Notice of Exempt Preliminary Roll-Up Communication, SEC File No. 270–396, OMB Control No. 3235–0452
Industry Guides, SEC File No. 270–69, OMB Control No. 3235–0069

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

Rule 13e–3 and Schedule 13E–3 under the Securities Exchange Act of 1934 (''Exchange Act''), contains requirements regarding going private transactions by certain issuers or their affiliates. Issuers or affiliates engaging in a Rule 13e–3 transaction file a Schedule 13E–3 to disclose information to security holders about the transaction. Schedule 13E–3 results in an estimated total annual reporting burden of 30,996 hours.

Form S–8 is used by registrants to register employee benefit plan securities under the Securities Act of 1933 (''Securities Act''). The form provides information to the registrant's employees about the plan and registrant that enables them to make informed investment decisions. Form S–8 results in an estimated total annual reporting burden of 131,284 hours.

Regulation 14D applies to tender offers subject to Section 14(d)(1) of the Exchange Act, including, but not limited to any tender offer for securities of a class described in that section which is made by an affiliate of the issuer of such class. Regulation 14E applies to any tender offer for securities other than exempted securities. Schedule 14D–1 contains disclosure about tender offers subject to Section 14(d)(1) of the Exchange Act. Schedule 14D–9 contains disclosure about solicitation/recommendation statements with respect to certain tender offers. The Regulations and Schedule result in an estimated total annual reporting burden of 129,656 hours.

A Notice of Exempt Preliminary Roll-Up Communication is required to be filed by a person making such a communication by Exchange Act Rules 14a–2(b)(4) and 14a–6(a). The Notice provides public information regarding ownership interests and any potential conflicts of interest. The Notice results in an estimated total annual reporting burden of 1 hour.

The Industry Guides provide guidelines for disclosure in documents submitted by registrants in specified industry groups such as oil and gas, insurance, and mining. They do not directly impose any reporting burden and therefore are assigned a total annual reporting burden of one reporting hour.

Written comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collections 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 Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington DC 20549.

Dated: October 10, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28306 Filed 10–24–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22846; 812–10544]

Brantley Capital Corporation, et al.; Notice of Application

October 21, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under sections 6(c) and 57(i) of the Investment Company Act of 1940 (the ''Act''), and under rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY: Applicants request an order to permit a business development company to co-invest with certain affiliates in portfolio companies.

APPLICANTS: Brantley Capital Corporation (the ''Company''), Brantley Capital Management, LLC (the ''Investment Adviser''), Brantley Venture Partners II, LP (''BVP II''), Brantley Venture Partners III, LP (''BVP III'') (BVP II and BVP III, the ''BVP entities''), and any entities currently or in the future advised by the Investment Adviser or by entities controlling, controlled by, or under common control with the Investment Adviser (together with the BVP entities, ''Company Affiliates'').[1]

FILING DATES: The application was filed on March 6, 1997 and amended on August 26, 1997, and on October 10, 1997. *Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 17, 1997, and should be accompanied by proof of service on 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, 20600 Chagrin Blvd., Suite 1150, Cleveland, OH 44122.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser (202) 942–0562, or Mercer E. Bullard, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street N.W., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Company, a Maryland corporation, is a non-diversified closed-end investment company that has elected to be regulated as a business development company (a ''BDC'') under the Act.[2] The Company filed a registration statement on Form N–2 that became effective on November 26, 1996.

2. The Company was formed to invest primarily in the equity securities and

[1] All existing entities that currently intend to rely on the order have been named as applicants, and any other existing or future entities that subsequently rely on the order will comply with the terms and conditions in the application.

[2] Section 2(a) (48) provides that a business development company is any closed-end company which is operated for the purpose of making investments in securities described in section 55(a) of the Act and makes available significant managerial assistance with respect to the issuers of these securities, and which elects BDC status under section 54(a).

equity-linked debt securities of private companies, and makes available significant managerial assistance to the issuers of such securities. The Company seeks to enable its stockholders to participate in investments not typically available to the public due to the private nature of a substantial majority of the Company's portfolio companies, the size of the financial commitment often required in order to participate in such investments, or the experience, skill and time commitment required to identify and take advantage of these investment opportunities.

