

**The India Growth Fund Inc. [File No. 811-5571]**

*Summary:* Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 30, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. As of January 21, 2004, applicant had 68 shareholders who have not returned their stock certificates. Unclaimed assets have been placed with applicant's transfer agent and will be held for the time period provided under the laws of each such shareholder's state of residence, after which time any unclaimed assets will escheat to the shareholder's state of residence. Expenses of \$211,000 incurred in connection with the liquidation were paid by applicant.

*Filing Dates:* The application was filed on November 12, 2003 and amended on January 23, 2004.

*Applicant's Address:* c/o UBS Global Asset Management (US) Inc., 51 West 52nd St., New York, NY 10019.

**Ayco Series Trust [File No. 811-10115]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. Shareholders approved the merger of applicant's fund on November 25, 2003, and applicant distributed its assets on December 19, 2003. The fund surviving the merger is the Goldman Sachs Capital Growth Fund, a series of Goldman Sachs Variable Insurance Trust. The Ayco Company, L.P. and Goldman Sachs Asset Management, L.P. paid expenses of \$131,590.90 incurred in connection with the merger.

*Filing Date:* The application was filed on January 12, 2004.

*Applicant's Address:* One Wall Street, Albany, NY 12203-3894.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-2455 Filed 2-4-04; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 26344; 812-13059]**

**PMC Capital, Inc., et al.; Notice of Application**

January 30, 2004

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

**ACTION:** Notice of an application under section 57(c) of the Investment Company Act of 1940 (the "Act") requesting an exemption from section 57(a)(2) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order permitting PMC Capital, Inc. ("PMC Capital"), a business development company ("BDC"), to merge into PMC Commercial Trust ("PMC Commercial").

**APPLICANTS:** PMC Capital and PMC Commercial.

**FILING DATES:** The application was filed on January 7, 2004 and amended on January 29, 2004.

**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 February 24, 2004, 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:** Secretary, Commission, 450 5th Street, NW., Washington, DC 20549-0609. Applicants, 18111 Preston Road, Suite 600, Dallas, TX 75252.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 942-0582, 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 may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549-0102 (telephone (202) 942-8090).

**Applicants' Representations**

1. PMC Capital, a Florida corporation, is an internally managed closed-end diversified management investment company that has elected to be regulated as a BDC as defined in section 2(a)(48) of the Act. PMC Capital makes loans principally through three subsidiaries, each of which is licensed and regulated by the Small Business Administration (the "SBA") and registered under the Act as a closed-end diversified management investment

company (collectively, the "SBA Subsidiaries"). The SBA Subsidiaries are Western Financial Capital Corporation ("WFCC"), PMC Investment Corporation ("PMIC"), and First Western SBLC, Inc. ("FW").<sup>1</sup> WFCC and FW are wholly owned by PMC Capital. Because the SBA owns nonvoting preferred stock of PMIC, PMIC is not wholly owned by PMC Capital, although it is controlled by PMC Capital. PMC Capital, directly or through the SBA Subsidiaries, makes loans primarily to new and developing companies whose securities have no established public market. PMC Capital's common stock trades on the American Stock Exchange.

2. In addition to its lending operations, PMC Capital earns income through its wholly-owned subsidiary, PMC Advisers, Ltd. ("Advisers") and PMC Asset Management, Inc., a wholly-owned subsidiary of Advisers. Advisers and PMC Asset Management, Inc. provide investment advisory and administrative services to PMC Commercial.<sup>2</sup>

3. PMC Commercial is a Texas real estate investment trust and primarily originates loans to small businesses collateralized by first liens on the real estate of the related business. In addition, its investments include the ownership of commercial properties in the hospitality industry. PMC Commercial's loans receivable are primarily to borrowers in the hospitality industry. It also originates loans for commercial real estate in the service, retail, multi-family and manufacturing industries. PMC Commercial's common shares trade on the American Stock Exchange.

4. Applicants have proposed a merger (the "Merger") and have entered into a merger agreement pursuant to which PMC Commercial has agreed to acquire PMC Capital. If the Merger is completed,

<sup>1</sup> WFCC is a Florida corporation that is licensed as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 (the "SBIA") and provides long-term loans to borrowers whether or not they qualify as "disadvantaged." PMIC is a Florida corporation that is licensed as a specialized small business investment company ("SSBIC") under the SBIA. PMIC provides long-term collateralized loans to eligible small businesses owned by "disadvantaged" persons, as defined under SBA regulations. FW is a Florida corporation that is licensed as a small business lending company ("SBLC") and originates variable-rate loans that are partially guaranteed by the SBA under its section 7(a) loan guarantee program.

