

significantly lower than those of the Strong funds.

c. The performance of the N&B Bond and Calvert Balanced Portfolios has been essentially equivalent to or better than the performance of the portfolios that will be eliminated.

d. The substitutions will, in all cases, be at the net asset value of the respective portfolios without the imposition of any transfer or similar charge.

e. The costs of the substitutions will be borne by Acacia National and SCM and will not be borne by policyowners. No charges will be assessed to effect the substitutions.

f. Within 5 days after the substitutions, Acacia National will send to policyowners written notice of the substitutions that identifies the shares that were substituted and discloses the shares which replaced them. Included in the mailing will be a supplement to the prospectus that discloses completion of the substitutions.

g. For 30 days following the mailing of the notice of substitutions, policyowners may transfer substituted assets without any charge. No such transfer will be counted as a transfer under any contractual provision which limits the number of transfers in any year.

h. The substitutions will in no way alter the insurance benefits to policyholders or the contractual obligations of Acacia National.

i. The substitutions will in no way alter the tax benefits to policyowners. Counsel for Acacia National has advised that the substitutions will not give rise to any tax consequences to the policyowners.

### Applicants' Conclusions

Applicants assert that, for the reasons and upon the facts set forth in the application, the requested order approving the proposed substitution meets the standards set forth in Section 26(b) of the 1940 Act and should be granted.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-27697 Filed 10-17-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22853; 812-10574]

### Equus II Incorporated; Notice of Application

October 10, 1997.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

**SUMMARY OF APPLICATION:** Applicant Equus II Incorporated seeks an order approving its 1997 Stock Incentive Plan (the "Plan") for certain of its directors, and the grant of certain stock options under the Plan.

**FILING DATES:** The application was filed on March 11, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

**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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 3, 1997, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 2929 Allen Parkway, Suite 2500, Houston, Texas 77019.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or Christine Y. Greenlees, 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, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942-8090).

### Applicant's Representations

1. Applicant is a business development company ("BDC") within

the meaning of section 2(a)(48) of the Act.<sup>1</sup> Applicant requests an order pursuant to section 61(a)(3)(B) of the Act approving the Plan as it applies to each director of the applicant who is neither an officer nor an employee of the applicant ("Non-employee Director") and to each new Non-employee Director who may be elected in the future to applicant's board of directors. The order also would approve the automatic grant of options, pursuant to the Plan, to purchase shares of applicant's common stock to each current and future Non-employee Director.

2. Applicant's board of directors (the "Board") consists of eight members. Five members of the Board are persons who are not "interested persons" (as defined in section 2(a)(19) of the Act) of the applicant. The Plan was approved by the Board on February 7, 1997, and by the applicant's shareholders on April 9, 1997, at a special meeting of shareholders. Officers, employees, and directors of the applicant are eligible to participate in the Plan. Applicant seeks approval of the Plan as it applies to Non-employee Directors. On May 15, 1997, the Board implemented part of the Plan. The portion of the Plan applicable to Non-employee Directors will not be implemented until an order is received from the Commission approving that portion of the Plan.

3. Each Non-employee Director of the applicant receives an annual director's fee of \$20,000, a fee of \$2,000 for each meeting of the Board attended in person, a fee of \$1,000 for participation in each telephonic meeting and for each committee meeting attended, and reimbursement of all out-of-pocket expenses relating to attendance at meetings.

4. Equus Capital Management Corporation ("ECMC") is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act") and serves as the applicant's management company. ECMC receives no compensation from the applicant under section 205(1) of the Advisers Act. Other than stock options issued to officers of the applicant under the Plan, the applicant does not currently have outstanding any warrants, options or rights to purchase its voting securities.

5. The Plan provides that each Non-employee Director serving on the Board as of the later of the date of approval of

<sup>1</sup> 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.

the Plan by: (a) The applicant's shareholders, or (b) an order of the Commission, will be granted a nonqualified stock option to purchase 5,000 shares of common stock, \$.01 par value (the "Common Stock"), of applicant that will vest 50% immediately and 16⅔% on the first, second, and third anniversaries of the date of the grant. Each new Non-employee Director will be granted upon his or her election a nonqualified stock option for a similar number of shares. In addition, beginning with the 1998 annual meeting of shareholders of applicant, each Non-employee Director elected will, on the first business day following the annual meeting, be granted a nonqualified stock option to purchase 2,000 shares of Common Stock. The exercise price of the options will be the closing price of the Common Stock on the American Stock Exchange on the date the option is granted or, if no market for the Common Stock exists, the current net asset value of the shares of the Common Stock. Each option will be exercisable during the period beginning six months after the date of the grant and ending ten years after the date of the grant.

6. In the event that a Non-employee Director's services are terminated because of death, permanent disability, or retirement, any invested options will vest, and the Non-employee Director or, if the Non-employee Director is not living, the Non-employee Director's estate, may exercise his or her options during the one-year period following the date of death, permanent disability, or retirement. The termination of a Non-employee Director's services will not otherwise accelerate the termination date of his or her options. Options may not be assigned or transferred other than by will or the laws of descent and distribution.

#### 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) of the Act.

2. Section 61(a)(3)(B) of the Act 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 SEC 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 paragraph (1) of section 205 of the Advisers Act, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act 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.

4. Applicant represents that the Plan and the options that would be granted automatically to current and future Non-employee Directors would comply with the requirements of section 61(a)(3)(B) of the Act. In addition, in support of its application, applicant states that its directors devote substantial time and attention to matters relating to applicant's portfolio companies, thus functioning more like the board of an operating company than the board of a traditional investment company. Applicant relies extensively on the judgment and experience of its directors, and believes that these factors are critical to its success. Further, applicant states that the Plan would provide incentives to the Non-employee Directors to remain on the Board and devote their best efforts to the success of applicant's business.

5. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Under the Plan, the amount of stock options that would be granted to the six current Non-employee Directors would be 30,000 shares in 1997 and 12,000 shares each year commencing in 1998, or approximately 1% of the 4,300,682 shares of Common Stock outstanding. Applicant submits that, given the relatively small number

of options that may be granted and exercised by Non-employee Directors under the Plan, the exercise of stock options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of applicant's Common Stock. In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance would not exceed 20% of the outstanding voting securities of the applicant. Further, because the options may not be exercised until six months after the date of grant and 50% of the stock options granted to Non-employee Directors vest on a ratable basis over the three years following the date of grant, the plan provides Non-employee Directors with an incentive to remain with the applicant.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-22851; 812-10356]

#### Investors Bank & Trust Company, et al.; Notice of Application

October 10, 1997.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for an order under (i) section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") granting relief from section 12(d)(1) of the Act; (ii) sections 6(c) and 17(b) of the Act granting relief from section 17(a) of the Act; and (iii) section 17(d) of the Act and rule 17d-1 to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants request an order to permit the lending agent for certain investment companies to invest cash collateral derived from securities lending transactions in shares of affiliated registered investment companies organized as a master-feeder fund.

**APPLICANTS:** Investors Bank & Trust Company (the "Bank"); Merrimac Funds (the "Feeder Trust"), on behalf of its Merrimac Cash Fund and Merrimac Treasury Fund, each a series of the Feeder Trust, and each other series of the Feeder Trust established in the future in which cash collateral from securities lending transactions may be invested (collectively, the "Feeder