

advisory and other services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Directors, to the scope and quality of services provided under the Current Agreement. If personnel providing material services during the Interim Period change materially, AAM-P will apprise and consult with the Board to assure that the Board, including a majority of the Independent Directors, are satisfied that the services provided will not be diminished in scope or quality.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23228; 812-10944]

Sirrom Capital Corporation; Notice of Application

May 29, 1998.

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, Sirrom Capital Corporation, requests an order approving its Amended and Restated 1995 Stock Option Plan for Non-Employee Directors (the "Amended Plan"). The requested order would supersede and existing order.

FILING DATES: The application was filed on December 31, 1997 and amended on April 29, 1998.

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 June 23, 1998, 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, NW., Washington, DC 20549. Applicant, 500 Church Street, Suite 200, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Edward P. Macdonald, 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 is available for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 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.¹ Applicant is a specialty finance company that primarily makes loans to small businesses. Applicant's investment objectives are to achieve both a high level of current income and long-term growth in the value of its assets. Applicant's investment decisions are made by a loan approval committee comprised of senior management in accordance with policies approved by its board of directors (the "Board"). Applicant assists its portfolio companies in establishing independent and effective boards of directors and management teams, devising business strategies, obtaining necessary financing, and increasing the value of the companies. 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 the Amended Plan for directors who are neither officers nor employees of applicant during the two year period preceding the date of grant of an option ("Non-Employee Directors").² On December 19, 1997, the Board adopted the Amended Plan subject to approval

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.

² Currently, there are eight Non-Employee Directors: E. Townes Duncan, William D. Eberle, Edward J. Mathias, Robert A. McCabe, Jr., Raymond H. Pirtle, Jr., L. Edward Wilson, P.E., Keith M. Thompson, and John A. Morris, Jr., M.D. However, John A. Morris, Jr., M.D. will not participate in the Amended Plan. Each Non-Employee Director receives \$10,000 per year if the Director attends 75% of the regular board meetings held during the year and receives reimbursement of expenses incurred in attending these meetings.

by the SEC and applicant's shareholders. On April 17, 1998, applicant's shareholders approved the Amended Plan. The Amended Plan will become effective on the date it is approved by the SEC. The requested order would supersede an existing order.³

3. The Amended Plan provides for: (i) An initial automatic grant of options to purchase 12,000 shares of applicant's common stock to a Non-Employee Director upon election to the Board; and (ii) an automatic grant of options to purchase an additional 4,000 shares of applicant's common stock to each Non-Employee Director re-elected to the board in April 1997 and April 1998 and to each Non-Employee Director who may be re-elected to the Board in the future (collectively, "Options"). A total of 492,000 shares of applicant's common stock is issuable under the Amended Plan.

4. Under the terms of the Amended Plan, the exercise price of an Option is 100% of the current market price of applicant's common stock on the date of issuance of the Option. The Options vest and become exercisable on the first anniversary of the date of grant and expire within ten years from the date of grant.

5. In the event of the death or disability of a Non-Employee Director during the Director's service, unexercised Options immediately become exercisable and may be exercised for a period of three years following the date of death (by the Director's personal representative) or one year following the date of disability. In the event of the termination of a Non-Employee Director for cause, any unexercised Options terminate immediately. If a Non-Employee Director's service is terminated for any reason other than by death, disability, or for cause, the Options may be exercised within one year immediately following the date of termination.

6. Applicant's officers and employees, including employee directors, are eligible to receive options under applicant's two other stock option plans (under which Non-Employee Directors are not entitled to receive awards). The total number of shares of common stock that would be issuable under the Amended Plan and these two other stock option plans is 7,199,098 shares and represents 19.4% of the total number of shares of applicant's outstanding common stock as of April 23, 1998. Applicant has no warrants, options or rights to purchase its

³ *Sirrom Capital Corporation*, Investment Company Act Release No. 21667 (January 11, 1996).

outstanding voting securities other than those granted to its directors, officers, and employees pursuant to these three 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) 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 section 205(1) of the Investment Advisers Act of 1940, 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 Amended Plan would comply with the requirements of section 61(a)(3)(B) of the Act. Applicant submits that the terms of the Amended Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant states that the Options would not be immediately

exercisable and do not vest until the first anniversary of the date of the grant. Applicant asserts that under the Amended Plan, even if each of the current Non-Employee Directors is re-elected for a period of three years, the total amount of common stock issuable under the Options would be 164,000 shares (28,000 shares of which would not yet be exercisable) or 0.44% of applicant's outstanding common stock. In addition, applicant states that the total number of shares of common stock issuable under the Options that may be granted in any one year to the current Non-Employee Directors represents .08% of applicant's outstanding common stock. Applicant asserts that, given the small number of common stock issuable upon exercise of the Options, the exercise of the Options pursuant to the Amended Plan will not have a substantial dilutive effect on the net asset value of applicant's common stock. Applicant states that, the total amount of voting securities that would be issuable under the Amended Plan at the time of issuance would not exceed 20% of applicant's outstanding voting securities.

5. Applicant states that its directors are directly involved in the oversight of the applicant's affairs, and applicant relies on the judgment and experience of its directors. Applicant also states that Non-Employee Directors are involved in applicant's ongoing operations and marketing activities, and applicant's management regularly solicits Non-Employee Directors for their ideas and advice with respect to prospective investments, acquisitions, and operational matters. Applicant believes that the Options will provide additional incentives to Non-Employee Directors to remain on the Board. Applicant also believes that the Options provide a means for Non-Employee Directors to increase their ownership interests in the applicant, thereby further ensuring close identification of their interests with those of the applicant and its shareholders. Applicant asserts that incentives such as Options will maintain continuity in the Board's membership and help attract and retain highly experienced professionals that are critical to applicant's success as a BDC.

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

[Release No. 34-40026, File No. SR-NASD-98-34]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Cancellations and Suspensions for Failure To Comply With Arbitration Award

May 26, 1998.

On May 1, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² The filing was thereafter amended on May 4, 1998.³ In its proposal, the Association sought approval of an amendment to its Code of Procedure, to permit members of the NASD Regulation, Inc. ("NASD Regulation") Office of Hearing Officers to oversee non-summary proceedings involving cancellations and suspensions related to failure to comply with an arbitration award. Notice of the proposal, including Amendment No. 1 thereto, was published in the **Federal Register** on May 12, 1998 ("Notice").⁴ The Commission did not receive comment letters on the filing.

I. Introduction and Background

In connection with the recent reorganization of the Association following issuance of the *SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions*⁵ and the *Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Letter from Joan C. Conley, Corporate Secretary, NASD Regulation, Inc. to Katherine England, Assistant Director, Division of Market Regulation, Commission dated May 4, 1998.

⁴ See Securities Exchange Act Release No. 39957 (May 1, 1998), 63 FR 26238 (File No. SR-NASD-98-34).

⁵ Securities Exchange Act Release No. 37538 (Aug. 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3-9056). The order included fourteen undertakings ("Undertakings") addressing actions to be taken by the Association in response to the findings of the Order.