

trust indenture provide that the trustee "shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust." Under these provisions, the only foreign entity that qualifies as a UIT custodian is an overseas branch of a U.S. bank.

2. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of person, securities, or transactions, from any provisions of the Act or any rule or regulation under the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Rules 17f-5 and 17f-7 under the Act govern the custody of assets of registered management investment companies overseas. Applicants seek an order under section 6(c) exempting them and any U.S. bank that acts as Trustee for any Trust Series from section 26(a)(2)(D) of the Act to the extent necessary to permit a Trustee to deposit Foreign Investments with an eligible foreign custodian as that term is defined in Rule 17f-5 under the Act ("Eligible Foreign Custodian") or with an eligible securities depository as that term is defined in Rule 17f-7 under the Act ("Eligible Securities Depository").

4. Under the proposed arrangements, a Trust Series would comply with all of the requirements of rule 17f-5, except that the Trustee will perform the duties and responsibilities that are normally performed by the foreign custody manager as described in rule 17f-5(c) ("Foreign Custody Manager"). Applicants state that the Trustee will fulfill the duties of a Foreign Custody Manager under rule 17f-5 to select an Eligible Foreign Custodian and monitor the foreign custody arrangements. Applicants assert that the Trustee will have the expertise and generally be in the best position to make the determinations required by rule 17f-5. Under the proposed arrangements, a Trust Series also will comply with all of the requirements of rule 17f-7, with the Trustee providing the risk analysis to the Sponsor, monitoring the custody risks associated with maintaining Foreign Investments with an Eligible Securities Depository on a continuing basis, and promptly notifying the Sponsor of any material change in the risks. Applicants also state that the Sponsor will be required to take

appropriate action in response to a notification by the Trustee.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series' Foreign Investments held with an Eligible Foreign Custodian in accordance with the foreign custody contract.

2. The Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence, and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.

3. The Indenture will contain provisions under which the Trustee agrees to perform all the duties assigned by rule 17f-5, as now in effect, or as it may be amended in the future, to a Foreign Custody Manager. A Trustee's duties under this condition will not be delegated.

4. The Indenture will contain provisions under which the Trustee agrees that it (or the Trustee's agent) will (i) Provide the Sponsor with an analysis of the custody risks associated with maintaining assets with an Eligible Securities Depository; (ii) monitor the custody risks associated with maintaining assets with the Eligible Securities Depository on a continuing basis and promptly notify the Sponsor of any material change in these risks; and (iii) exercise reasonable care, prudence and diligence in performing the foregoing duties.

5. The Sponsor will be required to take appropriate action in response to a notification by the Trustee provided pursuant to condition 4 above.

6. The Trust Series' prospectus will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N-1A and N-2. The prospectus also will contain disclosure concerning the Sponsor's responsibilities pursuant to condition 5 above.

7. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the Trust Series was terminated, the first two years in an easily accessible place. The records will

be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the Commission or its staff.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-461 Filed 1-9-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25881; 812-12658]

Gladstone Capital Corporation; Notice of Application

January 3, 2003.

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

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

SUMMARY OF APPLICATION: Applicant, Gladstone Capital Corporation, requests an order approving a proposal to issue stock options to directors who are not officers or employees of the applicant (the "Non-employee Directors") pursuant to its Amended and Restated 2001 Equity Incentive Plan (the "Plan").

FILING DATES: The application was filed on October 11, 2001, and amended on October 2, 2002, and January 2, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 28, 2003, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549-0609. Applicant, 1616 Anderson Road, Suite 208, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at

(202) 942-0611, or Mary Kay Frech, 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 Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

Applicant's Representations

1. Applicant, a Maryland corporation, is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.¹ Applicant's primary business is making loans to small and medium-sized companies. Applicant states that its investment objective is to achieve a high level of current income. Applicant's investment decisions are made by its board of directors (the "Board") based on the recommendations of a credit committee comprised of senior management. 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 grant of nonstatutory stock options pursuant to the Plan to its Non-employee Directors.² Applicant has a six member Board. Three of the five current members are not "interested persons" (as defined in section 2(a)(19) of the Act) of the applicant ("Disinterested Directors").³ The Plan was approved by both the Board and applicant's stockholders on July 23, 2001. On August 8, 2001, the Board and applicant's stockholders amended the Plan to increase the number of options that may be granted under the Plan. On September 23, 2002, the Board amended the Plan to adjust the method for determining the exercise price of options granted pursuant to the Plan. The grant of options to current Non-employee Directors under the Plan will be made on the date the Commission

issues an order on the application (the "Order Date").

3. Each Non-employee Director serving on the Order Date will be entitled to receive an option to purchase 10,000 shares of applicant's common stock (the "Initial Grants"), which will vest in two equal installments of 5,000 shares on each of the first two anniversaries of August 23, 2001, the date of applicant's initial public offering of its common stock.⁴ Each new Non-employee Director joining the Board after the Order Date will be entitled to receive an option to purchase 10,000 shares of applicant's common stock (the "New Director Grants"), which will be awarded when such individual joins the Board. Additionally, at the time of each annual meeting of applicant's stockholders, beginning with the 2002 annual meeting of stockholders, applicant will grant each incumbent Non-employee Director an additional option to purchase 10,000 shares of its common stock (the "Annual Grants"). The options granted under the New Director Grants and the Annual Grants will vest in two equal installments of 5,000 shares on each of the first two anniversaries of the date of grant.⁵

4. The exercise price of the options will not be less than the current market value of, or if no market value exists, the current net asset value per share of, applicant's common stock on the date of the grant.⁶ Under the Plan, "current market value" is defined as the closing sales price of the shares as quoted on the NASDAQ National Market, or alternatively, on the exchange where applicant's shares are traded, on the day the option is granted.

