

stock option to purchase 10,000 shares at fair market value is well within the range of reasonable director compensation in consideration of the time commitment described above, especially given that realization of such compensation is contingent upon the Company's market performance. Automatic, one-time option grants to current and future non-officer directors permit the Company to devote its cash resources to additional investments and not to increases in directors' fees to retain qualified non-officer directors or to attract replacements. Most importantly, as a method of compensation which is contingent on the Company's stock performance, such stock option awards serve the best interest of the stockholders of the Company by reinforcing the alignment of the interests of non-officer directors and stockholders of the Company.

4. For all of these reasons, the Company believes that providing for the automatic, one-time grant of stock options to purchase 10,000 shares at fair market value to each of the Company's current and future non-officer directors is fair and reasonable and does not involve overreaching of the Company or its stockholders.

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

Margaret H. McFarland,
Deputy Secretary.

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[Investment Company Act Rel. No. 21544;
812-8986]

Allied Capital Corporation II; Notice of Application

November 27, 1995.

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

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Allied Capital Corporation II (the "Company").

RELEVANT ACT SECTIONS: Order requested under section 61(a)(3)(B)(i)(II) of the Act.

SUMMARY OF APPLICATION: The Company requests an order approving a proposal to issue stock options to directors who are not officers or employees of the Company.

FILING DATE: The application was filed on May 12, 1994 and amended on June 24, 1994, July 31, 1995, and November 22, 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 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 22, 1995, and should be accompanied by proof of service on the applicants, 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1666 K Street, N.W., Ninth Floor, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942-0582, or Robert A. Robertson, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. The Company is a closed-end management investment company that has elected to be regulated as a business development company under the 1940 Act. It has two wholly-owned subsidiaries: Allied Investment Corporation II ("Allied Investment II") and Allied Financial Corporation II ("Allied Financial II"), which are registered under the Act as closed-end investment companies. Allied Investment II is licensed by the U.S. Small Business Administration (the "SBA") as a small business investment company ("SBIC"). Allied Financial II has applied to the SBA to be licensed as a specialized small business investment company ("SSBIC"), and makes certain investments pending issuance of its license as a SSBIC.

2. The Company invests in and lends to privately-owned small businesses directly and through its subsidiaries. It provides debt, mezzanine and equity financing for small growth companies, for leveraged buyouts of such companies, for note purchases and loan restructurings and for special situations, such as acquisitions, buyouts, recapitalizations and bridge financings of such companies. The Company also

provides financing to private and small public companies through its purchase of convertible debentures. The Company's investments generally take the form of loans with equity features, such as warrants or conversion privileges. The Company also makes senior loans without equity features. The Company's emphasis is on low- to medium-technology businesses, such as broadcasting, manufacturing, wholesale distribution and commodities storage, software and service providers and wholesale and retail operations. The Company makes available significant managerial assistance to its portfolio companies, as do the Company's subsidiaries.

3. The Company and its investment adviser have entered into an investment advisory agreement that provides that the fees paid and payable to the investment adviser are based on the value of the Company's assets and do not depend in any respect upon any capital gains of the Company or the capital appreciation of any of its funds. The Company does not have a profit-sharing plan described in Section 57(n) of the Act.

4. The Company's stock option plan (the "Option Plan") was adopted and approved in 1990, and has been amended on several occasions. In February 1994, the Company's Board of Directors adopted further amendments to the Option Plan, which were approved by the Company's stockholders in May 1994. Those amendments increased the number of shares reserved for issuance under the Option Plan and provided for the automatic, one-time grant to each person who serves as a director of the Company and is not an officer or employee of the Company or an employee of its investment adviser (each, a "non-officer director") of an option to purchase 10,000 shares of the Company's common stock.

5. The Option Plan provides for an automatic, one-time option grant to each person serving as a non-officer director on the date on which the issuance of options to non-officer directors is (i) authorized by the stockholders of the Company or (ii) approved by SEC order, whichever is later. The Option Plan also provides for an automatic, one-time option grant to each person who thereafter is elected initially as a non-officer director. Any automatic, one-time grant to a non-officer director will entitle the recipient to acquire 10,000 shares of the Company's common stock at an exercise price that is not less than the fair market value of a share of the Company's common stock at the date of issuance of the option. Each option

vests in three annual installments, with the first installment vesting on the date of issuance of the option and the other two installments vesting on the first and second anniversaries of the date of the issuance of the option. Each option expires on the earliest of (a) the tenth anniversary of its date of issuance, (b) 60 days after the optionee ceases to serve as a director of the Company for any reason other than death or permanent and total disability, (c) one year after the date on which the optionee dies or becomes permanently and totally disabled, or (d) the date on which the option is fully exercised. The Option Plan provides that all such options are non-transferable, except for disposition by will or intestacy, and are exercisable during the life of the optionee only by him or her.

