

same number of contribution base units for which the seller was obligated to contribute;

(B) the purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) the contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale. Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the statute be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, *The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations* 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of a variance or exemption from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 4204), a request for a variance or exemption from the bond/escrow requirement under any of the tests established in the regulation (sections 4204.12 & 4204.13) is to be made to the

plan in question. The PBGC will consider variance or exemption requests only when the request is not based on satisfaction of one of the four regulatory tests under regulation sections 4204.12 and 4204.13 or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. section 552(b)(4) (Freedom of Information Act).

Under section 4204.22(a) of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and section 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from P&O Ports Florida, Inc., (the "Purchaser") for a variance from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of SSA Gulf, Inc., d/b/a Harborside Refrigeration and Garrison on May 26, 2006. In the request, the Purchaser represents among other things that:

1. The Seller was obligated to contribute to the Tampa Maritime Association-International Longshoremen's Association Pension Plan (the "Plan") for the purchased operations.

2. The Purchaser has agreed to assume the obligation to contribute to the Plan for substantially the same contribution base units as the Seller.

3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Purchaser withdraw from the Plan and fail to pay its withdrawal liability.

4. The estimated amount of the withdrawal liability of the Seller with respect to the operations subject to the sale is \$1,191,462.

5. The amount of the bond/escrow established under section 4204(a)(1)(B) is \$421,864.

6. On April 9, 2007, the Purchaser established an escrow account for \$421,864 on behalf of the Plan through

Bank of America. Although the escrow account was established after the date required by section 4204(a)(1)(B), the Plan has agreed to accept the escrow while the variance request is pending with the PBGC.

7. In support of its request for a variance, the Purchaser has submitted a copy of its consolidated financial statements for 2005 and 2006, but has asserted that the information therein is privileged and confidential within the meaning of 552(b)(4) of the Freedom of Information Act.

8. A complete copy of the request was sent to the Plan and the collective bargaining representative of the Seller's employees by certified mail, return receipt requested.

Comments

All interested persons are invited to submit written comments on the pending variance request to the above address. All comments will be made a part of the record. The PBGC will make the comments received available on its Web site, www.pbgc.gov. Copies of the comments and the non-confidential portions of the request may be obtained by writing or visiting the PBGC's Communications and Public Affairs Department (CPAD) at the above address or by visiting that office or calling 202-326-4040 during normal business hours.

Issued at Washington, DC, on this 26th of July, 2007.

Charles E. F. Millard,

Interim Director.

[FR Doc. E7-15060 Filed 8-2-07; 8:45 a.m.]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27917; 812-13290]

Medallion Financial Corp.; Notice of Application

July 30, 2007.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an Application for an Order Under Section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant, Medallion Financial Corp., requests an order approving a proposal to grant certain stock options to directors who are not also employees or officers of the applicant (the "Eligible Directors") under its 2006 Non-Employee Director

Stock Option Plan (the "2006 Director Plan").

DATES: The application was filed on May 10, 2006 and amended on July 30, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 24, 2007, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicant, 437 Madison Avenue, 38th Floor, New York, New York, 10022.

FOR FURTHER INFORMATION CONTACT: Shannon Conaty, Senior Counsel, at (202) 551-6827, or Nadya B. Roytblat, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-0102 (telephone 202-551-5850).

Applicant's Representations

1. Applicant, a Delaware corporation, is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.¹ Applicant is a specialty finance company that has a leading position in originating, acquiring and servicing loans that finance taxicab medallions and various types of commercial businesses. Applicant operates its businesses through five wholly-owned subsidiaries, Medallion Funding Corp., Medallion Capital, Inc., Medallion Business Credit, LLC, Freshstart Venture Capital Corp.

¹ Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

and Medallion Bank. Applicant is managed by its executive officers under the supervision of its board of directors ("Board"). Applicant's investment decisions are made by its executive officers under authority delegated by the Board. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving its proposal to grant certain stock options under the 2006 Director Plan to its Eligible Directors.² Applicant has a nine member Board. Six of the seven current Eligible Directors on the Board are not "interested persons" (as defined in section 2(a)(19) of the Act) of the applicant. The Board approved the 2006 Director Plan at a meeting held on February 15, 2006 and Applicant's stockholders approved the 2006 Director Plan at the annual meeting of stockholders held on June 16, 2006.³ The 2006 Director Plan will become effective on the date on which the Commission issues an order on the application (the "Approval Date").⁴

3. Applicant's Eligible Directors are eligible to receive options under the 2006 Director Plan. Under the 2006 Director Plan, a maximum of 100,000 shares of applicant's common stock, in the aggregate, may be issued to Eligible Directors. There is no limit on the number of applicant's common stock which may be issued to any one Eligible Director. Each of the Eligible Directors elected at the annual meeting of the Board on June 16, 2006 and on June 1, 2007 will be granted options to purchase 9,000 shares of applicant's common stock on the Approval Date. The 2006 Director Plan also provides that (i) at each annual shareholders' meeting after the Approval Date, each Eligible Director elected or re-elected at

² The Eligible Directors receive a \$35,000 per year retainer payment, \$3,500 for each Board meeting attended, \$1,000 for each telephonic Board meeting, from \$1,500 to \$3,000 for each committee meeting attended, and reimbursement for related expenses.

³ On May 31, 2007, the Company's Board of Directors amended the 2006 Director Plan by unanimous board consent. The Company and its legal counsel have determined that such changes did not necessitate a shareholder vote under Section 10 of the 2006 Director Plan or pursuant to the provisions to the Act and the rules promulgated thereunder.

