6. Final FY 1999 Appropriation Request.
7. Capital Investments.
   a. Radio Frequency Identification (RFI) Project.
   b. Boise, Idaho, Processing & Distribution Center.
   c. Sioux Falls, South Dakota, Processing & Distribution Center.
   d. Church Street Station, New York, Renovation Project, Phase 2.
   e. Advanced Facer Canceler Systems.
   f. Barcode Readers for the Flat Sorting Machine 1000.
8. Briefing on the 1998 Stamp Program.
9. Report on the Pacific Area and Los Angeles Performance Cluster.
10. Tentative Agenda for the January 5–6, 1998, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 97–31597 Filed 11–26–97; 2:43 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22902; 812–10870]

Allied Capital Corporation, et al.; Notice of Application

November 21, 1997.

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

ACTION: Notice of application for exemption under sections 6(c), 12(d)(1)(J), 17(b), 57(c), and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act, and under section 12(h) of the Securities Exchange Act of 1934 (the ''Exchange Act'').

Summary of Application: The order would permit two business development companies (''BDCs''), a real estate investment trust, and the investment adviser to these entities, to merge into a third BDC. In addition, the order would permit the surviving BDC and its wholly-owned subsidiaries to file reports on a consolidated basis and to engage in certain transactions that would otherwise be permitted if the BDC and its subsidiaries were one company. The order also would permit asset coverage requirements for senior securities issued by the BDC and its BDC subsidiaries to apply on a consolidated basis. Further, the order would permit certain joint transactions between two of the BDC's subsidiaries and two private venture capital partnerships. The requested order would supersede any exemption granted to any applicant from provisions of the Act and the Exchange Act, effective as of the date of the merger.

Applicants: Allied Capital Corporation (''Allied I''), Allied Investment Corporation (''Investment I''), Allied Capital Financial Corporation (''Financial I''), Allied Capital Corporation II (''Allied II''), Allied Investment Corporation II (''Investment II''), Allied Financial Corporation II (''Financial II''), Allied Capital Lending Corporation (''Allied Lending''), Allied Capital SBLC Corporation (''Allied SBLC''), Allied Capital Advisers, Inc. (''Advisers''), and Allied Capital Commercial Corporation (''Allied Commercial'').

FILING DATE: The application was filed on November 21, 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 December 15, 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 5th Street, NW., Washington, DC 20549. Applicants, 1666 K Street, NW., 9th Floor, Washington, DC 20006–2803.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mercer E. Bullard, Branch Chief, at (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, NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. Applicants are all Maryland corporations. Stock of Allied I, Allied II, Allied Lending, Allied Commercial, and Advisers (the ''Participating Companies'') trades over-the-counter on the Nasdaq Stock Market's National Market. Allied I, Allied II, and Allied Lending have each elected to be regulated as a BDC, as defined under section 2(a)(48) of the Act.[1] Allied Development Corporation (''Development''), Investment I, and Financial I are wholly-owned subsidiaries of Allied I and Investment II and Financial II are wholly-owned subsidiaries of Allied II. Development, Investment I and II, and Financial I and II are registered under the Act as closed-end management investment companies. Development is currently inactive. Investment I and II are licensed small business investment companies (''SBICs'') under the Small Business Investment Act of 1958 (the ''1958 Act''). Financial I and II are specialized small business investment companies (''SSBICs'') under the 1958 Act. Allied Lending participates in the Small Business Administration's (''SBA'') general business loan program pursuant to section 7(a) of the Small Business Act. Allied SBLC and Allied Capital Credit Corporation (''Allied Credit'') are wholly-owned subsidiaries of Allied Lending. Allied SBLC is a BDC and a small business lending company (''SBLC'') participating in the general business loan program pursuant to section 7(a) of the Small Business Act. Allied Credit is currently inactive. Allied Commercial is a real estate investment trust (''REIT'') with three subsidiaries. Advisers is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as the investment adviser to the other Participating Companies. Advisers has one wholly-owned subsidiary established for the purpose of holding an office building which it plans to sell.