6. The Company currently has five non-officer directors. Upon the Commission's issuance of an order approving the option grants under the Option Plan to non-officer directors, those persons will receive options covering an aggregate of 50,000 shares. The 10,000 shares covered by each grant to a non-officer director would represent 0.14%, and the 50,000 shares covered by the grants to the five current non-officer directors would represent 0.72%, of the 6,938,191 shares of the Company's common stock outstanding as of June 30, 1995. As of June 30, 1995, there was an aggregate of 719,600 shares subject to then-outstanding options granted to officers of the Company under the Option Plan, and 317,744 shares available for future grants under the Option Plan (not including the 50,000 shares underlying the options proposed to be issued to the current non-officer directors). The shares subject to such then-outstanding options represent 10.37% of the Company's common stock outstanding on June 30, 1995; if those shares are increased by the 50,000 shares underlying the options proposed to be granted to current non-officer directors, they represent 11.09% of the Company's shares then outstanding. The Company has no other outstanding options, warrants or rights.

7. Non-officer directors are actively involved in managing the Company and in monitoring of the operation of its portfolio companies. Each non-officer director serves on at least one committee of the Company's Board, and serves as a director of at least one of the Company's subsidiaries. In addition, many of the non-officer directors have experience in the industries in which the Company regularly invests, and provide analysis and advice to the Company regarding prospective

investments and in managing the portfolio companies in which the Company has invested.

8. Every investment transaction by the Company requires prior express approval by its board of directors. Each director is provided, well in advance of each board meeting, a detailed narrative outlining the format of each proposed investment, restructuring and follow-on financing transaction under consideration. Whether in the context of a new investment or restructuring, follow-on financing, or disposition of an existing investment, the Company's directors analyze the reports and materials provided, discuss questions and issues with the responsible investment officer and with each other and make and approve recommendations with respect to each such investment decision.

9. The Company also relies upon its directors to review and consider the best use of the Company's resources. The directors review and evaluate reports of outstanding commitments, required reserves for follow-on financing and funds available for future investment for the purpose of evaluating and making these resource allocations. At least once each calendar quarter, directors of the Company review portfolio investments that are non-performing or performing inadequately and evaluate the best course of action for the Company to take under the circumstances. In addition, on a calendar quarter basis, the directors of the Company undertake a good faith valuation of the Company's investments for which no independent market valuations are available, which constitute substantially all of the Company's investments.

10. Non-officer directors frequently advise the investment officers serving the Company in the due diligence process regarding any proposed investment in companies operating in industries of which they have knowledge and expertise. Non-officer directors with industry or other relevant expertise also participate in the analysis or portfolio companies that are performing below expectations or are in a work-out situation.

11. Non-officer directors participate in the analysis of portfolio companies that are performing at or above expectations, and advise the investment officers serving the Company in efforts to monitor performance of such portfolio companies, improve banking or other commercial relationships and consider or prepare for public offerings, acquisitions or the like.

12. For these services, the Company pays its non-officer directors (as well as its officer-directors) \$1,000 for each

meeting of its Board or any committee thereof¹ attended. Allied Investment II and Allied Financial II each also pays its directors \$1,000 for each meeting of its board of directors that the director attends, although a director is not paid for attending such meetings of the Allied Investment II or Allied Financial II Boards on the same day as a meeting of the Company's Board.

Applicant's Legal Analysis

1. Section 61(a)(3)(B)(i)(II) of the Act permits a business development company to issue options to purchase its voting securities to its non-officer, non-employee directors pursuant to an executive compensation plan subject to certain conditions, which include the proposal to issue such options being authorized by the stockholders of the company and approved by the SEC on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its stockholders.

2. The Company believes that its proposal to issue options to its non-officer directors satisfies all of such statutory conditions other than SEC approval (including the requirement that if the amount of voting securities that would result from the exercise of outstanding options issued to the Company's directors, officers, and employees would exceed 15% of the Company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding options at the time of issuance may not exceed 20% of the outstanding voting securities of the Company) and that granting each non-officer director an option under the Option Plan is fair and reasonable. Non-officer directors provide to the Company skills and experience necessary for management and oversight of the Company's investments and operations, and often have specific experience with respect to industries in which the Company makes a significant number of investments. The Company believes that its ability to make an automatic option grant under the Option Plan to non-officer directors provides a means of retaining the services of its current non-officer directors and of attracting qualified persons to serve as non-officer directors in the future. The Company also believes that such options are a necessary adjunct to its directors' fees to provide fair and reasonable compensation for the services and attention devoted by the non-officer

¹ Non-officer directors are paid \$500 for participation in any committee meeting held on the same day as a meeting of the Company's Board.

directors. Each current non-officer director makes a significant contribution to the management of the Company's business and to analysis and supervision of its portfolio investments. The Company believes that any non-officer directors who are elected initially after issuance of the SEC's order will provide similar services and devote similar time and attention to serving the Company.

