Capital Corporation and Sierra Income Corporation, with expected stronger interest coverage for bondholders." He also predicted that "the wholly-owned asset management subsidiary, which pro forma for the deal will have approximately three billion dollars of third-party assets under management, will have the potential to drive Sierra net investment income and upside to NAV over time for the benefit of shareholders and bondholders." This statement, too, was based on calculations that incorporated the unreasonable projections.

103. The Proxy Statements and related Rule 425 communications failed to inform investors that Medley did not have a reasonable basis for its projections of future results of the surviving entity, or that the statements about the "expected" increases to net investment income that would result from the transaction incorporated those unreasonable projections.

104. The Proxy Statements and related Rule 425 communications also did not disclose any risks specific to areas of the business in which achievement of the projections might be more difficult. For example, they did not disclose that the projected rate of investing for Medley's non-discretionary SMAs was much higher than their historical rate of investing over the previous two years—or even the fact that those SMAs were non-discretionary and had no obligation to approve any investments.

February 2019 Supplemental Proxy Statement

105. On February 5, 2019, MDLY, MCC and Sierra filed a supplement to the joint proxy statement. The purpose of the filing was to respond to questions and concerns that an activist investor in MCC had raised concerning the proposed three-way merger.

106. The projections included in the supplemental proxy were materially misleading in numerous respects. For example, they incorporated the unreasonable projected investing levels for SMA Clients 1 and 2 and capital raise activity for the interval funds.

107. By February 2019, the projections that had been used in the merger negotiations, and described in the December 2018 proxy statement, were stale. As B. Taube and S. Taube knew, MDLY's performance in the intervening two quarters had differed significantly from the projections. Neither of the interval funds had, in fact, raised any capital in the fourth quarter of 2018. The FEAUM in SMA Client 1's account, instead of increasing by almost $80 million over the two quarters as projected, had decreased by $20 million. And SMA Client 2's FEAUM had not increased at all during the last two quarters of 2018.

108. Rule 14a-9 promulgated under Section 14(a) of the Exchange Act prohibits, among other things, proxy solicitations that omit to state any material fact necessary to correct a statement in an earlier proxy solicitation communication, relating to the same proposal, that has become false or misleading. In spite of this requirement, Medley issued the supplemental proxy statement, which reiterated and provided more detail about the stale projections, while failing to disclose that, in the two quarters since the projections had been prepared, actual performance had been far worse than projected.

The Renegotiated Proposed Three-Way Merger

109. On February 18, 2019, the activist investor sued in Delaware state court to enjoin the transaction. Although the transaction was not enjoined, on March 11, 2019, the court ordered additional disclosures concerning the process by which the transaction had been negotiated.

110. Following the court's decision, certain members of the MCC Special Committee resigned and were replaced, and the merger was renegotiated. In connection with the renegotiation of the merger, Medley prepared updated projections for MDLY, MCC and Sierra, which incorporated actual results through the fourth quarter of 2018. In spite of the fact that Medley's business had continued on its downward trajectory since the original projections, and the average quarterly rate of investing by the non-discretionary SMAs had decreased in the intervening quarters, the revised projections continued to assume that SMA Client 1's FEAUM would increase by almost $40 million per quarter going forward, and that SMA Client 2's FEAUM would increase by $12 million per quarter. These projections, which had lacked a reasonable basis in light of the actual activity from 2016 through the first half of 2018, were even more unreasonable given the actual activity in the second half of 2018, during which SMA Client 1's FEAUM had decreased and SMA Client 2's had not increased.

111. In making their renewed recommendation to their BDC clients that they acquire MDLY, Respondents provided these revised projections to the Special Committees of the BDCs. The revised, still-misleading projections were incorporated into statements in a revised joint

proxy statement/prospectus and related communications, which continued to state that the proposed merger was "expected to be accretive to NII per share for Sierra and MCC." The revised joint proxy statement/prospectus also repeated many of the misleading statements found in the original proxy statements.

112. Revised merger agreements, pursuant to which Sierra would acquire MDLY whether or not MCC merged into Sierra, were finalized on July 29, 2019, and a revised joint proxy statement/prospectus was filed on August 30, 2019. On May 1, 2020, however, Sierra's Board voted to terminate the proposed merger prior to final shareholder votes being collected and reported.

MEDLEY'S PERIODIC REPORTS

113. From at least August 11, 2016 through April 30, 2021, MDLY and Medley LLC filed annual reports pursuant to Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, and quarterly reports pursuant to Section 13(a) and Rule 13a-13 thereunder. B. Taube and S. Taube signed certifications with respect to each such filing that appeared consistent with the requirements of Exchange Act Rule 13a-14.

