

[FR Doc. 06-2427 Filed 3-13-06; 8:45 am]

BILLING CODE 3110-01-P

## POSTAL SERVICE BOARD OF GOVERNORS

### Sunshine Act Meeting

**TIMES AND DATES:** 4 p.m., Wednesday, March 22, 2006; and 8:30 a.m., Thursday, March 23, 2006.

**PLACE:** Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW.

**STATUS:** March 22—4 p.m. (Closed); March 23—8:30 a.m. (Closed).

#### MATTERS TO BE CONSIDERED:

1. Strategic Planning.
2. Rate Case Planning.
3. Financial Update.
4. Labor Negotiations Planning.
5. Personnel Matters and Compensation Issues.
6. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2006-1, Parcel Return Service.
7. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2006-2, Extension of Market Test for Repositionable Notes.

#### Thursday, March 23 at 8:30 a.m. (Closed)

1. Continuation of Wednesday's agenda.

#### FOR FURTHER INFORMATION CONTACT:

Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

**Wendy A. Hocking,**  
Secretary.

[FR Doc. 06-2531 Filed 3-10-06; 3:10 pm]

BILLING CODE 7710-12-M

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27258; 812-13233]

### MCG Capital Corporation; Notice of Application

March 8, 2006.

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

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 23(a), 23(b) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

*Summary of the Application:* MCG Capital Corporation ("Applicant") requests an order to permit Applicant to issue restricted shares of its common stock under the terms of its employee and director compensation plans.

*Filing Dates:* The application was filed on September 2, 2005, and amended on January 31, 2006.

*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 April 3, 2006, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicant, c/o Bryan J. Mitchell, Chief Executive Officer, MCG Capital Corporation, 1100 Wilson Blvd., Suite 3000, Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 551-6813, or Mary Kay Frech, Branch Chief, at (202) 551-6821, (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 Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549-0102 (tel. 202-551-5850).

#### Applicant's Representations

1. Applicant, a Delaware corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act.<sup>1</sup> Applicant provides financing and advisory services to a variety of small-

<sup>1</sup> Applicant was organized on March 18, 1998. On December 4, 2001, Applicant completed its initial public offering ("IPO") and immediately thereafter elected to be regulated as a BDC. 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.

and medium-sized companies throughout the United States with a focus on growth-oriented companies. Applicant's investments are primarily senior secured commercial loans, subordinated debt and equity-based investments. Shares of Applicant's common stock are traded on The NASDAQ Stock Market, Inc. National Market under the symbol "MCGC." As of December 31, 2005, there were 53,371,893 shares of Applicant's common stock outstanding. As of that date, Applicant had 128 employees, including the employees of its wholly-owned consolidated subsidiaries.

2. Applicant currently has an eight-member board of directors (the "Board") of whom three are "interested persons" of Applicant within the meaning of section 2(a)(19) of the Act and five are not interested persons (the "non-interested directors"). The five non-interested directors are neither employees nor officers of Applicant (the "non-employee directors"). Applicant states that its non-employee directors actively participate in service on committees of the Board and other aspects of corporate governance, as well as make a significant contribution to Applicant's business.

3. On November 28, 2001, prior to Applicant's election to be regulated as a BDC, Applicant terminated its stock option plan, and in exchange therefore issued to its employees and directors, in the aggregate, 1,539,851 shares of its common stock. These shares are subject to forfeiture restrictions but otherwise carry the rights of common stock, including the right to vote and the right to receive dividends. These shares represented 10.8% of Applicant's outstanding shares prior to its IPO, and 5.4% of Applicant's outstanding shares immediately following the IPO.

