within the meaning of the Act because their respective investment advisers came under common control as a result of the merger of Chase into Chemical on March 31, 1996. Applicant and MFG therefore relied on the exemption provided in rule 17a–8 to effect the Plan.[2] The Board and the board of trustees of MFG each determined, in accordance with rule 17a–8, that participation in the Plan was in the best interests of applicant or MFG, as applicable, and that the interests of existing shareholders of applicant or MFG, as applicable, would not be diluted as a result of participation in the Plan.

4. A proxy statement dated February 8, 1996 describing the Plan, a management letter, and proxy cards soliciting shareholder approval of the Plan were distributed to applicant's shareholders. Preliminary copies of these proxy materials were filed with the SEC by MFG as part of a registration statement on Form N–14 on December 29, 1995 and amended on February 8, 1996; definitive copies of these proxy materials were filed with the SEC on February 15, 1996.

5. On April 2, 1996, at a special meeting of the shareholders of the Merger Portfolios, shareholders of the Short Term Government Fund, the Government Securities Fund, the Blue Chip Fund, the Investor Shares of the Small Cap Fund, and the Value Fund considered and approved the Plan. The special meeting with respect to the CBC Benefit Shares of the Small Cap Fund was adjourned to solicit additional proxies. At a special meeting on April 16, 1996, holders of CBC Benefit Shares of the Small Cap Fund considered and approved the Plan.

6. As of May 3, 1996 (the ''Closing Date''), applicant had an aggregate NAV of $209,505,473. On the Closing Date, all of the assets and liabilities of each of the Merger Portfolios were exchanged for corresponding shares of a corresponding portfolio of MFG.[3] This exchange was based on a ratio determined by dividing the NAV per share of the relevant Merger Portfolio by the NAV per share of the corresponding MFG portfolio. Applicant's shareholders then received a *pro rata* distribution of the shares of the corresponding MFG portfolio received by the relevant Merger Portfolio. The merger Portfolio shares held by such shareholders then were cancelled. The Non-Merger Portfolios did not participate in the Plan, as they have never issued any shares and have no shareholders, assets, or liabilities.

7. All expenses incurred in connection with the Plan, including legal, printing, audit, and proxy solicitation expenses, were borne by Chase (including its affiliates), as the ultimate parent of the investment advisers to applicant and MFG. These expenses amounted to approximately $2,330,335.

8. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was applicant a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

9. Applicant filed Articles of Transfer with respect to the merger transaction in the State of Maryland on May 6, 1996, and intends to file Articles of Dissolution in the state following the grant of an order pursuant to this application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[2] Rule 17a–8 provides relief from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers. The staff of the Division of Investment Management has stated that it would not recommend that the Commission take enforcement action under section 17(a) of the Act if investment companies that are affiliated persons solely by reason of having investment advisers that are under common control rely on rule 17a–8. *See* Capitol Mutual Funds and Nations Fund Trust (pub. avail. Feb. 24, 1994).

[3] Holders of CBC Benefit Shares and Investor Shares received Institutional and Class A shares, respectively, of the Vista Small cap Equity Fund.

[Rel. No. IC–22372; 812–10374]

Sirrom Capital Corporation; Notice of Application

December 5, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (''Act'').

APPLICANT: Sirrom Capital Corporation.

RELEVANT ACT SECTIONS: Exemption requested under sections 6(c) from sections 12(d)(1) 18(a), 19(b), and 61(a) of the Act.

SUMMARY OF APPLICATION: Applicant requests an order to permit it to form a wholly-owned subsidiary that would operate as a special purpose bankruptcy remote subsidiary and borrow funds under a new credit facility.

FILING DATE: The application was filed on October 1, 1996, and amended on December 5, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1996, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 500 Church Street, Suite 200, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, internally managed investment company that has elected to be treated as a business development company (''BDC'') pursuant to section 54 of the Act. As a BDC, applicant furnishes capital to small businesses through loans to, and investments in, small companies.[1] Applicant typically makes its loans in the form of secured debt with a relatively high fixed interest rate and with warrants to purchase equity securities of the borrower. In the past, applicant has funded its loan originations with financing from the SBA and a syndicate of commercial banks. Applicants already has borrowed a significant portion of the debt

[1] applicant also makes loans to small, privately-owned companies through Sirrom Investments, Inc. (''Investments''), a wholly-owned, closed-end investment company that is licensed as a small business investment company (''SBIC'') by the Small Business Administration (''SBA''). Applicant previously obtained an order with respect to the establishment of Investments and certain of its activities (the ''SBIC Order''). Investment Company Act Release Nos. 22016 (June 13, 1996) (notice) and 22057 (July 9, 1996) (order).

financing available to it from these sources, however, and needs to establish an alternative source of financing.