5. Options granted under the Plan will expire within 10 years from the date of grant. In the event of death or disability of a Non-employee Director during the director's service, unexercised options immediately become exercisable and may be exercised only during the period of eighteen months following the date of death or twelve months following the date of disability, but in no event after the respective expiration date of such options. In the event of the termination of a Non-employee Director's directorship for a reason other than by

death or disability, an option, to the extent then exercisable, may be exercised only during a period of three months following the date of termination, but in no event after the respective expiration date of such options. The options may not be transferred except for disposition by will or the laws of descent and distribution.

6. Applicant's officers and employees, including any employee directors, also are eligible to receive stock options under the Plan. The total number of shares of common stock currently issuable under the Plan is 1,500,000 shares, representing approximately 13.7% of the 10,071,844 shares of applicant's common stock outstanding as of December 31, 2002. As of December 31, 2002, applicant had issued options to purchase 1,410,000 shares to its officers and employees (including officer-directors) under the Plan. After the Initial Grants and the Annual Grants for 2002 are granted to the three current Non-employee Directors, 40,000 shares of applicant's common stock would remain eligible for awards under the Plan.

7. On December 5, 2002, the Board approved a proposal to amend the Plan to increase the number of shares authorized for issuance under the Plan to 2,000,000 shares (the "Pool Increase Proposal"). Applicant will present the Pool Increase Proposal to its stockholders at its 2003 annual stockholders meeting, which is expected to be held on February 24, 2003. The Pool Increase Proposal, if approved, would represent approximately 17.4% of the shares of applicant's common stock outstanding as of December 31, 2002. Applicant will not issue any options to its officers, employees (including officer-directors) and Non-employee Directors beyond those currently remaining available for grant under the Plan unless and until its stockholders approve the Pool Increase Proposal.

8. Applicant has no warrants, options or rights to purchase its outstanding voting securities other than those granted to its officers and employees pursuant to the Plan. The Plan as it relates to the Non-Employee Directors will not be modified materially from the description in the application without obtaining an order of the Commission or approval of the Commission staff.

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

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 Each Non-employee Director receives an annual director's fee of \$10,000, a fee of \$1,000 for each Board meeting attended (with no additional compensation payable in connection with committee meetings), and reimbursement for related expenses.

³ The applicant's Board presently has one vacancy. All of applicant's Non-employee Directors are Disinterested Directors.

⁴ In the case of one Non-employee Director, the options will vest on each of the first two anniversaries of June 5, 2002, the date that such Non-employee Director joined the Board.

⁵ The options granted under the Annual Grants for 2002 will vest on each of the first two anniversaries of March 26, 2002, the date of applicant's 2002 annual meeting of stockholders.

⁶ The exercise price of the Initial Grants and the Annual Grants for 2002 will be the current market value of, or if no market value exists, the current net asset value per share of, applicant's common stock on the Order Date.

Act. 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: (i) The options expire by their terms within ten years; (ii) 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; (iii) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (iv) the options are not transferable except for disposition by gift, will or intestacy; (v) 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 (vi) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) 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.

3. Applicant represents that the terms of the Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant states in support of the application that the Non-employee Directors are actively involved in the oversight of applicant's affairs and that it relies on the judgment and experience of the Board. Applicant also states that the Non-employee Directors provide guidance and advice on operational issues, underwriting policies, credit policies, asset valuation, and strategic direction, as well as serving on committees. Applicant believes that the options to be granted to the Non-employee Directors provide significant incentives for the Non-employee Directors to remain on the Board and to devote their best efforts to the success of applicant's business.

Applicant also states that the options will provide a means for the Non-employee Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant's stockholders.

4. Applicant submits that the granting of options to the Non-employee Directors to purchase shares of applicant's common stock is fair and reasonable and does not involve overreaching of applicant or its stockholders. Applicant states that the number of voting securities that would result from the exercise of all options issued or issuable to officers, employees, and Non-employee Directors under the Plan, assuming approval of the Pool Increase Proposal, is 2,000,000 shares, or approximately 17.4% of applicant's outstanding common stock, which is below the percentage limitations in the Act. The total number of options issuable under the Plan that may be granted in any one year to Non-employee Directors represents about 0.4% of applicant's outstanding common stock. Applicant asserts that, given the small amount of common stock issuable upon exercise of the options, the exercise of options pursuant to the Plan would not have a substantial dilutive effect on the net asset value of applicant's stock.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-462 Filed 1-9-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 395, January 3, 2003]

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

ANNOUNCEMENT OF CLOSED MEETING: Additional Meeting.

The Securities and Exchange Commission held an additional Closed Meeting during the week of January 6, 2003.

An additional Closed Meeting was held on Monday, January 6, 2003 at 1:30 p.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries attended the Closed Meeting. Certain staff members who have an interest in the matters were also present.

The subject matter of the Closed Meeting held on Monday, January 6, 2003 was:

Regulatory matter bearing enforcement implication.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: January 8, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03-667 Filed 1-8-03; 3:59 pm]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 13, 2003: A Closed Meeting will be held on Tuesday, January 14, 2003, at 10 a.m., and an Open Meeting will be held on Wednesday, January 15, 2003, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, January 14, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and