

Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the file number SR-SCCP-95-01 and should be submitted by July 3, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶ that the proposed rule change (File No. SR-SCCP-95-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-14322 Filed 6-9-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-21115; 812-9286]

AMBAC Capital Management, Inc.; Notice of Application

June 6, 1995.

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

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "1940 ACT").

APPLICANT: AMBAC Capital Management, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for an exemption from the provisions of paragraphs (a)(1), (b)(2)(i) and (b)(3)(i) of rule 3a-5 under the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks relief from certain provisions of rule 3a-5 to enable it and other future wholly-owned finance subsidiaries of AMBAC, Inc. ("AMBAC") to rely on the exemption from all provisions of the 1940 Act afforded by the rule while engaging in certain lending and investing activities not included within the express terms of the rule.

FILING DATES: The application was filed on October 17, 1994, and amended and restated on June 2, 1995.

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 30, 1995, 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 Fifth Street, N.W., Washington, D.C. 20549; Applicant, 10 Glenville Street, Greenwich, Connecticut 06831.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942-0564 or C. David Messman, 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 Delaware corporation and wholly-owned subsidiary of AMBAC Capital Corporation, a Delaware corporation, which in turn is a wholly-owned subsidiary of AMBAC. AMBAC is a holding company primarily engaged through another wholly-owned subsidiary, AMBAC Indemnity Corporation ("AMBAC Indemnity"), in the financial guarantee insurance business. AMBAC's shares are publicly traded on the New York Stock Exchange.

2. AMBAC Indemnity is a licensed insurance company in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico and Guam that primarily insures newly issued municipal bonds. AMBAC Indemnity has been assigned triple-A claims-paying ability ratings, the highest ratings of Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Corporation ("S&P") and Fitch Investors Service, Inc. AMBAC depends primarily on dividends from AMBAC Indemnity to pay dividends on its capital stock, to pay principal and interest on its indebtedness, and to pay its operating expenses.

3. Applicant was organized to issue and sell municipal investment contracts and similar investment agreements (together, the "MICs"). Applicant presently sells the MICs on a private placement basis primarily to state or local government entities or agencies and trustees for bond issues of such entities or agencies (collectively, the "MIC Holders"), for the investment of

proceeds from municipal bond offerings.

4. The MICs are debt securities with an agreed-upon rate of return that may be collateralized by U.S. Treasury or other high quality securities. Municipal bond issuers find MICs attractive because their bonds are often issued to finance projects for which they have no immediate need for the entire proceeds of the issue. A MIC Holder may also purchase a MIC from the Applicant as a means of investing debt service reserve an similar funds held by the MIC Holder. The MICs provide the municipal bond issuer with a guaranteed yield that is advantageous relative to the interest rate on the bonds and can be structured to provide draw-downs as needed.

5. Because of restrictions on their permitted investments, some municipalities have requested that Applicant enter into MICs styled as repurchase agreements (each, a "Repo"), which would provide such municipalities with the economic equivalent of entering into a collateralized MIC. Applicant considers entering into such Repos to be equivalent to issuing a MIC in the form of a collateralized investment contract and will treat the proceeds generated thereby the same as any other proceeds raised in a debt issuance (hereinafter, any reference to "MIC" shall include such Repos).

6. The proceeds of MIC sales will be on-lent by Applicant to AMBAC and/or its direct and indirect subsidiaries (the "Recipients") for use in financing their respective operations. It is anticipated that substantially all of the proceeds from the MICs will be loaned by Applicant to the Recipients contemporaneously with the issuance of the related MIC, but in no event will less than 85 percent of such proceeds be loaned later than six months after Applicant's receipt of such proceeds. It is also anticipated that substantially all loans to Recipients will be collateralized by the Recipients themselves.

7. Pursuant to an Insurance and Indemnity Agreement with AMBAC Indemnity (the "Agreement"), Applicant's obligations under each MIC issued by it are fully insured by AMBAC Indemnity. The insurance policy (each, an "Indemnity Policy") provides that in the event of default by Applicant on the payment of principal or interest on the MIC, AMBAC Indemnity will make the scheduled payment. In addition, the MIC Holder may institute legal proceedings directly against AMBAC Indemnity to enforce such payment without first proceeding against Applicant. The Agreement requires

⁶ 15 U.S.C. 78s(b)(2) (1988).

⁷ 17 CFR 200.30-3(a)(12) (1994).

Applicant to reimburse AMBAC Indemnity for any payments made by AMBAC Indemnity under the Indemnity Policies.