114. Medley and Medley LLC's annual periodic reports on Form 10-K were misleading from at least March 16, 2017, when the Forms 10-K for fiscal year 2016 were filed, through April 30, 2021, when the amended Forms 10-K for fiscal year 2020 were filed. Each of these filings contained the same materially misleading statements about AUM, the expected time period for investing new capital, and the risks of Medley's business that were included in Medley LLC's Bond Offering Registration Statements.

115. From at least August 11, 2016 through April 30, 2021, MDLY's and Medley LLC's quarterly periodic reports filed on Forms 10-Q were materially misleading in that they counted the "commitments" of the two non-discretionary SMA clients when reporting AUM.

116. In addition, with respect to each quarterly or annual filing, from at least August 11, 2016 through April 30, 2021, MDLY filed current reports on Form 8-K, pursuant to Exchange Act Rule 13a-11, attaching materially misleading press releases concerning financial results for the completed reporting period. These filings were misleading because they included the non-discretionary, uncommitted "commitments" of SMA Clients 1 and 2 when calculating AUM. In addition, some of these Form 8-K filings were misleading to the extent that they emphasized Medley's "dry powder" or the "new institutional commitments" received by Medley since September 2015, without disclosing the fact that most of the dry powder and/or new commitments consisted of non-discretionary SMAs with clients that had not actually committed to invest the full amount and that were not approving investments at a rate consistent with their "commitment" amounts.

MDLY AND MEDLEY LLC'S INADEQUATE DISCLOSURE CONTROLS AND PROCEDURES, AND B. TAUBE AND S. TAUBE'S MISLEADING CERTIFICATIONS

117. MDLY and Medley LLC failed to maintain adequate disclosure controls and procedures as required by Exchange Act Rule 13a-15(a) from at least June 2016 through May 2021.

118. Rule 13a-15(e) under the Exchange Act requires each reporting company to have controls and procedures designed to ensure that information required to be disclosed in its reports under the Exchange Act is recorded, processed, summarized and reported in a timely manner, and that such information is accumulated and communicated to its management, including its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosures.

119. MDLY and Medley LLC had no policies, controls or procedures designed to ensure that their risk factor disclosures were updated to reflect the risks faced by Medley's business. Specifically, Medley did not designate personnel to be responsible for accumulating information about the risks to Medley's business and did not have any controls or procedures to evaluate the adequacy of each periodic report's risk factors disclosures in light of such risks.

120. MDLY and Medley LLC's failure to maintain appropriate controls and procedures contributed to their failure to disclose the risks created by the fact that non-discretionary SMAs represented approximately 20% Medley's reported AUM, that they represented approximately 40-55% of its available dry powder, and that they were not investing at a pace consistent with their "commitment" amounts, was disclosed in its Exchange Act reports.

121. B. Taube and S. Taube did not design or cause others to design effective disclosure controls or procedures for MDLY or Medley LLC. Nor did they evaluate the effectiveness of MDLY's or Medley LLC's disclosure controls or procedures for the period of each certification. Despite this, they signed certifications for each periodic report for each entity during the relevant period that falsely stated that they had done so. These false certifications violated Exchange Act Rule 13a-14, and the failure to evaluate the effectiveness of MDLY and Medley LLC's disclosure controls and procedures each quarter also violated Exchange Act Rule 13a-15(b).

Violations

122. As a result of the conduct described above, Respondents willfully[5] caused violations by Medley LLC of Section 17(a)(2) of the Securities Act, which prohibits, in the offer or sale of any securities, obtaining money or property by means of any untrue statement of material fact or by omission of material facts necessary in order to make statements made not misleading. Negligence is sufficient to establish violations of Section 17(a)(2) of the Securities Act. *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

123. As a result of the conduct described above, Respondents willfully violated, and caused violations by Medley LLC of, Section 17(a)(3) of the Securities Act, which prohibits, in the offer or sale of any securities, engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Negligence is sufficient

[5] "Willfully," for purposes of imposing relief under Sections 203(e) and 203(f) of the Advisers Act, "'means no more than 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 Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

to establish violations of Section 17(a)(3) of the Securities Act. *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

124. As a result of the conduct described above, Respondents willfully violated Section 206(2) of the Advisers Act, which prohibits investment advisers from directly or indirectly engaging "in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." Scienter is not required to establish a violation of Section 206(2), which may rest on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n. 5 (D.C. Cir. 1992) (*citing SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)).

125. As a result of the conduct described above, Respondents willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which together make it unlawful for any investment adviser to a pooled investment vehicle to "[m]ake any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle" or to "engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle." Scienter is not required to establish a violation of Section 206(4) of the Advisers Act or the rules thereunder. *Steadman*, 967 F.2d at 647.