4. Applicant believes that its successful operation depends on its ability to offer compensation packages to its professionals that are competitive with those offered by its competitors. Applicant believes its ability to adopt compensation plans providing for the periodic issuance of shares of restricted stock (*i.e.*, stock that, at the time of issuance, is subject to certain forfeiture restrictions, and thus is restricted as to its transferability until such forfeiture restrictions have lapsed) (the "Restricted Stock") is vital to its future growth and success. Applicant wishes to adopt equity-based compensation plans for its non-employee directors (the "Director Plan") and employees (the "Employee Plan", and together the "Plans"), as well as employees of its wholly owned consolidated subsidiaries (the "Participants").

5. The Plans will authorize the issuance of shares of Restricted Stock subject to certain forfeiture restrictions. These restrictions may relate to continued employment or service on the Applicant's Board, as the case may be (lapsing either on an annual or other periodic basis or on a "cliff" basis, *i.e.*, at the end of a stated period of time), the performance of the company, or other restrictions deemed by the compensation committee of the Board (the "Committee") to be appropriate. The Restricted Stock will be subject to restrictions on transferability and other restrictions as required by the Committee. Except to the extent restricted under the terms of the Plans, a Participant granted Restricted Stock will have all the rights of any other shareholder, including the right to vote the Restricted Stock and the right to receive dividends. During the restriction period, the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined, or otherwise encumbered by the Participant. Except as the Board otherwise determines, upon termination of a Participant's employment or service on the Board during the applicable restriction period, Restricted Stock for which forfeiture restrictions have not lapsed at the time of such termination shall be forfeited.

6. The maximum number of shares that are represented by shares of Restricted Stock will be 10% of the outstanding shares of Applicant's common stock on the effective date of the Plans plus 10% of the outstanding shares of Applicant's common stock issued or delivered by Applicant (other than pursuant to compensation plans) during the term of the Plans.<sup>2</sup> The Employee Plan limits the total number of shares that may be awarded to any single Participant in a single year to 500,000 shares. In addition, no Participant may be granted more than 25% of the shares reserved for issuance under the Plans. The Employee Plan will be administered by the Committee, which will award shares of Restricted Stock to the Participants from time to time as part of the Participants' compensation based on a Participant's actual or expected performance and value to the Applicant.

<sup>2</sup> For purposes of calculating compliance with this limit, Applicant will count as Restricted Stock all shares of Applicant's common stock that are issued pursuant to the Plans less any shares that are forfeited back to Applicant and cancelled as a result of forfeiture restrictions not lapsing. Applicant will also count as Restricted Stock the shares of Applicant's common stock that were issued in November 2001 in connection with the termination of Applicant's stock option plan, pursuant to the same calculation formula.

7. Under the Director Plan, Applicant's non-employee directors will each receive a grant of 7,500 shares of Restricted Stock at the beginning of each three-year term of service on the Board, for which forfeiture restrictions will lapse as to one-third of such shares each year. The Director Plan will be administered by the Committee, and the grants of Restricted Stock under the Director Plan will be automatic and will not be changed without Commission approval.

8. The Employee Plan has been approved by the Committee, which is composed entirely of non-interested directors, as well as the Board, including a majority of the non-interested directors and the required majority, as defined in section 57(o) of the Act ("required majority").<sup>3</sup> The Plans will be submitted for approval to Applicant's shareholders, and will become effective upon such approval, subject to and following receipt of the order.

#### **Applicant's Legal Analysis**

##### *Sections 23(a) and (b), Section 63*

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the Plans.

2. Section 23(b) generally prohibits a closed-end management investment company from selling its common stock at a price below its current net asset value ("NAV"). Section 63(2) makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the Plans would not meet the terms of section 63(2), sections 23(b) and 63 prohibit the issuance of the Restricted Stock.

3. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of 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

<sup>3</sup> The term "required majority," when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

purposes fairly intended by the policy and provisions of the Act.