8. In order to secure its performance under the Agreement, Applicant generally will rehypothecate all collateral received in respect of loans of proceeds to Recipients to The Bank of New York as trustee (together with any successor trustee, the "Trustee") for the benefit of AMBAC Indemnity under a Master Trust Agreement. With respect to MICs in the form of collateralized investment contracts or Repos, however, the collateral pledged to secure the related loan of proceeds will be rehypothecated to the MIC Holder rather than to the Trustee.

9. Applicant may come within the definition of an investment company under section 3(a) of the 1940 Act to the extent that its loans to AMBAC and the other Recipients may be considered as investing or reinvesting in debt securities of AMBAC and the other Recipients. Applicant presently is relying on the exception from the 1940 Act provided by section 3(c)(1). It will be unable to continue to do so, however, at such time as the 100 owner limit contained therein is exceeded or if Applicant were to make a public offering of its securities.

Applicant's Legal Analysis

1. Generally, rule 3a-5 grants an exemption from all provisions of the 1940 Act, subject to certain conditions, to any finance subsidiary (as defined in the rule) of an eligible parent company so as to permit the finance subsidiary to offer debt securities or non-voting preferred stock in the United States. Rule 3a-5 also permits a finance subsidiary to loan the proceeds of its securities offerings to eligible companies controlled by the parent company.

2. Applicant's proposed activities will not meet the requirement of paragraph (a)(1) of rule 3a-5 that any debt securities of the finance company issued to or held by the public be unconditionally guaranteed by the parent company. In Applicant's case, all MICs will receive a guarantee in the form of an unconditional insurance policy to be issued by AMBAC Indemnity, unless the parent company guarantee required by rule 3a-5 is delivered instead.

3. Applicant submits that its planned operations raise two further issues under rule 3a-5. First, paragraph (b)(2)(i) of rule 3a-5 defines an eligible parent company as a company that, among other things, is not an investment company under section 3(a)

or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a).

Applicant states that there may be some uncertainty over AMBAC's status under section 3(a)(3) of the 1940 Act. Consequently, to the extent that AMBAC must rely on a section 3(c)(6) exception as an insurance holding company, AMBAC would not qualify as an eligible parent under rule 3a-5. Second, paragraph (b)(3)(i) of rule 3a-5 defines a "company controlled by the parent company" as a company that, among other things, is not an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a). AMBAC engages in certain activities (including certain investment activities) through wholly-owned subsidiaries that have no outstanding securities other than those owned directly or indirectly by AMBAC. Such subsidiaries would be eligible for exemption under rule 3a-3 under the 1940 Act, except that a section 3(c)(6) exempt entity is not an eligible parent of a rule 3a-3 exempt company. In addition, the Applicant might choose in the future to lend the proceeds of its MIC offerings to AMBAC Indemnity, which is a section 3(c)(3) exempt insurance company.

Accordingly, Applicant requests exemptive relief from rule 3a-5(b)(3)(i) to permit it to lend the proceeds of its debt offerings to subsidiaries of AMBAC that would be exempt by virtue of rule 3a-3, but for AMBAC's status as their parent company, and to AMBAC Indemnity.

4. Section 6(c) of the 1940 Act provides, as here relevant, that the SEC, by order upon application, may conditionally or unconditionally exempt any person or persons from any provision of the 1940 Act or any rule thereunder, if such exemption is necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the 1940 Act. Applicant submits that the exemptive relief requested meets those standards.

5. Applicant submits that the Indemnity Policy issued by AMBAC Indemnity covering the MICs serves the underlying objectives of the rule 3a-5 guarantee since the MIC Holders will be provided with benefits substantially similar to those provided by the guarantee requirement of rule 3a-5. There will at all times be an uninterrupted payment of funds to the MIC Holders. MIC Holders will also

benefit from safeguards that are not present in the guarantee of a non-regulated parent company, since AMBAC Indemnity is subject to a comprehensive scheme of regulation and supervision under the insurance laws of Wisconsin, its state of incorporation, as well as the insurance laws and regulations of other jurisdictions in which it does business.

6. Applicant further asserts that the receipt of an insurance policy from AMBAC Indemnity in lieu of an AMBAC guarantee increases the likelihood that the MIC Holders will be paid in full. This is because AMBAC's equity interest in AMBAC Indemnity is in excess of 99% of its assets, so that AMBAC's only significant source of funds with which to make payments is dividends on its AMBAC Indemnity stock. Furthermore, AMBAC Indemnity's triple-A rated claims paying ability has been assigned higher ratings than AMBAC's double-A rated senior debt by Moody's and S&P, reflecting an assessment by such rating agencies of the increased likelihood of payment in the case of AMBAC Indemnity. Based on the foregoing, Applicant requests exemptive relief from rule 3a-5(a)(1) to permit AMBAC Indemnity to issue insurance policies in lieu of the parent guarantees otherwise required.

