

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79003 / September 30, 2016

INVESTMENT ADVISERS ACT OF 1940
Release No. 4542 / September 30, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17604

In the Matter of

Moloney Securities Co., Inc.
and Joseph R. Medley, Jr.

Respondents.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF
1934, SECTIONS 203(e) 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 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 Moloney Securities Co., Inc. (“Moloney”) and that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 203(k) of the Advisers Act against Joseph Ronald Medley, Jr. (“Medley”) (Moloney and Medley hereinafter are collectively referred to as “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer 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, and except as provided herein in Section V with regard to Respondent Medley, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, 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 finds¹ that:

Summary

This matter concerns Moloney’s multiple and repeated violations of the Advisers Act, even after the staff of the Commission’s Office of Compliance Inspections and Examination (hereinafter, “exam staff”) conducted examinations of Moloney and issued three deficiency letters to Moloney in 2006, 2009 and 2012. In the 2006 exam deficiency letter, the exam staff noted, among other items, that Moloney did not have written compliance policies and procedures in place for its investment advisory business. In response, Moloney represented that it would correct the noted deficiencies. While Moloney developed its written compliance policies and procedures for its investment advisory business, the 2009 exam revealed that Moloney did not adequately implement those policies concerning best execution and principal transactions. Furthermore, Moloney did not properly conduct principal transactions. Accordingly, the exam staff issued a deficiency letter in 2009 that identified deficiencies relating to Moloney’s practices regarding principal transactions and Moloney’s failure to implement its compliance policies and procedures regarding principal transactions and best execution. Moloney responded that it would resolve these deficiencies moving forward.

Following the issuance of these two deficiency letters from the exam staff, Moloney received another deficiency letter from the exam staff in 2012 which identified that the firm’s past deficiencies regarding principal transactions and implementation of compliance policies and procedures were ongoing. Specifically, Moloney failed to: (i) properly conduct principal transactions; (ii) accurately disclose its practices regarding principal transactions; and (iii) implement the firm’s compliance policies and procedures regarding principal transactions and best execution. Accordingly, Moloney violated Sections 206(2), 206(3), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

During the relevant period, Medley served as Chief Investment Officer (“CIO”) and President of Moloney’s investment advisory business. Through these roles, Medley was responsible for overseeing Moloney’s investment advisory business during the relevant period² and

¹ The findings herein are made pursuant to each Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² The relevant time period is September 1, 2009 – September 30, 2011.

caused Moloney's violations of Sections 206(2), 206(3), 206(4) and 207 of the Advisers Act and Rule 206(4)-7 promulgated thereunder.

Respondents

1. Moloney is a Missouri corporation based in Manchester, Missouri. Moloney was registered with the Commission as an investment adviser during the relevant period and has been registered with the Commission as a broker-dealer since 1995. Moloney's investment advisory business also operated under the doing business as name, Moloney Securities Asset Management, during the relevant period.

2. Medley has been associated with Moloney from 1999 to the present as both a registered representative and as an investment advisory representative. From July 2008 and during the relevant period, Medley served as the CIO and President of Moloney's investment advisory business, which also operated under the doing business as name, Moloney Securities Asset Management, during the relevant period.

Background

Principal Transactions

3. In July 2009, the exam staff issued Moloney a deficiency letter that noted, among other items, that Moloney failed to properly conduct principal transactions. Specifically, the exam staff found that the firm failed to adequately disclose its capacity in writing in connection with principal transactions. The exam staff reminded Moloney of its obligations to comply with Section 206(3) of the Advisers Act when conducting principal transactions, which required the firm and its advisory representatives to: (i) disclose its capacity in writing to clients and (ii) obtain client consent before the completion of each principal transaction.