3. At June 30, 1997, the Company had total assets valued at $40 million, which was primarily invested in short-term U.S. government securities pending investment in portfolio companies. The Company intends to invest a portion of its assets in equity securities of post-venture small-cap public companies. A post-venture company is a company that has received venture capital or private equity financing either (a) during the early stages of the company's business or the early stages of the development of a new product or service, or (b) as part of a restructuring or recapitalization of the company. The Company intends to limit its post-venture investments to companies which within the prior 10 years have received an investment of venture or private equity capital, have sold or distributed securities to venture or private equity capital investors, or have completed an initial public offering of equity securities.

4. The Company's investment objective is the realization of long-term capital appreciation in the value of its investments. In addition, whenever feasible in light of market conditions and the cash flow characteristics of the issuers of the securities in which it invests (collectively, the ''portfolio companies''), the Company will seek to provide an element of current income primarily from interest, dividends and fees paid by its portfolio companies.

5. The BVP entities are venture capital limited partnerships not registered under the Act in reliance on sections 3(c)(1) and/or 3(c)(7) of the Act. The BVP entities, during the period from 1981 through 1996, in the aggregate have made investments in 32 small businesses, each with up to $20 million in annual revenue, either as part of early-stage financings, expansion financings, acquisition or buyout financings or special situations. The BVP entities generally have made venture capital investments similar to the investments to be made by the Company in private companies.

6. BVP II, a Delaware limited partnership, has committed capital of approximately $30 million from 14 limited partners representing primarily corporate and public pension funds which has been fully invested in 15 portfolio companies. Although its committed capital is fully invested, BVP II may elect to reinvest from time to time, rather than to distribute immediately, the cash proceeds from the harvest of existing investments prior to its scheduled final distribution in April 2000. The sole general partner of the controlling general partner and two other general partners of the Delaware limited partnership which is BVP II's managing general partner are executive officers of the Company and are principals of the Investment Adviser.

7. BVP III, a Delaware limited partnership, has committed capital of approximately $60 million from 16 limited partners representing primarily corporate and public pension funds. The committed capital currently is less than 40% invested in 9 portfolio companies. BVP III is not scheduled for final distribution until December 2003. The sole general partner of the controlling general partner and two other general partners of the Delaware limited partnership which is BVP III's managing general partner are executive officers of the Company and principals of the Investment Adviser.

8. The Investment Adviser is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940. The Investment Adviser was named originally as ''Brantley Capital Management, Ltd.'', and organized originally as a Delaware corporation on February 9, 1995. The Investment Adviser was reorganized as a Delaware limited liability company on November 25, 1996. The Investment Adviser is privately owned by its members, including certain executive officers of the Company who are principals of the Investment Adviser. The Investment Adviser currently provides investment advisory services solely to the Company. However, certain of the Investment Adviser's principals are also principals of several management companies organized as limited partnerships, each of which is the managing general partner in one of the BVP entities.

9. Applicants request an order under section 57(i) of the Act and under rule 17d–1 to permit the Company and Company Affiliates to co-invest in portfolio companies.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons from participating in a joint transaction with a BDC in contravention of rules as prescribed by the SEC. Under section 57(b)(1) of the Act, persons who are affiliated persons of the directors or officers of a BDC within the meaning of section 2(a)(3)(C) of the Act are subject to section 57(a)(4). Under section 2(a)(3)(C), an affiliated person of another person includes any person directly or indirectly controlled by such other person.

2. Section 57(i) of the Act provides that, until the SEC prescribes rules under section 57(a)(4), the SEC's rules under sections 17(a) and 17(d) of the Act applicable to closed-end investment companies shall be deemed to apply to sections 57(a) and 57(d). Because the SEC has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

3. Rule 17d–1 under the Act generally prohibits affiliated persons of an investment company from entering into joint transactions with the company without prior SEC authorization. In passing upon applications under rule 17d–1(b), the SEC will consider whether the participation by the BDC in such joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Applicants state that, because the BVP entities may be deemed to be under common control with the Investment Adviser through the common ownership of the BVP entities' respective managing general partners with the Investment Adviser and also through the common identity of certain principals of the BVP entities' managing general partners and the Investment Adviser, the BVP entities may be persons affiliated with the Company under section 57(b) of the Act and therefore may be prohibited by section 57(a)(4) of the Act and rule 17d–1 from participating in the proposed co-investment program without exemptive relief.

5. Applicants expect that co-investment in portfolio companies by the Company and Company Affiliates will increase favorable investment opportunities for the Company. Applicants state that an investment company that makes venture capital investments typically limits its participation in any one transaction to a specific dollar amount. Applicants state that, when the Investment identifies venture capital investment opportunities requiring larger capital commitments, it must seek the participation of other venture capital entities. Applicants believe that the availability of the Company Affiliates as investing partners of the Company may

alleviate that necessity in certain circumstances.

