

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR-NYSE-95-36 and should be submitted by December 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-36515; File No. SR-Phlx-95-58]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Trader Registration and the Use of the Series 7A Examination**

November 27, 1995.

On September 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, a proposed rule change to require registration of persons who solicit or handle business in securities and are compensated by a member or participant organization for which the Phlx is the Designated Examining Authority ("DEA"). On October 6, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change amending paragraph (c)(ii) of Rule 604, which names the Series 7A as the appropriate examination for Limited Registration/Floor Members,<sup>1</sup> to clarify that this is the appropriate examination for such members only, not all members who conduct a public business from the equity trading floor.<sup>2</sup>

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 36395 (October 20, 1995), 60 FR 54904 (October 26, 1995). No comments were received on the proposal.

Currently, the Exchange requires Series 7 Registered Representatives to register with the Exchange on Form U-4 pursuant to Rule 604(a) and Limited Registration/Floor Members to register pursuant to Rule 604(c). However, there is no requirement for proprietary "upstairs" traders (*i.e.*, those who trade for the firm's own account) to register with the Exchange. This proposal adopts such a requirement as Rule

<sup>1</sup> A Limited Registration/Floor Member is a member who conducts a public business that is limited to accepting orders from professional customers for execution on the trading floor. The Series 7A examination is a module of the Series 7 (the General Securities Registered Representative Examination) developed to test the knowledge of relevant securities laws and Exchange rules required of such members. See Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993) (File No. SR-NYSE-93-10).

<sup>2</sup> See letter from Gerald O'Connell, First Vice President Market Regulation and Trading Operations, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 3, 1995. In Amendment No. 1 the Exchange explained the purpose of its proposed amendment to Rule 604(c)(ii).

604(d). Similar to Rules 604 (a) and (c), the proposal would require registration on Form U-4. This form is currently used in the Exchange's membership application process for prospective members or participants, as well as the officers, shareholders and directors of such organizations. In order to prevent duplicative registration, the proposal would not apply to persons who are otherwise registered with the Exchange.

The proposed rule change also seeks to amend paragraph (c)(ii) of Rule 604. Although the organization of Rule 604, as well as the intent behind its adoption, indicates that paragraph (c) and subparagraph (ii) thereunder apply only to Limited Registration/Floor Members,<sup>3</sup> on its face the text of 604(c)(ii) can be construed to apply to all members conducting a public business. The amendment adds limiting language to Rule 604(c)(ii) to clarify that the Series 7A is the appropriate examination for Limited Registration/Floor Members, not all members conducting a public business from the equity trading floor.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>4</sup> In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.

The Commission believes that requiring a firm's proprietary traders to register with the Exchange will aid in the prevention of fraudulent and manipulative acts by allowing the Exchange to maintain a complete record of those trading for a member or participant organization, not just persons handling customer accounts. The Form U-4 will provide background information on such traders, as well as a basis for further Exchange research if needed, thereby enhancing the Exchange's examination program.

The Commission also believes that the amendment to Rule 604(c)(ii) will enhance member compliance with this rule. By specifically naming floor members as the parties for whom the

<sup>3</sup> See Securities Exchange Act Release No. 35258 (January 20, 1995), 60 FR 5449 (January 27, 1995) (File No. SR-Phlx-94-15) (order approving the Phlx's adoption of the Limited Registration/Floor Member status and its use of the Series 7A for such members).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>1</sup> 17 C.F.R. 200.30-3(a)(12).

Series 7A is the appropriate examination, members will be able to readily discern whether the Series 7A requirement is applicable to them.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> that the proposed rule change (SR-Phlx-95-58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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[Investment Company Act Rel. No. 21543; 812-8972]

### Allied Capital 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 directors who are not officers or employees of the Company.

**FILING DATE:** The application was filed on May 5, 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. It has two active wholly-owned subsidiaries: Allied Investment Corporation ("Allied Investment") and Allied Capital Financial Corporation ("Allied Financial"), which are registered under the Act as closed-end investment companies. Allied Investment is licensed by the U.S. Small Business Administration (the "SBA") as a small business investment company, and Allied Financial is licensed by the SBA as a specialized small business investment company.

2. The Company invests in and lends to privately-owned small businesses directly and through its wholly-owned 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 typical maturity of such a loan made by the Company is seven years, although loan maturities vary. The Company also makes senior loans without equity features. The Company's emphasis is on low- to medium-technology businesses, such as broadcasting, packaging manufacturers, franchise operations, speciality manufacturing, environmental concerns, wholesale distribution and commodities storage 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 1983, 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<sup>1</sup> 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 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

<sup>1</sup> For purposes of the Option Plan, the fair market value of the shares is defined as the closing sale price as quoted on the National Association of Securities Dealers Automated Quotation System for the date of issuance of the option.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(12).