

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28165; 812-13447]

Triangle Capital Corporation; Notice of Application

February 20, 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 authorizing certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

Summary of the Application: Triangle Capital Corporation (“Triangle”) requests an order to permit it to issue restricted shares of its common stock under the terms of its employee and director compensation plan.

Filing Dates: The application was filed on October 31, 2007, and amended on February 20, 2008.

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 17, 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. Triangle, c/o Garland S. Tucker III, Triangle Capital Corporation, 3600 Glenwood Avenue, Suite 104, Raleigh, NC27612.

For Further Information Contact: John Yoder, Senior Counsel, at (202) 551-6878, 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. Triangle, a Maryland 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.¹ Triangle is a specialty finance company that provides customized financing solutions to companies with annual revenues between \$10 million and \$100 million. Shares of Triangle's common stock are traded on The NASDAQ Global Market under the symbol "TCAP." Triangle's initial public offering was completed on February 21, 2007. As of December 31, 2007, there were 6,803,863 shares of Triangle's common stock outstanding and Triangle had eleven employees, including the employees of its wholly-owned consolidated subsidiaries.

2. Triangle currently has an eight member board of directors ("Board") of whom three are "interested persons" of Triangle within the meaning of section 2(a)(19) of the Act and five are non-interested persons ("Non-interested Directors"). Triangle has

¹ Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

five directors who are not officers or employees of Triangle (the “Non-employee Directors”).

3. Triangle believes that its successful performance 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. Triangle believes its ability to offer 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. Effective February 13, 2007, Triangle adopted the 2007 Equity Incentive Plan. Triangle proposes to amend and restate the 2007 Equity Incentive Plan (“Amended and Restated Plan”) to permit the issuance of shares of Restricted Stock to its Non-employee Directors, employees and employees of its wholly-owned consolidated subsidiaries (collectively, the “Participants” and each, a “Participant”).

4. The Amended and Restated Plan 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 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), or other restrictions deemed by the Board to be appropriate. 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 Amended and Restated 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 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.

5. The maximum amount of Restricted Stock that may be issued under the Amended and Restated Plan will be 10% of the outstanding shares of Triangle's common stock on the effective date of the Amended and Restated Plan plus 10% of the outstanding number of shares of Triangle's common stock issued or delivered by Triangle (other than pursuant to compensation plans) during the term of the Amended and Restated Plan.² The Amended and Restated Plan limits the total number of shares that may be awarded to any single Participant in a single year to 100,000 shares. In addition, no Participant may be granted more than 25% of the shares of common stock reserved for issuance under the Amended and Restated Plan. The Amended and Restated Plan will be administered by the Board, which will award shares of Restricted Stock to the Participants (except for Non-employee Directors) from time to time as part of the Participants' compensation based on a Participant's actual or expected performance and value to Triangle.

6. Under the Amended and Restated Plan, Triangle's Non-Employee Directors will each receive a grant of \$30,000 worth of shares of Restricted Stock at the beginning of each one-year term of service on the Board, for which forfeiture restrictions

² For purposes of calculating compliance with this limit, Triangle will count as Restricted Stock all shares of Triangle's common stock that are issued pursuant to the Amended and Restated Plan less any shares that are forfeited back to Triangle and cancelled as a result of forfeiture restrictions not lapsing.

would lapse one year from the grant date. The Amended and Restated Plan will be administered by the Board, and the grants of Restricted Stock under the Amended and Restated Plan to Non-employee Directors will be automatic and will not be changed without Commission approval.

7. The Amended and Restated Plan will be submitted for approval to Triangle's shareholders, and will become effective upon such approval, subject to the issuance of the requested 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 Amended and Restated 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 Amended and Restated Plan would not meet the terms of section 63(2), sections 23(b) and 63 would prevent the issuance of the Restricted Stock.

3. Section 6(c) provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, 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. Triangle 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.