⁴ Applicant previously obtained similar relief for its 1996 Amended and Restated Non-Employee Director Stock Option Plan (the "1996 Director Plan", and together with the 2006 Director Plan, the "Director Plans"). See Medallion Financial Corp., Investment Company Act Rel. Nos. 22350 (Nov. 25, 1996) (notice) and 22417 (Dec. 23, 1996) (order), as amended by Medallion Financial Corp., Investment Company Act Rel. Nos. 24342 (Mar. 17, 2000) (notice) and 24390 (Apr. 12, 2000) (order). The 1996 Director Plan expired on May 21, 2006. Applicant intends to implement the 2006 Director Plan to replace the 1996 Director Plan.

that meeting to a three-year term will be granted options to purchase 9,000 shares of applicant's common stock; and (ii) upon the election, reelection or appointment of an Eligible Director to the Board other than at the annual shareholders' meeting, that Eligible Director will be granted an option to purchase that number of shares of common stock determined by multiplying 9,000 by a fraction, the numerator of which is equal to the number of whole months remaining in the new director's term and the denominator of which is 36. The options issued under the 2006 Director Plan will become exercisable at each annual meeting of applicant's shareholders with respect to one-third the number of shares covered by such option.

4. Under the terms of the 2006 Director Plan, the exercise price of an option will not be less than 100% of the current market value of, or if the stock is not quoted on the date of the grant, the current net asset value per share of, applicant's common stock on the date of the issuance of the option as determined in good faith by the members of the Board not eligible to participate in the 2006 Director Plan (the "Director Plan Committee").⁵ Options granted under the 2006 Director Plan will expire ten years from the date of grant and may not be assigned or transferred other than by will or the laws of descent and distribution. Any Eligible Director holding exercisable options under the 2006 Director Plan who ceases to be an Eligible Director for any reason, other than permanent disability, death or removal for cause, may exercise the rights the director had under the options on the date the director ceased to be an Eligible Director for a period of up to three months following that date. No additional options held by the director will become exercisable after the three month period. In the event of removal of an Eligible Director for cause, all outstanding options held by such director shall terminate as of the date of the director's removal. Upon the permanent disability or death of an Eligible Director, those entitled to do so under the director's will or the laws of descent and distribution will have the right, at any time within twelve months after the date of permanent disability or death, to exercise in whole or in part any rights which were available to the

⁵ Under the 2006 Director Plan, "current market value" (defined as "fair market value") is the closing sales price of applicant's common shares as quoted on the NASDAQ Global Select Market on the date of the grant, as reported in the Wall Street Journal (Northeast Edition).

director at the time of the director's permanent disability or death.

5. Applicant's officers and employees, including employee directors, are eligible or have been eligible to receive options under applicant's 1996 Employee Stock Option Plan (the "1996 Employee Plan"), which expired on May 21, 2006, and the 2006 Employee Stock Option Plan (the "2006 Employee Plan", and, together with the 1996 Employee Plan, the "Employee Plans"). Eligible Directors are not eligible to receive stock options under the Employee Plans. The remaining 2,061,304 shares of applicant's common stock subject to issuance to officers and employees under the Employee Plans represent 11.78% of the 17,502,515 shares of applicant's common stock outstanding as of June 30, 2007. Eligible Directors are eligible or have been eligible to participate in applicant's Director Plans under which 175,749 shares of applicant's common stock remain for issuance, representing 1.00% of shares of applicant's common stock outstanding as of June 30, 2007. The 100,000 shares of applicant's common stock that may be issued to Eligible Directors under the 2006 Director Plan represent 0.57% of shares of applicant's common stock outstanding as of June 30, 2007. Therefore, the maximum number of applicant's voting securities that would result from the exercise of all outstanding options issued and all options issuable to directors, officers, and employees under the Director Plans and the Employee Plans would be 2,237,053 shares of applicant's common stock, or approximately 12.78% of shares of applicant's common stock outstanding as of June 30, 2007. Applicant has no outstanding warrants, options, or rights to purchase its voting securities, other than the options granted or to be granted to its directors, officers, and employees under the Director Plans and the Employee Plans.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the

voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that its proposal to grant certain stock options to Eligible Directors under the 2006 Director Plan meets all the requirements of section 61(a)(3)(B). Applicant states that the Board is actively involved in the oversight of applicant's affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, applicant states that the Eligible Directors provide guidance and advice on financial and operational issues, credit and loan policies, asset valuation and strategic direction, as well as serving on committees. Applicant believes that the availability of options under the 2006 Director Plan will provide significant at-risk incentives to Eligible Directors to remain on the Board and devote their best efforts to ensure applicant's success. Applicant states that the options will provide a means for the Eligible Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with those of applicant and its stockholders. Applicant asserts that by providing incentives such as options, applicant will be better able to maintain continuity in the Board's membership and to attract and retain the highly

experienced, successful and motivated business and professional people who are critical to applicant's success as a BDC.

4. Applicant states that the maximum amount of voting securities that would result from the exercise of all outstanding options issued or issuable to the directors, officers, and employees under the Director Plans and Employee Plans would be 2,237,053 shares of applicant's common stock, or approximately 12.78% of applicant's shares of common stock outstanding as of June 30, 2007, which is below the percentage limitations in the Act. Applicant asserts that, given the relatively small amount of common stock issuable to Eligible Directors upon their exercise of options under the 2006 Director Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of applicant's common stock.

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

Nancy M. Morris,
Secretary.

[FR Doc. E7-15058 Filed 8-2-07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56159; File No. SR-Amex-2007-76]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to an Extension of the Penny Quoting Pilot Program

July 27, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 25, 2007, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Amex. On July 27, 2007, the Exchange filed Amendment No. 1 to the proposal. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.