3. The projected compensatory value of an automatic, one-time grant to the Company's non-officer directors of a stock option to purchase 10,000 shares at fair market value is well within the range of reasonable director compensation in consideration of the time commitment described above, especially given that realization of such compensation is contingent upon the Company's market performance. Automatic, one-time option grants to current and future non-officer directors permit the Company to devote its cash resources to additional investments and not to increases in directors' fees to retain qualified non-officer directors or to attract replacements. Most importantly, as a method of compensation which is contingent on the Company's stock performance, such stock option awards serve the best interest of the stockholders of the Company by reinforcing the alignment of the interests of non-officer directors and stockholders of the Company.

4. For all of these reasons, the Company submits that providing for the automatic, one-time grant of stock options to purchase 10,000 shares at fair market value to each of the Company's current and future non-officer directors is fair and reasonable and does not involve overreaching of the Company or its stockholders.

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-29384 Filed 12-1-95; 8:45 am]

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[Investment Company Act Rel. No. 21542; 812-9010]

**Allied Capital Lending Corporation;
Notice of Application**

November 27, 1995.

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

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Allied Capital Corporation (the "Company").

RELEVANT ACT SECTIONS: Order requested under section 61(a)(3)(B)(i)(II) of the Act.

SUMMARY OF APPLICATION: The Company requests an order approving a proposal to issue stock options to its directors who are not officers or employees of the Company.

FILING DATE: The application was filed on May 20, 1994 and amended on June 24, 1994, July 31, 1995, and November 22, 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 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 22, 1995, and should be accompanied by proof of service on the applicants, 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 1666 K Street, N.W., Ninth Floor, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942-0582, or Robert A. Robertson, 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 from the SEC's Public Reference Branch.

Applicant's Representations

1. The Company is a closed-end management investment company that has elected to be regulated as a business development company under the Act. The Company is a small business lending company ("SBLC") approved by the U.S. Small Business Administration (the "SBA"). The Company participates in the SBA's section 7(a) guaranteed loan program, under which the SBA will guarantee up to 90% of certain qualifying loans to small business concerns. The Company, through a subsidiary, also provides first mortgage commercial loans in conjunction with the SBA 504 loan program and as

companion loans to section 7(a) guaranteed loans.

2. The Company lends to privately-owned small businesses directly. It provides loans to qualifying small businesses to acquire or refinance real estate, machinery or equipment, or to provide working capital. Loans made by the Company are secured by a mortgage or other lien on the assets of the borrower and, frequently, of its principals. The Company's loans are diversified in different industries and geographic regions of the United States. At December 31, 1994, the Company had in its portfolio or was servicing loans to, among others, hotels and motels, restaurants, manufacturers, retail shops, food stores, professional service providers, laundries and cleaners, home furnishings concerns, gasoline stations, business services firms, recreational services providers, automobile exhaust repair shops, personal services providers and automotive repair concerns. The Company makes available significant managerial assistance to companies in its portfolio.

3. As permitted by SBA regulations, the Company systematically sells to investors, without recourse, the guaranteed portions of its loans. Such loan sales generally take place approximately three months after the closing of the loan. The Company continues to service those loans for a servicing fee. At December 31, 1994, the Company was servicing over \$116 million aggregate principal amount of loans, of which approximately 72% had been sold to investors.

4. The Company and its investment adviser have entered into an investment advisory agreement that provides that the fees paid and payable to the investment adviser are based on the value of the Company's assets, as determined from time to time, and do not depend in any respect upon any capital gains of the Company or the capital appreciation of any of its funds. The Company does not have a profit-sharing plan described in section 57(n) of the Act.

5. The Company's stock option plan (the "Option Plan") was adopted and approved in 1993. In February 1994, the Company's board of directors adopted amendments to the Option Plan, which were approved by the Company's stockholders in May 1994. Those amendments increased the number of shares reserved for issuance under the Option Plan and provided for the automatic, one-time grant to each person who serves as a director and is not an officer or employee of the Company or an employee of its