<sup>2</sup> PMC Capital is also directly or indirectly the sole shareholder or partner of the following non-investment company subsidiaries: PMC Funding Corp., PMC Capital, L.P. 1998-1, and PMC Capital, L.P. 1999-1. In addition, PMC Capital and PMC Commercial jointly own interests in several special purpose entities formed in connection with structured loan sale transactions.

PMC Capital shareholders will receive 0.37 PMC Commercial common shares of beneficial interest for each share of PMC Capital common stock they own and will hold approximately 40.49% of PMC Commercial's common shares after the Merger. PMC Commercial shareholders will continue as shareholders after the Merger, holding approximately 59.51% of the outstanding shares of PMC Commercial.

5. Upon completion of the Merger, PMC Capital will be merged with and into PMC Commercial, and the operations of PMC Commercial will include the continuation of the businesses of PMC Capital. Each of PMC Capital's wholly-owned subsidiaries will remain in existence following the Merger, and will be wholly-owned by PMC Commercial. Both Advisers and PMC Asset Management, Inc. will continue in existence after the Merger; however, it is currently intended that they will have no advisory contracts. It is anticipated that they will be taxable REIT subsidiaries that will lease foreclosed properties and generate the income of such properties, if any.

6. At a meeting of the PMC Commercial board of trust managers held on June 14, 2002, management of Advisers indicated that a merger between PMC Capital and PMC Commercial might be beneficial and should be evaluated by PMC Commercial. The PMC Commercial board of trust managers determined that it would be appropriate to consider such a transaction and established a special committee of trust managers (the "PMC Commercial Special Committee") with no relationship to PMC Capital to determine whether such a transaction would be in the best interests of PMC Commercial shareholders and to report back to the full board. On November 4, 2002, the PMC Commercial Special Committee submitted an indication of interest to the PMC Capital board of directors.

7. On November 8, 2002, having received and reviewed PMC Commercial's indication of interest, the PMC Capital board held a special meeting. At that meeting, the PMC Capital board appointed a special committee composed of the PMC Capital directors who are not "interested persons" as defined in section 2(a)(19) of the Act (the "PMC Capital Special Committee"). The PMC Capital Special Committee was empowered to determine whether the proposed merger would be in the best interests of PMC Capital's shareholders and to make a recommendation to the PMC Capital board of directors. The PMC Capital Special Committee was

also authorized to (a) retain legal and financial advisors of its own choosing, (b) review documents and otherwise perform due diligence with respect to PMC Commercial, and (c) prepare and negotiate the terms of the proposal and all documents necessary to effect the Merger.

8. On November 8, 2002, at its first meeting, the PMC Capital Special Committee engaged Sutherland Asbill & Brennan LLP ("Sutherland") as its legal counsel. On December 6, 2002, the PMC Capital Special Committee engaged A.G. Edwards, an investment banking firm, as its financial advisor in connection with the proposed merger. A.G. Edwards had no previous relationship with PMC Capital or PMC Commercial or any of their respective affiliates. From December 9, 2002 to January 6, 2003, the PMC Capital Special Committee, Sutherland and A.G. Edwards conducted extensive due diligence investigations of PMC Capital and PMC Commercial. As part of that process, representatives of A.G. Edwards met with senior management of both PMC Capital and PMC Commercial.

9. On January 6, 2003, representatives of the PMC Capital Special Committee, Sutherland and A.G. Edwards met to discuss the results of the due diligence process and to discuss the terms of the indication of interest. At this meeting, A.G. Edwards presented to the PMC Capital Special Committee a comprehensive review of the terms of the proposal and several possible strategic alternatives thereto, including a REIT conversion and recapitalization, a partial asset liquidation and share repurchase, and an equity financing. The PMC Capital Special Committee determined at this meeting to pursue the indication of interest with an exchange ratio range of 0.34 to 0.41. Subsequently, the PMC Commercial Special Committee and PMC Capital Special Committee negotiated an exchange ratio of 0.37.

