STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:	)
	) **ADMINISTRATIVE ORDER**
KEVIN MARSHALL MCCALLUM	) **NO. OB-2024-0011**
	)
RESPONDENT	)

ORDER TO BAR

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, has determined as follows:

RESPONDENT

1. KEVIN MARSHALL MCCALLUM ("McCallum") (CRD# 2222586) was an Alabama resident with a listed address of 2141 Brook Highland Ridge, Birmingham, Alabama 35242. McCallum, who was employed as a broker dealer agent and investment advisor with LPL Financial LLC (CRD# 6413) in Birmingham, Alabama, was registered with the Commission as a Registered Agent from May 2012 through June 2019.

STATEMENT OF FACTS

2. The Commission received a complaint from an attorney representing a client of McCallum's. The complaint alleged McCallum overconcentrated customer accounts with Medley Capital Corporation stock which caused significant losses to the account values. The complaint also stated the Financial Industry Regulatory Authority (FINRA) suspended McCallum's broker dealer agent registration and ordered restitution. The Commission initiated an investigation to gather further information regarding this matter.

3. Information obtained by the Commission indicates from May 2017 through June 2019, McCallum made unsuitable recommendations to 12 customers, resulting in an overconcentration in a high-risk, publicly traded business development company (BDC). A

recommendation may be unsuitable if it results in an undue concentration in a particular security and the correspondent increased risk of loss is inconsistent with the customer's investment profile.

4. During this period, McCallum recommended concentrated investments to 12 customers in a high-risk and highly speculative publicly-traded BDC that exhibited signs of financial distress, even though his customers had low or moderate risk tolerances and investment objectives and lacked any prior experience investing in BDCs.

5. The BDC that McCallum recommended held first and second lien secured loans, unsecured loans, and equity in small and medium-sized companies in a variety of industries, including construction, banking, telecommunications, pharmaceutical, and oil and gas companies. The risk of loss for investments in this BDC was magnified because of the company's financed debts. Additionally, the illiquidity of the BDC's investments presented risk that it would be difficult for the BDC to sell such investments if required, causing it to realize significantly less than the value at which the BDC recorded the investments. Further, the BDC was exposed to interest rate risk that could affect its investment returns. From May 2017 through June 2019, the BDC's net asset value (NAV) declined steadily as a result of write downs to its loan portfolio. Likewise, the BDC's share price and the percentage of NAV at which it traded declined throughout the period.

6. During the period between May 2017 and June 2019, McCallum's recommendations resulted in the 12 customers concentrating approximately 17% to 60% of their liquid net worth in the BDC. Four of the customers were over the age of 60 and seven of the customers invested retirement funds in the BDC. McCallum's recommendations generated commissions to LPL totaling $37,492.78, of which $14,231.61 was paid to McCallum.

7. After June 2019, the BDC's stock price continued to decline. In November 2019, McCallum's customers began to file arbitration claims against LPL concerning McCallum's recommendations of the BDC. One customer who realized losses from the sale of her positions obtained payment from LPL in connection with resolving her arbitration claims. Four other customers also sold their positions and realized losses totaling $1,222,092.29.

8. Commission Rule 830-X-3.12 requires that *"Every dealer, investment adviser and every associated person thereof who recommends to a customer the purchase, sale or exchange of any security shall have reasonable grounds to believe and shall believe that the recommendation is suitable for such customer on the basis of information furnished by such customer after*

reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by such dealer, investment adviser or associated person thereof."

9. Additionally, during the same period, McCallum sent emails to customers about the BDC that contained unwarranted and exaggerated claims, opinions and forecasts, did not provide a fair and balanced treatment of the risks and benefits of the investment, and contained promissory statements.

10. McCallum sent emails about the BDC that violated the content standards for registered representative's communications with the public. FINRA Rule 2210 governs communications by registered representatives with the public. FINRA Rule 2210(d)(1)(A) requires that all member communications be based on principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or industry. FINRA Rule 2210(d)(1)(B) provides that no member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim. FINRA Rule 2210(d)(1)(F) provides that communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.