2. Applicant has signed a commitment letter with ING Capital Markets (''ING'') to establish a credit facility in the amount of $100 million. To provide ING with collateral that would be clearly and legally separate from that pledged to other lenders, applicant intends to form a special purpose, bankruptcy remote subsidiary (''Newco''). Newco will be a Delaware corporation and a registered closed-end investment company. Applicant will transfer to Newco at least $20 million in loans as a capital contribution. In consideration of such transfer, Newco will issue to applicant 1,000 shares of its common stock, comprising all of its issued and outstanding shares. Newco's activities will be limited to: (a) Purchasing secured loans to small businesses and related warrants from applicant; (b) owning and holding such loans and warrants; (c) funding the purchases of such loans and warrants by borrowing from financial institutions; and (d) activities ancillary to such activities. The directors and officers of Newco will be identical to those of applicant, except that Newco will have no more than two directors who are not directors or affiliated persons of applicant. Applicant states that this arrangement is necessary to permit Newco to obtain the opinions required to secure an investment grade rating from one or more nationally recognized rating agencies for the commercial paper to be issued by ING.

3. Newco would borrow funds under the ING credit facility, and would use such funds to purchase new loans and related warrants from applicant. Newco would pledge these loans and warrants to an indenture trustee as collateral to secure the funds loaned by ING. ING in turn would fund borrowings under the credit facility by issuing commercial paper secured by the pool of loans and warrants owned by Newco. Newco would pay a spread to ING over the rate paid on the commercial paper issued, along with other fees to originate and administer the credit facility.

4. The following kinds of inter-company transactions may arise in the future between applicant and Newco: (a) Applicant may make additional investments in Newco either as contributions to capital, purchases of additional stock, or loans; (b) from time to time Newco will pay dividends and make other distributions to applicant with respect to its investment in the stock of Newco, including capital gains dividends; (c) applicant and Newco may from time to time hold loans made to the same borrower; (d) Newco will purchase portions of applicant's portfolio investments in accordance with the terms of the credit facility; and (e) applicant may repurchase all or a portion of portfolio investments held by Newco at such time as they are released from the pool of collateral established under the credit facility.

Applicant's Legal Analysis

1. *Section 12(d)(1).* Section 12(d)(1)(A) of the Act prohibits any registered investment company from purchasing or otherwise acquiring the securities of another investment company, except as permitted by that section. In addition, section 12(d)(1)(C) prohibits any investment company from purchasing or otherwise acquiring any security issued by a registered closed-end investment company if the acquiring company (and any affiliated investment companies) would own more than 10% of the voting stock of the closed-end investment company.

2. Because applicant will acquire all of the capital stock of Newco, may make loans or advances to it, and may guarantee its indebtedness (which also could be considered as the acquisition of its debt securities), applicant requests an exemption from section 12(d)(1). Applicant asserts that its acquisition of Newco's securities will not compromise the objectives of section 12 or harm the public interest because it has agreed that it will exercise its rights as the shareholder of Newco on matters requiring shareholder approval only as directed by its shareholders. Accordingly, applicant believes that the relationship of its shareholders to Newco's activities will be no different than if it were to carry out such activities directly.

3. *Sections 18(a) and 61(a).* Section 18(a) of the Act prohibits a closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in the section. ''Asset coverage'' is defined in section 18(h) as the ratio that the value of the total assets of an issuer, less all liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Section 61 applies section 18, with certain modifications, to a BDC.

4. Applicant is a BDC, and Newco is a closed-end investment company. Both will be subject to the asset coverage requirements of section 18(a) on an individual basis, although these requirements are modified by section 61(a) with respect to applicant as a BDC. Applicant also is subject to the asset coverage requirements of section 18(a) on a consolidated basis because it may be an indirect issuer of senior securities with respect to any indebtedness of Newco. Accordingly, applicant would be required to treat as its own all assets held directly by itself and Newco (with the value of its investment in Newco eliminated). Applicant also would be required to treat as its own any liabilities of Newco (with intercompany receivables and liabilities eliminated), including liabilities of Newco in respect of senior securities.

5. Applicant seeks an exemption from sections 18(a) and 61(a) to permit the issuance of senior securities as described in the application. Applicant submits that, absent an exemption from the consolidated asset coverage requirements of sections 18(a) as modified by section 61(a), its ability to obtain financing would be restricted. Applicant believes that such an exemption is in the public interest because Newco's activities will in all material respects have the same economic effect with respect to applicant's shareholders as if applicant had engaged in them directly.

6. *Section 19(b).* Section 19(b) of the Act prohibits any investment company from distributing long-term capital gains more than once every 12 months. Because the warrants held as collateral for funds borrowed under the credit facility may be released from the collateral pool upon repayment of the small business loan related thereto, Newco would be free to transfer any such warrant to applicant or sell it to a third party, thereby potentially realizing a long-term capital gain. Applicant asserts that it and Newco effectively will be one company, and that no purpose would be served by limiting distributions from Newco to one per year. Applicant also submits that more frequent distributions would permit it to more efficiently manage its internal cash flow, resulting in administrative cost savings and, thus, a benefit to its shareholders. Accordingly, applicant seeks an exemption from section 19(b).