Triangle 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. Triangle states that the Amended and Restated Plan does not raise the concern about preferential treatment of Triangle's insiders because the Amended and Restated Plan is a bona fide compensation plan 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. Triangle 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. Triangle 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. Triangle also asserts that the Amended and Restated Plan would not become a means for insiders to obtain control of Triangle because the maximum number of Triangle's voting securities that may be issued pursuant to the

Amended and Restated Plan will be limited as set forth in the application. Triangle's current intention is to issue only shares of Restricted Stock as incentive compensation; however, if Triangle 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 Amended and Restated Plan.

5. Triangle further states that the Amended and Restated Plan will not unduly complicate Triangle's structure because equity-based employee compensation arrangements are widely used among corporations and commonly known to investors. Triangle notes that the Amended and Restated Plan will be submitted to its shareholders. Triangle represents that a concise, "plain English" description of the Amended and Restated Plan, including its potential dilutive effect, will be provided in the proxy materials that will be submitted to Triangle's shareholders. Triangle also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934. Triangle further notes that the Amended and Restated 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, Triangle will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act.³ Triangle thus concludes that the Amended and Restated Plan will be adequately

³ In addition, Triangle 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).

disclosed to investors and appropriately reflected in the market value of Triangle's shares.

6. Triangle acknowledges that, while awards granted under the Amended and Restated Plan would have a dilutive effect on the shareholders' equity in Triangle, that effect would be outweighed by the anticipated benefits of the Amended and Restated Plan to Triangle and its shareholders. Triangle 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, Triangle suggests, in turn are likely to increase Triangle's performance and shareholder value. Triangle also asserts that equity-based compensation would more closely align the interests of Triangle's employees with those of Triangle's shareholders. Triangle believes that the granting of shares of Restricted Stock to Non-employee Directors under the Amended and Restated Plan is fair and reasonable because of the skills and experience that such directors provide to Triangle. Such skills and experience are necessary for the management and oversight of Triangle's investments and operations. Triangle 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 Triangle's business in the future. The issuance of shares of Restricted Stock will also provide a means for Triangle's Non-employee Directors to increase their ownership interest in Triangle, thereby helping to ensure a close identification of their interests with those of Triangle and its shareholders. In addition, Triangle states that Triangle's shareholders will be further protected by the

conditions to the requested order that assure continuing oversight of the operation of the Amended and Restated Plan by Triangle'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. Triangle requests an order pursuant to section 57(a)(4) and rule 17d-1 to permit the Amended and Restated Plan. Triangle states that the Amended and Restated Plan, although benefiting the Participants and Triangle in different ways, are in the interests of Triangle's shareholders because the Amended and Restated Plan will help Triangle attract and retain talented professionals, help align the interests of Triangle's employees with those of its shareholders, and in turn help produce a better return to

Triangle's shareholders. Thus, Triangle asserts that the Amended and Restated Plan is consistent with the policies and purposes of the Act.

Applicant's Conditions:

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

1. The Amended and Restated Plan will be approved by Triangle's shareholders in accordance with section 61(a)(3)(A)(iv) of the 1940 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 Triangle's directors on the basis that such issuance is in the best interests of Triangle and its shareholders.
3. The amount of voting securities that would result from the exercise of all of Triangle's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Amended and Restated Plan, at the time of issuance shall not exceed 25% of the outstanding voting securities of Triangle, except that if the amount of voting securities that would result from the exercise of all of Triangle's outstanding warrants, options, and rights issued to Triangle's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Amended and Restated Plan, would exceed 15% of the outstanding voting securities of Triangle, 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 Amended and Restated Plan, at the time of issuance shall not exceed 20% of the outstanding voting securities of Triangle.

4. The maximum amount of Restricted Stock that may be issued under the Amended and Restated Plan will be 10% of the outstanding shares of common stock of Triangle on the effective date of the Amended and Restated Plan plus 10% of the number of shares of Triangle's common stock issued or delivered by Triangle (other than pursuant to compensation plans) during the term of the Amended and Restated Plan.

5. The Board will review periodically the potential impact that the issuance of Restricted Stock under the Amended and Restated Plan could have on Triangle's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Amended and Restated 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 Amended and Restated Plan would not have an effect contrary to the interests of Triangle's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Amended and Restated 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, pursuant to delegated authority.

Florence E. Harmon
Deputy Secretary