7. Applicant's parent AMBAC may be considered a section 3(c)(6) exempt company, as noted above, because it is primarily engaged in a section 3(c)(3) business (insurance) through AMBAC Indemnity. Applicant contends that the types of businesses enumerated in section 3(c)(3) do not present the potential for investment company type activities with which the SEC was concerned when it limited the definition of parent company (such as AMBAC) and controlled company (such as AMBAC Indemnity) under rule 3a-5. Similarly, where AMBAC engages in certain activities through wholly-owned subsidiaries that would qualify for exemption under rule 3a-3, except for the fact that a section 3(c)(6) entity is not an eligible parent of a rule 3a-3 company, Applicant contends that there is no reason to impose the requirements of the 1940 Act on such subsidiaries. Accordingly, Applicant believes it is appropriate to grant relief from paragraphs (b)(2)(i) and (b)(3)(i) of rule 3a-5 to enable Applicant to lend the proceeds of its offerings to its parent company, AMBAC, and to the other Recipients.

8. Applicant believes that neither its structure nor its mode of operations resembles that of an investment company. Applicant asserts, therefore, that it is not the type of company

Congress intended to regulate under the 1940 Act, and that under the circumstances, AMBAC's status as a section 3(c)(6) excepted company should not prevent the SEC's grant of requested relief.

9. Applicant and any other future wholly-owned subsidiary of AMBAC relying on any order granting the application will comply with the provisions of rule 3a-5 except to the limited extent for which relief is sought in the application. AMBAC believes that any such future subsidiaries would be formed in response to business or market concerns, such as business differentiation between products or to more specifically manage the risks of different MIC categories.

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

Margaret H. McFarland,

Deputy Secretary.

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of the Security and believes that dual listing would fragment the market for the Security.

Any interested person may, on or before June 27, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

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to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 7315 East Peakview Avenue, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942-0562, or C. David Messman, 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 business development company ("BDC") within the meaning of section 2(a)(48) of the Act.¹ Applicant seeks an order pursuant to section 61(a)(3)(B) of the Act authorizing it to: (a) Grant options to purchase 100,000 shares of applicant's common stock to each current non-employee director of applicant on the date the Commission issues the order requested hereby (the "Order Date"); and (b) grant options to purchase 100,000 shares of applicant's common stock to each new non-employee director of applicant who may be elected or appointed to applicant's Board of Directors (the "Board") subsequent to the Order Date.

2. The Directors' Plan provides for non-discretionary grants of stock options to non-employee directors of applicant to acquire, in the aggregate, up to 500,000 shares of applicant's common stock. The Directors' Plan was adopted by the Board on April 1, 1993 (the "Effective Date") and approved by applicant's shareholders on December 28, 1993 for a ten year term commencing on the Effective Date. On April 20, 1995, the Board cancelled all options conditionally granted under the Director's Plan, none of which were exercisable or had been exercised, and adopted amendments to the Directors' Plan (the "Directors' Plan Amendments"). The Directors' Plan Amendments revised the Directors' Plan to provide that options shall automatically be granted not on the

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) and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid. Certain of the regulatory restrictions of the Act are relaxed for BDCs.

[File No. 1-5951]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (CMI Corporation, Voting Class A Common Stock, \$0.10 Par Value)

June 6, 1995.

CMI Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, the Security is listed on the New York Stock Exchange, Inc. ("NYSE"). The Security commenced trading on the NYSE at the opening of business on May 24, 1995, and concurrently therewith the Security was suspended from trading on the Amex.

In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of the Security on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading

[Investment Company Rel. No. 21116; 812-9428]

Equitex, Inc.; Notice of Application

June 6, 1995.

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

ACTION: Notice of Application under the Investment Company Act of 1940 (the "Act").

APPLICANT: Equitex, Inc.

RELEVANT ACT SECTION: Section 61(a)(3)(B).

SUMMARY OF APPLICATION: Applicant seeks an order authorizing applicant to issue stock options pursuant to applicant's Amended 1993 Stock Option Plan for Non-Employee Directors (the "Directors' Plan").

FILING DATES: The application was filed on December 14, 1994 and amended on April 24, 1995.

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 July 3, 1995, 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