126. As a result of the conduct described above, Respondent MDLY willfully violated, and Respondents B. Taube and S. Taube caused MDLY's violations of, Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, which together prohibit the use of proxy statements containing materially false or misleading statements or omissions of material fact necessary to make statements made not misleading. Among other things, Rule 14a-9 prohibits soliciting by means of any proxy statement or other communication containing any statement which, at the time and in light of the circumstances under which it is made, omits to state any material fact necessary to correct any statement in any earlier communication with respect to the same subject matter which has become false or misleading. No showing of scienter is required to establish a violation of Section 14(a) of the Exchange Act and Rule 14a-9 thereunder. *See, e.g., Gerstle v. Gamble-Skogmo, Inc.* 478 F.2d 1281, 1299-1300 (2d Cir. 1973).

127. As a result of the conduct described above, Respondent MDLY willfully violated, and Respondents B. Taube and S. Taube caused MDLY's violations of, Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1, 13a-11 and 13a-13 thereunder, which require issuers with securities registered under Section 12 to file annual, quarterly, and other reports as the Commission may require. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), cert. denied, 440 U.S. 913 (1979). Respondents MDLY, B. Taube and S. Taube also caused violations by Medley LLC of Section 13(a) of the Exchange Act and Exchange Act Rules 13a-1 and 13a-13 thereunder. In addition, Respondent MDLY willfully violated, and Respondents B. Taube and S. Taube caused MDLY's violations of, Section 13(a) of the Exchange Act and Rule 12b-20 thereunder. Rule 12b-20 requires the inclusion of any additional material information in, among other things, periodic and annual reports, that is necessary to make required statements, in light of the circumstances under which they were made, not

misleading. Information regarding the financial condition of a company is presumptively material. *SEC v. Blavin*, 760 F.2d 706, 711 (6th Cir. 1985). No showing of scienter is necessary to establish a violation of Section 13(a) or Rules 12b-20, 13a-1, 13a-11 and 13a-13. *See, e.g., Savoy*, 587 F.2d at 1167. Respondents MDLY, B. Taube and S. Taube also caused violations by Medley LLC of Section 13(a) of the Exchange Act and Rule 12b-20 thereunder.

128. As a result of the conduct described above, Respondent MDLY willfully violated, and Respondents B. Taube and S. Taube caused MDLY's violations of, Exchange Act Rule 13a-15(a), which requires issuers who are required to file annual reports pursuant to Section 13(a) or 15(d) of the Exchange Act to, among other things, maintain disclosure controls and procedures designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Respondents MDLY, B. Taube and S. Taube also caused violations by Medley LLC of Exchange Act Rule 13a-15(a).

129. As a result of the conduct described above, Respondent MDLY willfully violated, and Respondents B. Taube and S. Taube caused MDLY's violations of, Exchange Act Rule 13a-15(b), which requires the management of issuers who are required to file annual reports pursuant to Section 13(a) or 15(d) of the Exchange Act, with the participation of the issuer's principal executive and financial officers, or persons performing similar functions, to evaluate the effectiveness of the issuer's disclosure controls and procedures, as of the end of each fiscal quarter. Respondents MDLY, B. Taube and S. Taube also caused violations by Medley LLC of Exchange Act Rule 13a-15(b).

130. As a result of the conduct described above, Respondents B. Taube and S. Taube willfully violated Exchange Act Rule 13a-14(a), which mandates, among other things, that an issuer's principal executive and financial officers make certain certifications in Exchange Act periodic reports.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, and Sections 203(e), 203(f) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Medley Management Inc.

(1) Respondent MDLY cease and desist from committing or causing any violations or any future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, and Section 13(a) of the Exchange Act and Rules 12b-10, 13a-1, 13a-11, 13a-13, 13a-15(a) and 13a-15(b) thereunder.

(2) Respondent MDLY is censured.

(3) Respondent MDLY shall pay a civil money penalty in the amount of $4,000,000 to the Securities and Exchange Commission, with such penalty to be paid, to the extent not offset by payments made in the bankruptcy case captioned *In re: Medley LLC*, Case No. 21-10526 (KBO) (Bankr. D. Del., filed March 7, 2021) (the "Bankruptcy Case") in accordance with Subsections E and F below, within the time set forth in Subsection I below.

B. Brook B. Taube

(1) Respondent B. Taube shall cease and desist from committing or causing any violations or any future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, and Section 13(a) of the Exchange Act and Rules 12b-10, 13a-1, 13a-11, 13a-13, 13a-14(a), 13a-15(a) and 13a-15(b) thereunder.

(2) Respondent B. Taube is censured.

(3) Respondent B. Taube shall pay a civil money penalty in the amount of $4,000,000 to the Securities and Exchange Commission, with such penalty to be paid, to the extent not offset by payments made in the Bankruptcy Case in accordance with Subsections E and F below, within the time set forth in Subsection I below.

