

provides authority for the Commission to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies.

In 2009, the Commission adopted amendments to Rule 17g-5. Rule 17g-5, as amended, imposes additional requirements on NRSROs in order to address concerns about the integrity of their credit rating procedures and methodologies in light of the role they played in determining credit ratings for securities collateralized by or linked to subprime residential mortgages.

Rule 17g-5, as amended, requires NRSROs to disclose and manage certain conflicts of interest. The collection of information obligation imposed by Rule 17g-5 is mandatory for credit rating agencies that are applying to register or are registered with the Commission as NRSROs. Registration with the Commission as an NRSRO is voluntary.

The Rating Agency Act added a new Section 15E, "Registration of Nationally Recognized Statistical Rating Organizations" (15 U.S.C. 78o-7) to the Exchange Act. Exchange Act Section 15E(h)(2) provides the Commission with authority to prohibit, or require the management and disclosure of, any potential conflict of interest relating to the issuance of credit ratings by an NRSRO (15 U.S.C. 78o-7(h)(2)).

Rule 17g-5, as amended, requires the disclosure and establishment of procedures to manage an additional conflict of interest and prohibits an NRSRO from issuing a rating for a structured finance product unless information about the transaction and the assets underlying the rated security are disclosed to certain persons. The Commission estimates that it will take 10 NRSROs approximately 300 hours to develop a system, as well as the policies and procedures, for the disclosures required by Rule 17g-5, resulting in a total one-time hour burden of 3,000.

Rule 17g-5, as amended, also requires disclosures on a transaction by transaction basis. The Commission estimates that the total number of structured finance ratings issued by all NRSROs in a given year would be 14,880 and that it would take 1 hour per transaction to make the information publicly available resulting in a total aggregate annual burden to the industry of 14,880 hours.

Rule 17g-5, as amended, also requires arrangers to disclose certain information. The Commission estimates that it would take 200 arrangers subject to the rule approximately 300 hours to develop a system, as well as the policies and procedures, for the disclosures

required by Rule 17g-5, resulting in a total one-time hour burden of 60,000.

Rule 17g-5, as amended, also requires disclosures by arrangers on a transaction by transaction basis. The Commission estimates that 200 arrangers would arrange approximately 20 new transactions per year and that it would take 1 hour per transaction to make the information publicly available, resulting in a total aggregate annual burden of 4,000 hours.

Rule 17g-5, as amended, also requires disclosure of information by arrangers on an ongoing basis that is used by an NRSRO to undertake credit rating surveillance on the structured finance product. The Commission estimates this disclosure would be required for approximately 125 transactions a month, and it would take each respondent approximately 0.5 hours per transaction to disclose the information. Therefore, the Commission estimates that it would take each respondent approximately 750 hours on an annual basis to disclose such information, for a total aggregate annual burden of 150,000 hours.

Finally, Rule 17g-5, as amended, requires NRSROs to submit an annual certification to the Commission. The Commission estimates that it would take each NRSRO approximately 2 hours to complete the certification, resulting in a total aggregate annual burden of 20 hours.

Accordingly, the total estimated burden associated with Rule 17g-5 is 63,000 hours on a one-time basis (3,000 + 60,000 = 63,000) and 168,900 on an annual basis (14,880 + 150,000 + 4,000 + 20 = 168,900).

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

The public may view background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to:

[Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments

must be submitted within 30 days of this notice.

Dated: July 24, 2012.

**Kevin M. O'Neill**,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30145; 812-14022]

### Saratoga Investment Corp., et al.; Notice of Application

July 23, 2012.

**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 18(a) and 61(a) of the Act.

**APPLICANTS:** Saratoga Investment Corp. (the "Company"), Saratoga Investment Advisors, LLC (the "Investment Adviser"), Saratoga Investment Corp. SBIC GP, LLC (the "General Partner"), and Saratoga Investment Corp. SBIC LP ("Saratoga SBIC").

**SUMMARY OF THE APPLICATION:** The Company requests an order to permit it to adhere to a modified asset coverage requirement.

**FILING DATES:** The application was filed April 2, 2012. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 17, 2012, 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 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:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: 535 Madison Avenue, NY, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** Lewis B. Reich, Senior Counsel, at (202) 551-6919, or Jennifer L. Sawin, 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 via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. The Company, a Maryland corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the Act.<sup>1</sup> The Company seeks to generate both current income and capital appreciation on its investments primarily through mezzanine debt, leveraged loans and to a lesser extent equity. The Investment Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. Saratoga SBIC, a Delaware limited partnership, is a small business investment company ("SBIC") licensed by the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBIA"). Saratoga SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company directly owns 99% of Saratoga SBIC in the form of a limited partnership interest and is the sole member of the General Partner. The General Partner, a Delaware limited liability company that is a wholly-owned subsidiary of the Company, owns 1% of Saratoga SBIC in the form of a general partnership interest. The Company acts as manager of and investment adviser to Saratoga SBIC.

### Applicants' Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct

or indirect wholly owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as a SBIC and relies on Section 3(c)(7) for an exception from the definition of "investment company" under the 1940 Act (each, a "SBIC Subsidiary").<sup>2</sup> Applicants state that companies operating under the SBIA, such as SBIC Subsidiaries, will be subject to the SBA's substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Saratoga SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Saratoga SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from the SBIC Subsidiary's asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such 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. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC itself, there is no policy reason to deny the benefit of that exemption to the Company.

### Applicants' Condition

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

The Company shall not issue or sell any senior security and the Company shall not cause or permit Saratoga SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Saratoga SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, Saratoga SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of Saratoga SBIC or another SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

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

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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<sup>1</sup> 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 section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>2</sup> All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.