10. On March 27, 2003, the PMC Capital Special Committee met with its legal and financial advisors to discuss the exchange ratio. A.G. Edwards delivered its oral opinion to the PMC Capital Special Committee that, based on and subject to the various assumptions and qualifications to be set forth in its written opinion as of March 27, 2003, the exchange ratio of 0.37 was fair to PMC Capital shareholders from a financial point of view. The PMC Capital Special Committee then unanimously voted to recommend to the PMC Capital board of directors that (a) the Merger and the transactions contemplated thereby were fair to and in the best interest of PMC Capital

shareholders from a financial and procedural point of view; and (b) the Merger, the merger agreement and the transactions contemplated thereby be approved and recommended to PMC Capital shareholders.

11. On March 27, 2003, the full PMC Capital board of directors met to consider the proposed merger, the merger agreement and the transactions contemplated thereby. Sutherland reviewed the terms of the merger agreement with the board and discussed the fiduciary duties to which the board members were subject. A.G. Edwards delivered its oral opinion that, based on and subject to the various assumptions and qualifications to be set forth in its written opinion as of March 27, 2003, the exchange ratio of 0.37 was fair, from a financial point of view, to PMC Capital shareholders. The Chairman of the PMC Capital Special Committee presented the unanimous recommendation of the PMC Capital Special Committee that (a) the Merger and the transactions contemplated thereby were fair to and in the best interest of PMC Capital shareholders from a financial and procedural point of view; and (b) the Merger, the merger agreement and the transactions contemplated thereby should be approved and recommended to PMC Capital shareholders.

12. Based on the information and factors considered by the PMC Capital Special Committee and the unanimous recommendation of the PMC Capital Special Committee, the PMC Capital board of directors (a) determined that the Merger and the transactions contemplated thereby were fair to and in the best interest of the PMC Capital shareholders from a financial and procedural point of view; and (b) approved the Merger, the merger agreement and the transactions contemplated thereby and recommended such matters to PMC Capital's shareholders.

13. The exchange ratio was based on (a) The financial terms and conditions of the merger agreement; (b) historical business and financial information relating to the two companies; (c) financial forecasts and other data relating to the two companies' business; (d) discussions with members of senior management with respect to the business and prospects of the two companies, including the benefits and costs related to the Merger; (e) the historical stock prices and trading volumes of the two companies' common stock; and (f) public information with respect to other companies believed to be generally comparable to the two companies.

14. In reaching its decision to approve the Merger, the terms of the merger agreement and the transactions contemplated thereby and to recommend that the PMC Capital board of directors approve and recommend such matters to PMC Capital's shareholders, the PMC Capital Special Committee consulted with PMC Capital management as well as its legal counsel and financial advisor and carefully considered the following material factors: (a) Its review and knowledge of the business, financial condition, results of operations and prospects of PMC Capital, and its general familiarity with and knowledge about PMC Capital's affairs; (b) the present and possible future economic and competitive environment of the small business lending industry in which PMC Capital operates; (c) the written opinion of A.G. Edwards as of March 27, 2003 that the exchange ratio of 0.37 of a common share of PMC Commercial for each share of PMC Capital common stock was fair, from a financial point of view, to PMC Capital's shareholders, and the analyses presented to the PMC Capital Special Committee by A.G. Edwards; (d) the need to increase the capital base of PMC Capital at a reduced cost to achieve operating efficiencies, which the Merger of PMC Capital with PMC Commercial could offer; (e) the need to diversify PMC Capital's investment assets in an effort to provide PMC Capital shareholders with greater earnings performance and operating and dividend stability; (f) its belief that any transaction with PMC Commercial should result in maximizing shareholder value; (g) after conducting a review of strategic alternatives, its belief that the proposed merger provided the best method of maximizing shareholder value; (h) the negotiations it and its financial and legal advisors conducted with the PMC Commercial Special Committee and its financial and legal advisors; (i) the nature of the parties' representations and warranties contained in the merger agreement; (j) the other terms and conditions in the merger agreement, including the right of PMC Capital to terminate the merger agreement prior to its approval by PMC Capital shareholders in the exercise of its fiduciary duty in connection with a superior proposal, subject to a termination fee; (k) that the combined company would have a larger equity market capitalization, which could generate greater research coverage and institutional investment as well as potentially increase the trading volume of the PMC Commercial common shares to be received by PMC Capital