C. Seth B. Taube

(1) Respondent S. Taube shall cease and desist from committing or causing any violations or any future violations of Section 17(a)(2) and 17(a)(3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, and Section 13(a) of the Exchange Act and Rules 12b-10, 13a-1, 13a-11, 13a-13, 13a-14(a), 13a-15(a) and 13a-15(b) thereunder.

(2) Respondent S. Taube is censured.

(3) Respondent S. Taube shall pay a civil money penalty in the amount of $2,000,000 to the Securities and Exchange Commission, with such penalty to be paid, to the extent not offset by payments made in the Bankruptcy Case in accordance with Subsections E and F below, within the time set forth in Subsection I below.

D. If, at any time up to and including the date 90 days after entry of this Order, one or more Respondent(s) execute written settlement agreement(s) with the Liquidating Trustee in the Bankruptcy Case providing for such Respondent(s) to make payments for further distribution

to bondholders,[6] each such Respondent shall provide a copy of such agreement (each, a "Settlement Agreement") to the Commission's counsel in this action. If no such settlement is executed by any Respondent within 90 days from entry of this Order, then each Respondent's civil penalty shall become due and shall be paid to the Commission within 14 days of the expiration of such 90-day period.

E. Upon payment by any Respondent to the Liquidating Trustee, indenture trustee or other disbursing agent designated by the Liquidating Trustee in writing (each, a "Disbursing Agent") in connection with the Bankruptcy Case, such Respondent may provide evidence of such payment to the Commission's counsel in this action in a form acceptable to the Commission's counsel.

F. Upon the conclusion of one or more distributions to bondholders in the Bankruptcy Case, any Respondent may provide the Commission's counsel with evidence, prepared by a Disbursing Agent in a form acceptable to the Commission's counsel, of final amounts paid from that entity to bondholders, with accompanying case identifying information.

G. The penalties ordered in Subsections A through C above shall be offset, in the order set forth in Subsection H below, by the amount of any cash payments made by any of the Respondents, as described in Subsection E, that are subsequently distributed to bondholders and documented as set forth in Subsection F within 180 days of entry of this Order. Payment of attorneys' fees or any other costs of administering the distribution to bondholders in the Bankruptcy Case, as well as any costs incurred by the notes indenture trustee in connection with the Bankruptcy Case, shall not be deemed payment to bondholders of Medley LLC for purposes of the civil penalty offsets set forth in this Subsection and in Subsection H below.

H. Upon the earlier of 180 days from the date of entry of this Order, or the receipt by the Commission's counsel of evidence documenting amounts paid by Respondents and distributed to bondholders in the Bankruptcy Case in accordance with Subsections E and F above, the Commission's counsel shall calculate the amount by which each Respondent's penalty may be offset. Such offsets shall be applied in the following manner: 1) the first $4 million shall be credited toward the penalty to be paid by MDLY, set forth in paragraph A.3 above, regardless of which Respondent paid such amount; 2) any amounts greater than $4 million shall be credited two thirds toward the penalty to be paid by Respondent B. Taube, set forth in paragraph B.3 above, and one third toward the penalty to be paid by Respondent S. Taube, set forth in paragraph C.3 above.

I. If, upon calculation of the offsets as set forth in Subsection H above, any Respondent's civil penalty amount is not offset in full by the payments made and distributed to bondholders in the Bankruptcy Case, the Commission's counsel shall notify the Respondent(s) of the amount(s) not offset. Any Respondent who receives such a notice shall, within 14 days of receiving the notice, remit to the Commission the outstanding balance of such Respondent's civil penalty.

[6] The term "bondholders," as used in this Section IV, refers to the holders of Medley LLC bonds who are identified under the Bankruptcy Plan as holders of Class 3 Note claims.

J. The Commission's counsel may extend the deadlines set forth in Subsections D through I above for good cause shown. Deadlines shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day. Any extension must be documented in writing.

K. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

L. Any payments required to be made pursuant to Subsection I shall 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 the payor as a 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 Sheldon L. Pollock, Associate Director, Division of Enforcement, New York Regional Office, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

M. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, 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, each Respondent agrees that in any Related Investor Action, Respondent shall not argue that Respondent is entitled to, nor shall Respondent benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payments of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty

Offset, each Respondent agrees that Respondent 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 Securities and Exchange Commission. 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 Respondent 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; it does not include the Bankruptcy Case.

V.

It is further Ordered that any debt for disgorgement, prejudgment interest, civil penalty or other amounts payable by Respondents B. Taube and S. Taube 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 Respondents B. Taube and S. Taube 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), and, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, Respondents B. Taube and S. Taube stipulate that the findings in the Order are true, and that such findings shall be accepted and deemed true, without further proof by any party, in any nondischargeability proceeding involving the Commission.

By the Commission.

Vanessa A. Countryman
Secretary