4. Applicant requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a) and (b) and section 63 of the Act. Applicant states that the concerns underlying those sections include: (i) Preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (ii) complication of the investment company's structure that makes it difficult to determine the value of the company's shares; and (iii) dilution of shareholders' equity in the investment company. Applicant states that the Plans do not raise the concern about preferential treatment of Applicant's insiders because the Plans are bona fide employee compensation plans of the type that is common among corporations generally. In addition, section 61(a)(3)(B) of the Act permits a BDC to issue to its officers, directors and employees, pursuant to an executive compensation plan, warrants, options and rights to purchase the BDC's voting securities, subject to certain requirements. Applicant states that, for reasons that are unclear, section 61 and its legislative history do not address the issuance by a BDC of restricted stock as incentive compensation. Applicant states, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. Applicant also asserts that the Plans would not become a means for insiders to obtain control of Applicant because the number of shares of Applicant issuable under the Plans would be limited as set forth in the application. Applicant's current intention is to issue only shares of Restricted Stock as incentive compensation; however, if Applicant issues stock options in the future, it will do so pursuant to section 61 and in compliance with the terms and conditions of the application. Moreover, no individual Participant could be issued more than 25% of the shares reserved for issuance under the Plans.

5. Applicant further states that the Plans will not unduly complicate Applicant's structure because equity-based employee compensation arrangements are widely used among corporations and commonly known to investors. Applicant notes that the Plans will be submitted to Applicant's shareholders for their approval. Applicant represents that a concise, "plain English" description of the Plans,

including their potential dilutive effect, will be provided in the proxy materials that will be submitted to Applicant's shareholders. Applicant also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Applicant further notes that the Plans will be disclosed to investors in accordance with the requirements of the Form N-2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, Applicant will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act.<sup>4</sup> Applicant thus concludes that the Plans will be adequately disclosed to investors and appropriately reflected in the market value of Applicant's shares.

6. Applicant acknowledges that, while awards granted under the Plans would have a dilutive effect on the shareholders' equity in Applicant, that effect would be outweighed by the anticipated benefits of the Plans to Applicant and its shareholders. Applicant asserts that it needs the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, Applicant suggests, in turn are likely to increase Applicant's performance and shareholder value. Applicant also asserts that equity-based compensation would more closely align the interests of Applicant's employees with those of Applicant's shareholders. Applicant believes that the granting of shares of Restricted Stock to non-employee directors under the Director Plan is fair and reasonable because of the skills and experience that such directors provide to Applicant. Such skills and experience are necessary for the management and oversight of Applicant's investments and operations. Applicant believes that granting the shares of Restricted Stock will provide significant incentives for non-employee directors to remain on the Board and to devote their best efforts to the success of Applicant's business in the future, as

they have done in the past. The issuance of shares of Restricted Stock will also provide a means for Applicant's non-employee directors to increase their ownership interest in Applicant, thereby helping to ensure a close identification of their interests with those of Applicant and its shareholders.

7. In addition, Applicant states that Applicant's shareholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plans by Applicant's Board. Under these conditions, the Board will review the Plans at least annually. In addition, the Committee periodically will review the potential impact that the issuance of Restricted Stock could have on Applicant's earnings and NAV per share, such review to take place prior to any decisions to issue Restricted Stock, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Committee will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plans would not have an effect contrary to the interests of Applicant's shareholders. This authority will include the authority to prevent or limit the grant of additional Restricted Stock under the Plans.

*Section 57(a)(4), Rule 17d-1*

8. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) ("57(b) persons"), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d-1, made applicable to BDCs by section 57(i), proscribes participation in a "joint enterprise or other joint arrangement or profit-sharing plan," which includes a stock option or purchase plan. Employees and directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d-1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

9. Applicant requests an order pursuant to section 57(a)(4) and rule 17d-1 to permit the Plans. Applicant

states that the Plans, although benefiting the Participants and Applicant in different ways, are in the interests of Applicant's shareholders because the Plans will help Applicant attract and retain talented professionals, help align the interests of Applicant's employees with those of its shareholders, and in turn help produce a better return to Applicant's shareholders. Thus, Applicant asserts that the Plans are consistent with the policies and purposes of the Act and that Applicant's participation in the Plans will be on a basis no less advantageous than that of other participants.