6. The Investment Adviser believes that it will be advantageous for the Company to co-invest with the investment objectives, policies, and restrictions of the Company. The Investment Adviser also believes that co-investment by the Company and the Company Affiliates will provide the opportunity for achieving greater diversification and exercising greater influence on the portfolio companies in which the Company and Company Affiliates co-invest.

7. Applicants submit that the formula for the allocation of co-investment opportunities among the Company on the one hand and the Company Affiliates on the other and the advance approvals of the required majority (within the meaning of section 57(o) of the Act) of directors of the Company, as provided in condition 1 below, will ensure that the Company will be treated fairly. Applicants also contend that the conditions to which the requested relief will be subject are designed to ensure that principals of the Investment Adviser would not be able to favor the Company Affiliates over the Company through the allocation of investment opportunities among them.

Applicants' Conditions

Applicants agree that the requested order shall be subject to the following conditions:

1. (a) To the extent that the Company is considering new investments, the Investment Adviser will review investment opportunities on behalf of the Company, including investments being considered on behalf of any Company Affiliate. The Investment Adviser will determine whether an investment being considered on behalf of a Company Affiliate (''Company Affiliate Investment'') is eligible for investment by the Company.

(b) If the Investment Adviser deems a Company Affiliate Investment eligible for the Company (a ''co-investment opportunity''), the Investment Adviser will determine what it considers to be an appropriate amount that the Company should invest. When the aggregate amount recommended for the Company and that sought by a Company Affiliate exceeds the amount of the co-investment opportunity, the amount invested by the Company shall be based on the ratio of the net assets of the Company to the aggregate net assets of the Company and the Company Affiliate seeking to make the investment.

(c) Following the making of the determinations referred to in (a) and (b), the Investment Adviser will distribute written information concerning all co-investment opportunities to the Company's directors who are not ''interested persons'' as defined under section 2(a) (19) of the Act (''Independent Directors''). The information will include the amount the Company Affiliate proposes to invest.

(d) Information regarding the Investment Adviser's preliminary determinations will be reviewed by the Company's Independent Directors. The Company will co-invest with a Company Affiliate only if a required majority (as defined in section 57(o) of the Act) (''Required Majority'') of the Company's Independent Directors conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of the Company and do not involve overreaching of the Company or such shareholders on the part of any person concerned;

(ii) The transaction is consistent with the interests of shareholders of the Company and is consistent with the Company's investment objectives and policies as recited in filings made by the Company under the Securities Act of 1933, as amended, its registration statement and reports filed under the Securities Exchange Act of 1934, as amended, and its reports to shareholders;

(iii) The investment by the Company Affiliate would not disadvantage the Company, and that participation by the Company would not be on a basis different from or less advantageous than that of the Company Affiliate; and

(iv) The proposed investment by the Company will not benefit the Investment Adviser or any affiliated entity thereof, other than the Company Affiliate making the coinvestment, except to the extent permitted pursuant to sections 17(e) and 57(k) of the Act.

(e) The Company has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. The Company will not make an investment for is portfolio if any Company Affiliate, the Investment for its portfolio if any Company Affiliate, the Investment Adviser, or a person controlling, controlled by, or under common control with the Investment Adviser is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition number 5.

3. For any purchase of securities by the Company in which a Company Affiliate is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration right shall be the same for the Company and the Company Affiliate.

4. If a Company Affiliate elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by the Company, the Investment Adviser will notify the Company of the proposed disposition at the earliest practical time and the Company will be given the opportunity to participate in the disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Company Affiliate. The Investment Adviser will formulate a recommendation as to participation by the Company in the proposed disposition, and provide a written recommendation to the Company's Independent Directors. The Company will participate in the disposition to the extent that a Required Majority of its Independent Directors determine that it is in the Company's best interest. Each of the Company and the Company Affiliate will bear its own expenses associated with any such disposition of a portfolio security.