11. Between October 2015 and June 2019, McCallum sent seventeen emails about the BDC to 19 customers, including eight of the customers to whom he made the unsuitable recommendations, that violated the content standards of FINRA Rule 2210. All of the emails were unbalanced, in violation of FINRA Rule 2210(d)(1)(A) and 11 of the emails failed to provide a sound basis for evaluating the facts, also in violation F1NRA Rule 2210(d)(1)(A). Thirteen of the emails contained unwarranted and promissory statements, in violation of FINRA Rule 2210(d)(1)(B). Finally, in 15 of the emails McCallum provided impermissible projections and/or exaggerated or unwarranted claims, opinions or forecasts in violation of FINRA Rule 2210(d)(1)(F).

12. For example, in a March 2018 email to a customer, McCallum discussed the customer's account performance, including the purported benefits of continuing to hold a position in the BDC, but failed to explain the associated risks, in violation of FINRA Rule 2210(d)(1)(A). McCallum also made statements that were promissory and unwarranted in violation of FINRA Rule 2210(d)(1)(B), by stating that the stock price of the BDC would increase to 80% to 90% of the NAV, stating that he did not anticipate further downside in the customer's portfolio, stating

that he was confident that the portfolio would rise back to previous levels and higher, and predicting that the Federal Reserve would raise interest rates three times in the year, which would benefit the BDC. Finally, McCallum also included an impermissible projection of the anticipated 12-month dividend cashflow from the BDC, in violation of FINRA Rule 2210(d)(1)(F).

13. McCallum executed a FINRA Letter of Acceptance, Waiver and Consent No. 2019062569501, issued on June 17, 2021, that suspended McCallum from association with any FINRA member in any capacity for one year, imposed a $25,000 fine, ordered disgorgement of $14,231.61 plus interest, and ordered restitution in the amount of $1,222,092.29 plus interest.

CONCLUSIONS OF LAW

14. Pursuant to Section 8-6-3(j)(2) and (6), Code of Alabama 1975, the Commission may, by order, deny, suspend or revoke any registration, or censor or bar any applicant or registrant or any officer, director, partner or person occupying a similar status or performing similar functions for a registrant, from employment with a dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in this state if the Commission finds that the order is in the public interest and that the applicant or registrant willfully violated or failed to comply with a rule issued under the Act or is the subject of an order, adjudication or determination entered within the past 10 years by a securities or commodities agency or a national securities exchange or association, or an administrator of another state or a court of competent jurisdiction.

15. **RESPONDENT** violated Commission Rule 830-X-3.12 when **RESPONDENT** overconcentrated clients' accounts into the BDC when it was not suitable for the clients.

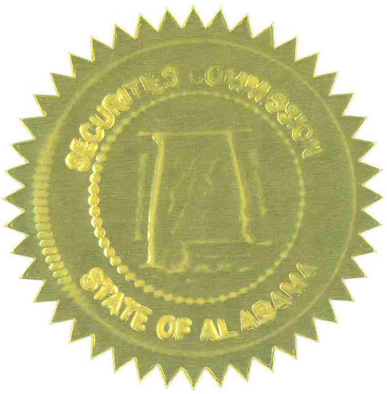
16. **RESPONDENT** is the subject of a FINRA Letter of Acceptance, Waiver, and Consent entered within the past 10 years suspending him from associating with any FINRA member, in any capacity.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that are available to it under the Act.

This Order is appropriate in the public interest for the protection of investors and is consistent with the purposes of the Act.

ACCORDINGLY, IT IS HEREBY ORDERED that the **RESPONDENT** be barred from registration or engaging in any securities activities in the state of Alabama.

Entered at Montgomery, Alabama, this 17th day of May 2024.



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