4. In response to this deficiency letter, Moloney stated that it would modify its practices, policies and procedures regarding principal transactions to ensure that the firm complied with Section 206(3) of the Advisers Act. In addition to representing that Moloney would improve the implementation of its existing policies concerning principal transactions, Moloney created new template forms for its investment advisory representatives to use for principal transactions. These template forms were designed to give clients notice of Moloney's capacity in the transactions and to obtain client consent to execute transactions completed on a principal basis. Moloney provided these templates and represented to the exam staff that the firm would use these template forms in efforts to ensure compliance with Section 206(3) of the Advisers Act.

5. The 2012 exam, however, revealed that Moloney did not improve its practices regarding principal transactions. For instance Moloney conducted 53 principal transactions during the two-year relevant period, but failed to use the new template forms in all but one of these transactions. Moloney continued to conduct principal transactions without both disclosing its

capacity in writing to clients and obtaining client consent before the completion of each transaction.

Best Execution Compliance Policies and Procedures

6. In 2006, the exam staff issued a deficiency letter that noted, among other items, that Moloney lacked written compliance policies or procedures that outlined how the firm's advisory business would seek best execution for its clients. Following the 2006 exam, Moloney developed new compliance policies and procedures structured to ensure that it would adequately satisfy its best execution obligations for its advisory clients. In connection with these new written policies, Moloney formed a best execution committee. Per these written policies, the best execution committee was required to hold quarterly meetings to review best execution and to take minutes reflecting the steps that the firm took to satisfy its best execution obligations.

7. Although Moloney created these new compliance policies and procedures to address best execution practices, the exam staff issued a deficiency letter in 2009 that noted, among other items, that Moloney did not implement these best execution policies and procedures. For instance, Moloney's best execution committee did not meet on a quarterly basis or take minutes of its meetings. In response to the 2009 deficiency letter, Moloney represented that the firm would improve its compliance with these policies and procedures.

8. Despite these representations, during the relevant period, Moloney continued to disregard its own compliance policies and procedures regarding best execution. In contravention of firm policy, Moloney did not: (i) convene a best execution committee on a quarterly basis; (ii) take minutes from best execution meetings; or (iii) review best execution for its clients on a consistent quarterly basis.

Disclosure Violations

9. Between September 1, 2009 and September 30, 2011, clients received a copy of the firm's Form ADV Part 2A. During this relevant period, Moloney's Form ADV Part 2A contained certain misstatements of material fact concerning principal transactions.

10. Moloney's Form ADV Part 2 A, Item 11, stated the following concerning principal transactions:

Moloney will not seek to act as principal without obtaining in each instance prior authorization and consent of the client, and providing the client with written confirmation and disclosure of such capacity prior to settlement of the trade.

11. These statements falsely indicated that Moloney would provide certain notice and obtain advisory client consent before executing principal transactions, when Moloney did not do so.

Failure to Implement Compliance Policies and Procedures

12. During the relevant period, Moloney failed to implement its compliance policies and procedures concerning principal transactions and best execution.

13. During the relevant time period, Moloney's Investment Advisory Policies and Procedures prohibited the following conduct related to principal transactions:

Acting as a principal in a transaction without first disclosing to the client the nature of such transaction, providing information sufficient to allow an informed decision, obtaining verbal consent and prior approval from the client to act in such capacity and disclosing and confirming such capacity to the client, in writing, prior to completion (settlement) of the transaction.

14. During the relevant time period, Moloney's Investment Advisory Policies and Procedures also provided that a best execution committee would meet and examine best execution on a quarterly basis:

A best execution committee comprised of the CEO, CCO, and CIO as well as other members of the management committee of the firms' broker/dealer will meet quarterly to review best execution reports provided by its clearing brokers to assess and evaluate execution speed, price improvement, liquidity and other factors to compare performance with the firm's expectations and industry standards. Execution data from competing clearing firms will also be examined, where available. The minutes of such meetings will be maintained on file at the home office.

