

Medley Capital Corp  
Form 8-K  
April 17, 2019

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d)**

**of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported):**

**April 17, 2019 (April 15, 2019)**

**Medley Capital Corporation**

**(Exact name of registrant as specified in its charter)**

**Delaware**                      **814-00818**      **27-4576073**  
(State or other jurisdiction) (Commission (IRS Employer  
of incorporation)              File Number) Identification No.)

**280 Park Avenue, 6<sup>th</sup> Floor East, New York, NY**      **10017**  
(Address of principal executive offices)              (Zip Code)

**(212) 759-0777**

**(Registrant's telephone number, including area code)**

**Not Applicable**

**(Former name or former address, if changed since last report)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 1.01 Entry into a Material Definitive Agreement.**

On April 15, 2019, Medley Capital Corporation (“MCC”) entered into a binding term sheet (the “Settlement Term Sheet”) by and among MCC, Brook Taube, Seth Taube, Jeff Tonkel, Mark Lerdal, Karin Hirtler-Garvey, John E. Mack, Arthur S. Ainsberg, MCC Advisors LLC, Medley LLC and Medley Group LLC (the “Medley Parties”), on the one hand, and FrontFour Capital Group LLC (“FFCG”), FrontFour Master Fund, Ltd. (“FFMF,” together with FFCG, “FrontFour”), on behalf of themselves and a class of similarly situated stockholders of MCC, on the other hand, in connection with the action styled *In re Medley Capital Corporation Stockholder Litigation*, C.A. No. 2019-0100-KSJM (the “Class Action”).

The Settlement Term Sheet provides that MCC will seek to obtain the agreement and/or consent of Sierra Income Corporation (“Sierra”) to effect certain amendments to (i) the Agreement and Plan of Merger between MCC and Sierra, dated as of August 9, 2018 (the “MCC Merger Agreement”), and (ii) the Agreement and Plan of Merger, dated as of August 9, 2018, by and among Medley Management Inc. (“MDLY”), Sierra, and Sierra Management, Inc. (the “MDLY Merger Agreement,” together with the MCC Merger Agreement, the “Merger Agreements”). If the foregoing amendments are entered into they will, among other matters (as described in further detail in the Settlement Term Sheet): (a) extend the Outside Date (as defined in the Merger Agreements) to October 31, 2019; (b) permit MCC’s special committee of independent directors (the “MCC Special Committee”) to undertake a sixty day “go shop” process to solicit superior transactions to the proposed merger of MCC with and into Sierra (the “MCC Merger”) and (c) if the MCC Merger is consummated, create a settlement fund, consisting of \$17 million in cash and \$30 million of Sierra stock, with the number of shares of Sierra stock to be calculated using the pro forma NAV reported in the future proxy supplement describing the amendments to the MCC Merger Agreement, which will be distributed to eligible members of the Class (as defined in the Settlement Term Sheet). In connection with the Settlement Term Sheet, MDLY has executed an acknowledgement and agreement to take certain actions, including consenting to certain amendments to the MCC Merger Agreement and agreeing to certain amendments to the MDLY Merger Agreement, in furtherance of the transactions contemplated thereby.

As described in Item 5.02 below, upon execution of the Settlement Term Sheet, David A. Lorber and Lowell W. Robinson were appointed to the board of directors of MCC (the “Board”). In addition, the Settlement Term Sheet provides that MCC and FrontFour will enter into a Governance Agreement pursuant to which, among other matters, FrontFour will be subject to customary standstill restrictions and be required to vote in favor of the MCC Merger at a meeting of stockholders to approve the MCC Merger Agreement and the directors nominated by the Board for election at MCC’s 2019 annual meeting of stockholders.

Under the Settlement Term Sheet, the parties have agreed to cooperate to reduce the agreements reflected therein to a definitive stipulation of settlement (the “Settlement Stipulation”) on or before April 30, 2019, and to obtain approval of the Court of Chancery of the State of Delaware (the “Court”) as soon as reasonably practicable thereafter. The Settlement Stipulation will provide for mutual releases between and among FrontFour and the Class, on the one hand, and the Medley Parties, on the other hand, of all claims that were or could have been asserted in the Class Action. The Medley Parties will also release all claims arising out of or relating to the prosecution and settlement of the Class

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Action and all claims that were or could have been asserted (other than claims against NexPoint Advisors, L.P. and its affiliates) in the litigation pending in the United States District Court for the Southern District of New York (the “Federal Action”), and FrontFour and the Class will release all claims arising out of or relating to the prosecution and settlement of the Federal Action.

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Under the Settlement Term Sheet, MCC and FrontFour have also undertaken to work together in good faith to agree to supplemental disclosures relating to the transactions contemplated by the Merger Agreements consistent with the Memorandum Opinion issued by the Court on March 11, 2019, in connection with the Class Action.

If the contemplated amendments to the Merger Agreements have not been entered into by May 15, 2019, the Settlement Term Sheet may be terminated by MCC or FrontFour.

The contemplated amendments to the Merger Agreements require the agreement of Sierra and there can be no assurance that such agreement will be obtained or that agreements on the amendments to the Merger Agreements will be reached.

A copy of the Settlement Term Sheet is attached hereto as Exhibit 10.1 and incorporated by reference herein. The foregoing description of the Settlement Term Sheet is qualified in its entirety by reference to such exhibit.

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On April 15, 2019, in connection with the execution of the Settlement Term Sheet, the Board appointed David A. Lorber and Lowell W. Robinson to the Board to fill the vacancies on the Board created by the resignations of Mark Lerdal and John E. Mack, respectively. There are no current or proposed transactions between MCC and either Messrs. Lorber or Robinson or their immediate family members which would require disclosure under Item 404(a) of Regulation S-K promulgated by the Securities and Exchange Commission.

Mr. Lorber will serve as a Class I director of the Board for a term expiring at MCC's 2021 annual meeting of stockholders. Mr. Robinson will serve as a Class III director of the Board for a term expiring at MCC's 2020 annual meeting of stockholders.

In addition, the Board added Messrs. Lorber and Robinson to the MCC Special Committee, with Mr. Lorber serving as Chair of such committee. Mr. Lorber will also serve as a member of the nominating and corporate governance committee and the compensation committee of the Board, and Mr. Robinson will serve as a member of the audit committee of the Board.

As a result of the foregoing, MCC regained compliance with (1) the requirement that listed companies have a majority of independent directors as set forth in Section 303A.01 of the NYSE Listing Company Manual and (2) the requirement that the audit committee of a listed company to have a minimum of three members as set forth in Section 303A.07 of the NYSE Listing Company Manual.

**Item 8.01 Other Events.**

A copy of the press release issued by MCC on April 16, 2019, relating to the matters described in Items 1.01 and 5.02 of this Current Report on Form 8-K is filed herewith as Exhibit 99.1 and incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

Exhibit No.	Description
10.1	<u>Settlement Term Sheet, dated April 15, 2019</u>
99.1	<u>Press Release, dated April 16, 2019</u>

## **SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

### **MEDLEY CAPITAL CORPORATION**

By: /s/ Richard T. Allorto, Jr.  
Name: Richard T. Allorto  
Title: Chief Financial Officer and Secretary

Date: April 17, 2019