5. If a Company Affiliate desires to make a ''follow-on'' investment (*i.e.*, an additional investment in the same entity) in a portfolio company whose securities are held by the Company or to exercise warrants or other rights to purchase securities of the issuer, the Investment Adviser will notify the Company of the proposed transaction at the earliest practical time. The Investment Adviser will formulate a recommendation as to the proposed participation by the Company in a follow-on investment and provide the recommendation to the Company's Independent Directors along with notice of the total amount of the follow-on investment. The Company's Independent Directors will make their own determination with respect to follow-on investment. To the extent that the amount of a follow-on investment opportunity is not based on the amount of the Company's and the Company Affiliate's initial investments, the relative amount of investment by the Company Affiliate and the Company will be based on the ratio of the Company's remaining funds available for investment to the aggregate of the Company's and the Company Affiliate's remaining funds available for investment. The Company will participate in the investment to the extent that a Required Majority of its Independent Directors determine that it is in the Company's best interest. The acquisition of follow-on investments as permitted by this condition will be

subject to the other conditions in the application.

6. The Company's Independent Directors will review quarterly all information concerning co-investment opportunities during the preceding quarter to determine whether the conditions in the application were complied with.

7. The Company will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Company's Independent Directors under section 57(f).

8. No Independent Director of the Company will be a director or general partner of any Company Affiliate with which the Company co-invests.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–28365 Filed 10–24–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39261; File No. SR–CBOE–97–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Relating to ''Go Along'' Orders

October 20, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 25, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The CBOE proposes to issues a regulatory circular which would establish the representation of ''go along'' orders on the floor of the Exchange as a violation of just and equitable principles of trade pursuant to Exchange Rule 4.1. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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

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

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

1. Purpose

The purpose of the proposed rule change is to prohibit floor brokers from representing or executing ''go along'' orders (as further described below) on the floor of the Exchange. The representation or execution of such orders will be considered an act inconsistent with just and equitable principles of trade pursuant to Exchange Rule 4.1. The Exchange proposes to set forth the prohibition against the representation of ''go along'' orders in a regulatory circular describing the types of conduct which would be considered to be violative of just and equitable principles of trade.

Definition of ''Go Along'' Orders: Generally, a ''go along'' order, or a ''not held with the crowd'' order, is an order that instructs a floor broker to bid or offer (as appropriate for the type of order) at the price established by the other participants in the trading crowd. Generally, the customer will specify whether the order is to buy or sell, the number of contracts, the series, and the strike price. Typically, the floor broker will be instructed to buy when the majority of the of the market-makers participating on a trade are selling. These orders often are placed by market-making firms as a side business, by upstairs broker-dealers who want to participate in ''market making,'' and by specialists on other exchanges. These orders are entered in both multiply-traded and singly listed option classes. As proposed, such an order would be prohibited even if the bid or offer does not match exactly the price established by the other participants in the trading crowd as long as the customer has given the broker discretion to determine what to bid or offer based upon the prices established by the other participants.

Rationale for the Prohibition Against ''Go Along Orders'': The Exchange believes that the continued representation of this class of orders on the floor of the Exchange poses a serious threat to the continued viability of the CBOE market-maker system, as explained below.

The execution of ''go along'' orders provides a disincentive to the transaction of a market-making business and thus, threatens the continued viability of the market-making system.

The CBOE believes its market-marker system has, since its inception, provided liquid, deep, fair, and reliable markets for hundreds of option classes in thousands of different series. These liquid markets are brought about through the efforts of numerous market-makers who are willing to take on various affirmative obligations in exchange for the opportunity to stand in a trading crowd and trade with and against other market participants. The various affirmative obligations are established by Exchange rules,[1] including Rule 8.7 which, among other things, requires market-makers to ''engage * * * in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class.'' Rule 8.7.03 imposes distribution of activity requirements on market-markers. Rule 8.51 obligates market-makers to honor disseminated market quotes. In addition to being required to meet the above obligations, CBOE market-makers are subject to plenary oversight and regulation by the CBOE.[2] In short, the system of affirmative obligations and oversight embodied in CBOE Rules subjects market-makers to a great deal of responsibility, in order to assure the quality and liquidity of the CBOE markets.

The CBOE believes that ''go along'' orders interfere with this obligation-opportunity trade-off of Exchange market-making. Essentially, those

[1] Congress intended that exchanges have the primary responsibility for the formulation and enforcement of the regulation of exchange market making. See Report of the Senate Banking, Housing and Urban Affairs Committee, Senate Report No. 94–75, April 14, 1975, to accompany S. 249, at p. 15. Section 11(b) of the Exchange Act and Exchange Act Rule 11b–1 codify that policy. In fact, certain of the obligations imposed on CBOE market-makers by CBOE rules are mandated by Rule 11b–1.

[2] Exchange Act Rule 11b–1(a)(2)(v) requires to CBOE to have procedures ''to provide for effective and systematic surveillance of the activities'' of its market-makers.