shareholders in the Merger as compared to the trading volume of PMC Capital's common stock before the Merger; (l) the historical market prices and trading information with respect to the PMC Capital common stock and PMC Commercial common shares; (m) the comparisons of historical financial measures for PMC Capital and PMC Commercial, including earnings, return on capital and cash flow, and comparisons of historical operational measures for PMC Commercial and PMC Capital; (n) the expectation that the Merger would be a tax-free transaction for U.S. Federal income tax purposes; (o) the proposed composition of the management of PMC Commercial following the Merger, which would facilitate the integration of both companies and assist the continuation of the best practices of PMC Capital and PMC Commercial following the completion of the Merger; (p) the expectation that unification of the businesses of PMC Capital and PMC Commercial would remove some of the confusion in the marketplace resulting from having two separate public companies with similar names and management; (q) the timing of receipt and the terms of approvals from appropriate governmental entities, including the possibility of delay in obtaining satisfactory approvals or the imposition of unfavorable terms or conditions in the approvals; (r) the desire to simplify PMC Capital's complex business and regulatory structure; (s) the likelihood that the transactions contemplated by the Merger would be successfully completed; and (t) the current industry, economic, market and other relevant conditions.

15. On August 22, 2003, PMC Commercial's registration statement on Form S-4 (the "Registration Statement")<sup>3</sup> was filed with the Commission. The Registration Statement includes a joint proxy statement/prospectus (the "Joint Proxy Statement/Prospectus"), which was used to offer the securities to be issued by PMC Commercial and to solicit proxies in connection with the approval of the Merger by the stockholders of each of PMC Commercial and PMC Capital. The Registration Statement was declared effective on November 12, 2003, and the Joint Proxy Statement/Prospectus was first mailed to shareholders on or about November 12, 2003. On December 30, 2003, PMC Capital shareholders approved the Merger. On January 9, 2004, PMC

Commercial shareholders approved the Merger.

#### Applicants' Legal Analysis

1. Section 57(a)(2) generally makes it unlawful for any person related to a BDC in a manner described in section 57(b), acting as principal, knowingly to purchase from such BDC any security or other property. Section 57(b), in turn, provides that section 57(a) applies to, among other persons, any person directly or indirectly controlled by or under common control with a BDC.

2. The transfer of the assets of PMC Capital to PMC Commercial as a result of the Merger could be deemed to violate section 57(a)(2) to the extent that PMC Capital and PMC Commercial are deemed to be under common control by virtue of PMC Capital controlling Advisers, which, as PMC Commercial's investment adviser, could be deemed to control PMC Commercial.

3. Section 57(c) of the Act provides that the Commission will exempt a transaction from section 57(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the BDC or its shareholders on the part of any person concerned, and the proposed transaction is consistent with the policy of the BDC and consistent with the general purposes of the Act. Applicants believe that the requested relief meets these standards for the reasons discussed below.

4. Applicants believe that the Merger, whereby shares of PMC Capital will be converted into the right to receive shares of PMC Commercial, would benefit PMC Capital's stockholders in a number of ways. It would result in increased size, increased portfolio diversity, and a superior mix of current and capital gain income. The Merger would also eliminate the need for costly duplication of efforts related to maintaining and reporting for two separate public entities.

5. Applicants assert that the extensive involvement of the board of PMC Capital, including PMC Capital Special Committee, the fairness opinion rendered by the independent financial adviser for PMC Capital, and the fact that PMC Capital was represented by separate counsel in connection with the Merger ensures that no overreaching of PMC Capital or its shareholders will occur in connection with the Merger.

<sup>3</sup> File No. 333-108180.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-2357 Filed 2-4-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49146; File No. 4-429]

### Joint Industry Plan; Order Approving Joint Amendment No. 8 to the Options Intermarket Linkage Plan Relating to Satisfaction Orders and Trade-Throughs

January 29, 2004.

#### I. Introduction

On December 18, 2003, December 22, 2003, December 29, 2003, and December 30, 2003, the International Securities Exchange, Inc. ("ISE"), the Pacific Exchange, Inc. ("PCX"), the American Stock Exchange LLC ("Amex"), the Philadelphia Stock Exchange, Inc. ("Phlx"), and the Chicago Board Options Exchange, Inc. ("CBOE") (collectively, the "Participants"), respectively submitted to the Securities and Exchange Commission ("SEC" or "Commission") in accordance with section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 11Aa3-2 thereunder,<sup>2</sup> a proposed amendment to the Options Intermarket Linkage Plan (the "Plan").<sup>3</sup> The amendment proposes to extend the pilot provision limiting trade-through liability to 10 contracts per satisfaction order at the end of the day for an additional five months, until June 30, 2004.