7. *Section 6(c).* Section 6(c) permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. The relationship of applicant's shareholders to the activities to be carried out by Newco will be no different than if such activities were carried out by applicant because (a) Newco will be a wholly-owned subsidiary of applicant, and (b) applicant has agreed that it will exercise its rights as the shareholder of Newco

on matters required by the Act to be approved by shareholders only as directed by its shareholders. Accordingly, applicant believes that the requested exemptions meet the section 6(c) standards.

Applicant's Conditions

Applicant agrees that any exemptive relief granted will be subject to the following conditions:

1. Applicant at all times will own and hold, beneficially and of record, all of the outstanding voting capital stock of Newco.

2. Applicant will not cause or permit Newco to change any of its fundamental investment policies, or take any other action referred to in section 13(a) of the Act, unless such action shall have been authorized by applicant after approval of such action by a vote of a majority of applicant's outstanding voting securities.

3. No person shall serve or act as investment adviser to Newco under circumstances subject to section 15 of the Act unless applicant's directors and shareholders shall have taken the action with respect thereto also required to be taken by Newco's directors and shareholders.

4. Newco shall have two directors who are not directors of applicant as long as a majority of its board of directors consists of directors who are also directors of applicant. Notwithstanding the foregoing, the board of directors of Newco will be elected by applicant as the sole shareholder of Newco, and such board will be composed of the same persons that serve as directors of applicant except to the extent noted above.

5. Applicant will not itself issue, and will not cause or permit Newco to issue, any senior security or sell any senior security of which applicant or Newco is the issuer except as hereinafter set forth: (a) applicant and Newco may issue and sell to banks, insurance companies, and other financial institutions their secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, provided the following conditions are met: (i) such notes or evidences of indebtedness are not intended to be publicly distributed, (ii) such notes or evidences of indebtedness are not convertible into, exchangeable for, or accompanied by any options to acquire any equity security (except that, with respect to applicant, the restrictions in this clause (ii) shall not be applicable except to the extent they are applicable generally to BDCs), and (iii) immediately after the issuance or sale of any such notes or evidence of indebtedness by either applicant or Newco, applicant and Newco, on a consolidated basis, and applicant individually, shall have the asset coverage that would be required by section 18(a) if applicant and Newco each had elected to become a BDC pursuant to section 54 of the Act; and (b) in addition, Newco may borrow from applicant. None of the borrowings set forth in clause (b) above shall be deemed senior securities for purposes of any order issued pursuant to the application.

6. Applicant will file with the SEC the financial statements required by the federal securities laws on a consolidated basis as to applicant and Newco. Applicant will provide to its shareholders financial statements on a consolidated basis as to applicant and Newco, except when unconsolidated financial statements are required under generally accepted accounting principles.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–31396 Filed 12–10–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38017; File No. SR–PHLX–96–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Relating to Modifying the Formula Which Calculates the Settlement Value for Dollar Denominated Delivery Options (''3D Options'')

December 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1996, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange also filed Amendments Nos. 1, 2, and 3 on November 19, 1996, December 2, 1996 and December 3, 1996, respectively, the substance of which are incorporated into this notice.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rule Change

The Exchange proposes to change PHLX Rule 1057, in order to modify the formula which calculates the settlement value for Dollar Denominated Delivery currency options (''3D Options''). PHLX proposes to modify the existing formula to reflect the fact that there may be a variation in the appropriate number of bids and offers that are available for each currency. The Exchange would randomly select at least five (5) such bids and offers from a pool of twenty-five (25) active interbank foreign exchange participants, and set the number for each individual currency prior to commencing trading 3D Options on that currency.[1] Due to the variation in the number of bids and offers, the Exchange also proposes to amend the rule to state that it will discard one third of the highest offers and one third of the lowest bids and offers to arrive at the closing settlement value.

The text of the proposed rule change follows. (New language is in italics and deletions are in brackets.)

Rule 1057. 3D (Dollar Denominated Delivery) foreign currency options are cash settled options. The Exchange shall contract with a market information vendor(s) which shall act as the Exchange's designated agent(s) to generate the closing settlement value utilizing the following methodology sanctioned by the Exchange described below.

The closing settlement price shall be determined by the Exchange's designated agent(s) as follows: On every expiration date for 3D contracts, at 10:30 A.M. (EST or EDT), the Exchange designated agent(s) shall collect a bid and offer quotation for the current foreign exchange spot/price [from at least fifteen (15) interbank foreign exchange participants randomly selected from a list of twenty-five (25) active interbank foreign exchange market participants.] *from an appropriate number of interbank foreign exchange participants determined by the Exchange selected at random from a pool of twenty-five (25) active interbank foreign exchange participants. A minimum number of five (5) interbank foreign exchange participants must be selected from the group of 25 interbank foreign exchange participants.* After discarding [the five] *one-third of the* highest offers and [five] *one-third of the* lowest bids, the Exchange's designated agent will arithmetically average the remaining [ten (10) bids and ten (10) offers] *bids and offers* to arrive at a closing settlement value.

In the event of the Exchange's designated agent(s) inability to generate a closing settlement value, the Exchange will poll the interbank market participants directly (by

[1] The Exchange would have the ability to obtain bids and offers from more than five interbank foreign exchange participants as determined by the Foreign Currency Option Committee.