

information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 27, 2008.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-4206 Filed 3-4-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 18f-1 and Form N-18f-1; SEC File No. 270-187; OMB Control No. 3235-0211.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 18f-1 (17 CFR 270.18f-1) enables a registered open-end management investment company ("fund") that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-18(f)). A fund relying on the rule must file Form N-18F-1 (17 CFR 274.51) to notify the Commission of this election. The Commission staff estimates that approximately 39 funds file Form N-18F-1 annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 39 hours.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: February 27, 2008.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-4207 Filed 3-4-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28176; 812-13348]

### Patriot Capital Funding, Inc.; Notice of Application

February 28, 2008.

**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:** Patriot Capital Funding, Inc. ("Applicant") requests an order to permit Applicant to

issue restricted shares of its common stock under the terms of its employee compensation plan.

**FILING DATES:** The application was filed on November 29, 2006, and amended on February 15, 2008. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

**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 March 24, 2008, 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 Richard P. Buckanavage, President and Chief Executive Officer, Patriot Capital Funding, Inc., 274 Riverside Avenue, Westport, CT 06880.

**FOR FURTHER INFORMATION CONTACT:** Shannon Conaty, Senior Counsel, at (202) 551-6827, or Janet M. Grossnickle, 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 20549-1520 (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>

<sup>1</sup> Applicant was organized on November 4, 2002. When Applicant commenced business operations in 2003, its business was conducted through two separate entities, Patriot Capital Funding, Inc. and Wilton Funding, LLC. On July 27, 2005, Wilton Funding, LLC merged with and into Patriot Capital Funding, Inc. and the surviving entity, Applicant, elected to be regulated as a BDC. Section 2(a)(48)

Applicant is a specialty finance company that provides customized financing solutions to small- and medium-sized companies. Applicant's investments are primarily senior secured commercial loans, subordinated debt instruments and junior secured term loans. Shares of Applicant's common stock are traded on The NASDAQ Stock Market, Inc. Global Select Market under the symbol "PCAP." As of December 31, 2007, there were 20,650,455 shares of Applicant's common stock issued and outstanding. As of that date, Applicant had 14 employees, including the employees of its one wholly-owned consolidated subsidiary, Patriot Capital Funding LLC I.

2. Applicant currently has a six-member board of directors (the "Board") of whom two are "interested persons" of Applicant within the meaning of section 2(a)(19) of the Act and four are not interested persons (the "non-interested directors"). The four non-interested directors are neither employees nor officers of Applicant (the "non-employee directors").

3. Applicant currently intends, upon receipt of the order, to discontinue its stock option plan and offer all employees holding outstanding options the opportunity to cancel those options in exchange for 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"). Conversion of options into shares of Restricted Stock will not be mandatory and each employee will have the ability to choose to cancel and convert or to keep his or her outstanding options. As of December 31, 2007, total outstanding stock options represent 11.8% of Applicant's total outstanding shares of common stock.<sup>2</sup> The number of shares of Restricted Stock that will be issued in connection with this cancellation and conversion is intended to replicate the value of interests the individual has in the stock option plan and such valuation will be based on assumptions approved by the Board and an

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. On August 2, 2005, Applicant completed its initial public offering.

<sup>2</sup> As a result of allowing each individual employee to make the choice whether to convert his or her options, Applicant anticipates that options will remain outstanding once the cancellation and conversion are completed.

appropriate option pricing model (*e.g.*, Black Scholes), which will be selected by the Board.<sup>3</sup>

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 and other investment management businesses. Applicant believes its ability to offer a compensation plan providing for the periodic issuance of shares of Restricted Stock is vital to its future growth and success. Applicant wishes to adopt an equity-based compensation plan (the "Plan") for its employees as well as employees of its wholly-owned subsidiaries (the "Participants").

5. The Plan will authorize the issuance of shares of Restricted Stock subject to certain forfeiture restrictions. These restrictions may relate to continued employment (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 Applicant, or other restrictions deemed by the Board to be appropriate. The Restricted Stock will be subject to restrictions on transferability and other restrictions as required by the Board. The Restricted Stock will not be transferable except for disposition by gift, will or intestacy. Except to the extent restricted under the terms of the Plan, 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 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 amount of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of Applicant on the effective date of the Plan 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

<sup>3</sup> The opportunity to convert options into shares of Restricted Stock will be offered to employees through a tender offer process and employees will be provided with the disclosure that is required by Schedule TO under the Securities Exchange Act of 1934 (the "Exchange Act"). The same pricing model will be used for all of Applicant's employees and officers.

the Plan.<sup>4</sup> The Plan limits the total number of shares that may be awarded to any single Participant in a single year to 300,000 shares. In addition, no Participant may be granted more than 25% of the shares reserved for issuance under the Plan. Upon the recommendation of the compensation committee of the Board (the "Committee") which is comprised solely of non-interested directors, the Board 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 Applicant.

7. Each issuance of Restricted Stock under the Plan will be approved by the required majority, as defined in section 57(o) of the Act,<sup>5</sup> of Applicant's directors on the basis that the issuance is in the best interests of Applicant and its shareholders. The date on which the required majority approves an issuance of Restricted Stock will be deemed the date on which the subject Restricted Stock is granted. The Plan will be submitted for approval to Applicant's shareholders and will become effective upon such approval, subject to issuance 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 Plan.

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 Plan would not meet the terms of section 63(2), sections 23(b)

<sup>4</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 Plan (including any shares issued in connection with the termination of its stock option plan) less any shares that are forfeited back to Applicant and cancelled as a result of forfeiture restrictions not lapsing.