**Applicant's Conditions**

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The Employee Plan will be authorized in accordance with section 61(a)(3)(A)(iv) of the Act, and each Plan will be approved by the Applicant's shareholders.
2. The Applicant will comply with sections 61(a)(3)(B)(iii) and (iv) of the Act.
3. The amount of voting securities that would result from the exercise of all of the Applicant's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plans, at the time of issuance shall not exceed 25% of the outstanding voting securities of the Applicant, except that if the amount of voting securities that would result from the exercise of all of the Applicant's outstanding warrants, options, and rights issued to the Applicant's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plans, would exceed 15% of the outstanding voting securities of the Applicant, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plans, at the time of issuance shall not exceed 20% of the outstanding voting securities of the Applicant.
4. The maximum amount of Restricted Stock that may be issued under the Plans will be 10% of the outstanding shares of common stock of Applicant on the effective date of the Plans plus 10% of the number of shares of Applicant's common stock issued or delivered by Applicant (other than pursuant to compensation plans) during the term of the Plans.
5. The Committee will administer the Plans.
6. The Board will review the Plans at least annually. In addition, the Committee will review periodically the

<sup>4</sup>In addition, Applicant will comply with the amendments to the disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers and directors to the extent adopted and applicable to BDCs. See Executive Compensation and Related Party Disclosure, Release No. 34-53185 (Jan. 27, 2006).

potential impact that the issuance of Restricted Stock under the Plans could have on Applicant's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Plans, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Committee will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plans would not have an effect contrary to the interests of Applicant's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plans. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

By the Commission.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-3544 Filed 3-13-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of Biopulse International, Inc., n/k/a Only You, Inc., and Summit National Consolidation Group, Inc., n/k/a Superwipes, Inc.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Biopulse International, Inc. (n/k/a Only You, Inc.) because it has not filed a periodic report since the period ending April 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Summit National Consolidation Group, Inc. (n/k/a Superwipes, Inc.) because it has not filed a periodic report since the period ending December 31, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EST on March 10, 2006, through 11:59 p.m. EST on March 23, 2006.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 06-2475 Filed 3-10-06; 12:07 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53451; File No. SR-Amex-2006-23]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt an Options Licensing Fee for Options on Certain Rydex Exchange-Traded Funds

March 8, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 6, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to modify its Options Fee Schedule by adopting a per-contract license fee for the orders of specialists, registered options traders, firms, non-member market makers, and broker-dealers (collectively, "Market Participants") in connection with options transactions in six (6) new Rydex exchange-traded funds ("ETFs").

The text of the proposed rule change is available on the Exchange's Internet Web site (<http://www.amex.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposal is to adopt a per-contract options licensing fee in connection with options on the following six (6) ETFs: (1) Rydex S&P 500 Pure Growth ETF (symbol: RPG); (2) Rydex S&P Pure Value ETF (symbol: RPV); (3) Rydex S&P MidCap 400 Pure Growth ETF (symbol: RFG); (4) Rydex S&P MidCap 400 Pure Value ETF (symbol: RFV); (5) Rydex S&P Small Cap 600 Pure Growth ETF (symbol: RZG); and (6) Rydex S&P Small Cap 600 Pure Value ETF (symbol: RZV) (collectively, "Rydex ETFs"). Amex represents that it plans to assess the proposed options licensing fee on members commencing March 7, 2006.

The Exchange has entered into numerous agreements with various index providers for the purpose of trading options on certain ETFs. As a result, the Exchange is required to pay index license fees to third parties as a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has recently established per-contract licensing fees for orders of Market Participants that are collected on each option transaction in certain designated products in which such Market Participant is a party.<sup>5</sup>

The purpose of the proposal, therefore, is to charge an options licensing fee in connection with options on the Rydex ETFs. Specifically, Amex seeks to charge an options licensing fee of \$0.09 per contract side for each

<sup>5</sup> See Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005).