The proposed amendment to the Plan was published in the **Federal Register** on January 6, 2004.<sup>4</sup> No comments were received on the proposed amendment. This order approves the proposed amendment to the Plan.

#### II. Description of the Proposed Amendment

In Joint Amendment No. 8, the Participants propose to extend the pilot provision contained in section 8(c)(ii)(B)(2)(c) of the Plan that limits trade-through liability to 10 contracts per satisfaction order at the end of the day for an additional five months, until June 30, 2004, in order to gain more experience with the limitation on trade-through liability. Pursuant to the pilot, an exchange member's trade-through liability is limited to 10 contracts per Satisfaction Order for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

#### III. Discussion

When this pilot was originally proposed in Joint Amendment No. 4 to the Plan,<sup>5</sup> the Participants represented to the Commission that their members had expressed concerns regarding their obligations to fill Satisfaction Orders (which arise after a trade-through<sup>6</sup>) at the close of trading in the underlying security. Specifically, the Participants represented that their members were concerned that they may not have sufficient time to hedge the positions they acquire.<sup>7</sup> The Participants stated that they believed that their proposal to limit liability for trade-throughs for the last five minutes of trading in the underlying security to the filling of 10 contracts per exchange, per transaction would protect small customer orders, but still establish a reasonable limit for their members' liability. The Participants further represented that the proposal should not affect a member's potential liability under an exchange disciplinary rule for engaging in a pattern or practice of trading through other markets under section 8(c)(i)(C) of the Plan.

The Commission approved the proposal for a one-year pilot<sup>8</sup> to give the Participants and the Commission an opportunity to evaluate: (1) The need for the limitation on liability for trade-

throughs near the end of the trading day; (2) whether 10 contracts per Satisfaction Order is the appropriate limitation; and (3) whether the opportunity to limit liability for trade-throughs near the end of the trading day leads to an increase in trade-throughs. In its approval order, the Commission requested that the Participants provide a report to the Commission at least sixty days prior to seeking permanent approval of the pilot program. The Commission specified that the report should include information about the number and size of trade-throughs that occur during the last seven minutes of the trading day, the number and size of Satisfaction Orders that Participants might be required to fill without the limitation on liability and how those amounts are affected by the limitation on liability, and the extent to which the Participants use the underlying market to hedge their options positions.<sup>9</sup>

In connection with the request in Joint Amendment No. 8 to extend the pilot for an additional five months until June 30, 2004, the Commission notes that the Participants represent that if they seek to make the limitations on trade-throughs permanent, they will submit the above-referenced report to the Commission no later than March 31, 2004. The Participants further represent in Joint Amendment No. 8 that each exchange plans to submit individual reports regarding the requested data and that these reports will detail the number of trade-throughs in the last seven minutes of options trading and the rest of the day, as well as the number and size of Satisfaction Orders that would have been filled absent the current exemption. In addition, the Participants represent that the reports will provide information on the extent to which the exchange's members hedge their options trading during the day as part of their overall risk management. Finally, the Participants represent that they will make every effort to provide specific information regarding their members' hedging at the end of the trading day.

After careful consideration, the Commission finds that the proposed amendment to the Plan seeking to extend the current pilot is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Plan is consistent with section 11A of the Act<sup>10</sup> and Rule 11Aa3-2 thereunder,<sup>11</sup> in that extending the pilot, while the Participants gather and evaluate data

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 240.11Aa3-2.

<sup>3</sup> On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage proposed by the Amex, CBOE, and ISE. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon request by the Phlx and PCX, the Commission issued orders to permit these exchanges to participate in the Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000).

<sup>4</sup> See Securities Exchange Act Release No. 49010 (December 30, 2003), 69 FR 706.

<sup>5</sup> See Securities Exchange Act Release No. 47028 (December 18, 2002), 67 FR 79171 (December 27, 2002) (Notice of Proposed Joint Amendment No. 4).

<sup>6</sup> Trade-throughs occur when a broker-dealer executes its customer's order on one exchange at a price inferior to another exchange's disseminated quote.

<sup>7</sup> See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

<sup>8</sup> See Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (approval of pilot program on a 120-day basis); see also Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (approval of pilot program).

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78k-1.

<sup>11</sup> 17 CFR 240.11Aa3-2.