<sup>5</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.

and 63 would prevent 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 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 Plan does not raise the concern about preferential treatment of Applicant's insiders because the Plan is a bona fide employee compensation plan of the type that is common among corporations generally. In addition, section 61(a)(3) 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 Plan would not become a means for insiders to obtain control of Applicant because the number of shares of Applicant issuable under the Plan would be limited as set forth in the application. Moreover, no individual Participant could be issued more than 25% of the shares reserved for issuance under the Plan. Applicant's current intention, subject to the receipt of the order, is to discontinue its stock option plan and offer all employees holding outstanding options the opportunity to cancel those options in exchange for

shares of Restricted Stock. If, however, Applicant chooses to reinstate the stock option plan (or adopt another such plan) and 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.

5. Applicant further states that the Plan 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 Plan will be submitted to Applicant's shareholders for their approval. Applicant represents that a concise, "plain English" description of the Plan, including its 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 Exchange Act. Applicant further notes that the Plan 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 under the Exchange Act.<sup>6</sup> Applicant thus concludes that the Plan 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 Plan would have a dilutive effect on the shareholders' equity in Applicant, that effect would be outweighed by the anticipated benefits of the Plan 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

<sup>6</sup> 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, Securities Act Release No. 8655 (Jan. 27, 2006) (proposed rule); Executive Compensation and Related Party Disclosure, Securities Act Release No. 8732A (Aug. 29, 2006) (final rule and proposed rule), as amended by Executive Compensation Disclosure, Securities Act Release No. 8765 (Dec. 22, 2006) (adopted as interim final rules with request for comments).

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. 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 Plan by Applicant's Board.

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

7. 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.

8. Applicant requests an order pursuant to section 57(a)(4) and rule 17d-1 to permit the Plan. Applicant states that the Plan, although benefiting the Participants and Applicant in different ways, are in the interests of Applicant's shareholders because the Plan 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.

#### **Applicant's Conditions**

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

1. The Plan will be approved by Applicant's shareholders in accordance with section 61(a)(3)(A)(iv) of the Act.
2. Each issuance of Restricted Stock to officers and employees will be approved by the required majority, as defined in section 57(o) of the Act, of Applicant's directors on the basis that such issuance

is in the best interests of Applicant and its shareholders.

3. The amount of voting securities that would result from the exercise of all of Applicant's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 25% of the outstanding voting securities of Applicant, except that if the amount of voting securities that would result from the exercise of all of Applicant's outstanding warrants, options, and rights issued to Applicant's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plan, would exceed 15% of the outstanding voting securities of 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 Plan, at the time of issuance shall not exceed 20% of the outstanding voting securities of Applicant.

4. The maximum amount of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of Applicant on the effective date of the Plan 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 Plan.

5. The Board will review periodically the potential impact that the issuance of Restricted Stock under the Plan 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 Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plan 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 Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E8-4178 Filed 3-4-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [73 FR 10828, February 28, 2008].

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NE., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** March 3, 2008 at 2 p.m.

**CHANGE IN THE MEETING:** Additional Item.

The following matter will also be considered during the 2 p.m. Closed Meeting scheduled for Monday, March 3, 2008:

An adjudicatory matter.

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

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) 551-5400.

Dated: February 29, 2008.

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E8-4228 Filed 3-4-08; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-57393; File No. SR-Amex-2007-79]**

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change as Modified by Amendments No. 1, 2, and 3 Relating to Independent Directors and Audit Committee Members

February 27, 2008.

On September 18, 2007, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change relating to independent directors and audit committee members. On November 8, 2007 and November 16, 2007, Amex submitted Amendments No. 1 and 2, respectively, to the proposed rule change. The proposed

rule change as modified by Amendments No. 1 and 2 was published for comment in the **Federal Register** on December 27, 2007.<sup>3</sup> The Commission received no comments on the proposal. On February 14, 2008, Amex submitted Amendment No. 3 to the proposed rule change.<sup>4</sup>

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, the requirements of Section 6(b)(5) of the Act,<sup>5</sup> because it allows an issuer a reasonable period of time ("cure period") to fill a vacancy on its audit committee when the number of members on such committee has fallen below the minimum required by the Exchange's rules; and to restore the proportion of independent directors on its board to the level required by the Exchange's rules in a situation when a vacancy arises or an independent director ceases to be independent due to circumstances beyond his or her reasonable control.<sup>6</sup>

The Commission notes that the cure period established by the proposed rule change for issuers generally is consistent with the period provided in the rule of another exchange previously approved by the Commission.<sup>7</sup> Further, the Commission believes that the proposal appropriately adjusts the cure period for Small Business Issuers (as defined in Amex's rules) in view of the

<sup>3</sup> See Securities Exchange Act Release No. 56982 (December 18, 2007), 72 FR 73386 (December 27, 2007).

<sup>4</sup> Amendment No. 3 was a technical amendment not subject to notice and comment.

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

<sup>6</sup> The Commission notes that the proposed rule change does not affect the cure period afforded to an issuer for purposes of compliance with the Exchange's independence standards for audit committee members, including those required by Rule 10A-3 under the Act, 17 CFR 240.10A-3. The proposal rather relates to situations in which a vacancy arises on an issuer's audit committee, as, for example, in a case where a resignation or death causes the number of independent directors on the committee to fall below the minimum required by Amex's rules (two in the case of Small Business Issuers as defined in the Amex's rules and three for all other issuers). The proposal further relates to situations in which a vacancy arises on an issuer's board or an independent director on an issuer's board ceases to be independent due to circumstances beyond his or her reasonable control such that the issuer no longer meets the Amex standard requiring that a majority of directors on an issuer's board be independent (or 50% of the directors, in the case of Small Business Issuers).

<sup>7</sup> See NASDAQ Manual, Rule 4350(c) and (d). See Securities Exchange Act Release No. 54421 (September 11, 2006), 71 FR 54698 (September 18, 2006).

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

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