15. Moloney failed to implement either of these written compliance policies and procedures.

16. Beginning in July 2008, through his roles as CIO and President, Medley was responsible for ensuring that Moloney conducted principal transactions in compliance with the Advisers Act and in a manner consistent with its written disclosures, and that the firm's practices accurately conformed and adhered to its compliance policies and procedures regarding principal transactions and best execution. Yet, Medley failed to ensure the proper conduct and implementation of the firm's principal transactions in compliance and conformance with the Advisers Act and its written disclosures concerning the same, and did not properly oversee the implementation of the firm's policies and procedures concerning principal transactions and best execution, or correct the firm's deficiencies related to the same.

Violations

17. As a result of the conduct described above, Moloney willfully violated Section 206(3) of the Advisers Act, which makes it unlawful for an adviser to engage in principal

transactions with a client without disclosing its capacity and obtaining client consent before completion of the transaction.³

18. As a result of the conduct described above, Moloney willfully violated Section 206(2) of the Advisers Act, which makes it unlawful for an adviser to engage in any transactions, practice, or course of business that operates as a fraud or deceit upon any client.

19. As a result of the conduct described above, Moloney willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, which makes it unlawful to provide investment advice without adopting and implementing written compliance policies and procedures reasonably designed to prevent violations of the Advisers Act.

20. As a result of the conduct described above, Moloney willfully violated 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 with the Commission ... or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

21. As a result of the conduct described above, Medley caused Moloney’s violations of Sections 206(2), 206(3), 207 and 206(4) of the Advisers Act, and Rule 206(4)-7 promulgated thereunder.

Respondents’ Remedial Efforts

22. In determining to accept the Offers, the Commission considered remedial acts promptly undertaken by Respondents and cooperation afforded the Commission staff. Prior to the issuance of this Order, Moloney reimbursed certain clients for principal transactions which did not comply with Section 206(3) of the Advisers Act. Respondents also segregated the firm’s brokerage and advisory accounts to assist with a more efficient review of the firm’s advisory business. In April 2014, Moloney hired a compliance consultant to revise and enhance its compliance procedures and policies. Furthermore, the firm hired an experienced chief compliance officer to assist with Moloney’s investment advisory business.

Undertakings

Respondent Moloney has undertaken to:

23. **Independent Compliance Consultant.** Engage, within 30 days of the Order, an Independent Compliance Consultant not unacceptable to the staff for a one year period to review Moloney’s investment adviser compliance program and to assist

³ 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 Acts.” *Id.* (quoting *Gearheart & Otis, Inc. v. SEC*, 348 F.3d 798, 803 (D.C. Cir. 1965)).

Moloney in developing and implementing policies and procedures reasonably designed to promote Moloney's compliance with the Advisers Act. Moloney's engagement of the Independent Compliance Consultant shall include, but not be limited to, Moloney's obligations with respect to principal transactions, best execution, and disclosure requirements to advisory clients.

24. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Moloney, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Moloney, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

25. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Moloney agrees to provide such evidence. The certification and supporting material shall be submitted to Barry Isenman, Assistant Regional Director, U.S. Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604 with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

26. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates 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.

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 15(b) and 21C of the Exchange Act, and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents cease and desist from committing or causing any violations and any future violations of Sections 206(2), 206(3), 207, 206(4), and Rule 204-4(7) promulgated thereunder.

B. Moloney is censured.

C. Moloney shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$34,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Moloney may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Moloney 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) Moloney 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 Moloney 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 Barry Isenman, Assistant Regional Director, U.S. Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

D. Medley shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$7,500 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following ways:

- (1) Medley may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Medley 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) Medley 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 Medley 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 Barry Isenman, Assistant Regional Director, U.S. Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois 60604.

E. 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 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' payments of a civil penalties 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 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 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.

G. Respondent Moloney shall comply with the undertakings enumerated in Paragraphs 23-26 above.

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 Respondent Medley, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Medley⁴ under this Order or any other judgment, order, consent

⁴ This paragraph applies solely to Respondent Medley.

order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent Medley 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