2. Applicants have proposed a reorganization in which Allied I, Allied II, Allied Commercial, and Advisers (collectively, the ''Acquired Companies'') will merge into Allied Lending and become ''ACC'' (the ''Consolidation''). ACC will be an adviser registered under the Advisers Act and will operate as an internally managed BDC. Investment I and Financial I will merge with Investment II and Financial II, with Investment I and Financial I as the surviving entities (respectively, the ''Surviving SBIC Subsidiary'' and the ''Surviving SSBIC Subsidiary''). As part of the Consolidation, the SBLC Subsidiary will

[1] Section 2(a)(48) generally 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 (3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. Such issuers are small companies whose securities typically are illiquid.

become the ''Surviving SBLC Subsidiary.'' Prior to the Consolidation, Development will be merged with Allied I and Allied Credit will be merged into Allied Lending. In addition, prior to the Consolidation, Allied Commercial's three subsidiaries will be merged into ''Equity Holdings LLC'' and ''Acceptance LLC,'' Allied Lending will establish a REIT subsidiary that will become a subsidiary of ACC following the Consolidation (the ''Surviving REIT Subsidiary''), and Advisers' wholly-owned subsidiary will be liquidated or merged into ''Property LLC,'' which will become a subsidiary of ACC following the Consolidation.

3. Following the Consolidation, ACC will have seven wholly-owned subsidiaries (the ''Surviving Subsidiaries''): Equity Holdings LLC, Acceptance LLC, and Property LLC, and the Surviving SBLC, SBIC, SSBIC, and REIT Subsidiaries. Following the Consolidation, Surviving SBIC and SSBIC Subsidiaries will elect BDC status and will no longer operate as registered investment companies. Therefore, the Surviving SBIC, SSBIC, and SBLC Subsidiaries will all be BDCs (the ''Surviving BDC Subsidiaries''). The Surviving REIT Subsidiary, Equity Holdings LLC, Acceptance LLC, and Property LLC will not be BDCs or registered investment companies. In addition, ACC may in the future create additional wholly-owned subsidiaries (the ''Future Subsidiaries'') which in some cases may be BDCs (the ''Future BDC Subsidiaries'').

4. The Consolidation will be effected pursuant to a merger agreement dated August 14, 1997, and amended and restated on September 19, 1997 (the ''Merger Agreement''). The merger is anticipated to occur on December 31, 1997 (the ''Effective Date''). On the Effective Date, each share of common stock of the Acquired Companies will be converted into shares of Allied Lending in the following amounts: (a) Each share of Allied I will be converted into 1.07 shares of Allied Lending; (b) each share of Allied II will be converted into 1.40 shares of Allied Lending; (c) each share of Allied Commercial will be converted into 1.60 shares of Allied Lending; and (d) each share of Advisers will be converted into 0.31 shares of Allied Lending (collectively, the ''Exchange Ratios''). The Exchange Ratios were based on the relative market prices of the Participating Companies' stock, as discussed below. The exchange agent for the Consolidation will request that, as soon as possible after the Effective Date, shareholders of the Acquired Companies surrender their respective shares. Upon the surrender, the exchange agent will mail the shareholders a confirmation of ownership of ACC common stock. Shares of ACC common stock will be issued in book entry form.

5. The Consolidation will be conditioned on each Participating Company receiving a tax opinion from counsel stating that the Consolidation will be a tax-free event under the Internal Revenue Code of 1986, as amended (the ''Code''). Each Participating Company will be responsible for a *pro rata* portion of expenses related to the Consolidation, based on each Company's total market capitalization as of August 13, 1997, except that each Company will pay the fees and expenses of the financial adviser it engaged to assist it with the Consolidation. Estimated total expenses in connection with the Consolidation are $672,000 for Allied I, $907,000 for Allied II, and $458,000 for Allied Lending. In addition, each of Allied I, Allied II, and Allied Lending have paid $120,000 for the services of its respective independent financial adviser.

6. In June 1997, Morgan Stanley & Co. Incorporated (''Morgan Stanley'') was retained by each of the Participating Companies as the financial adviser to provide advice and assistance with respect to defining objectives, performing valuation analysis, structuring and planning the Consolidation. In addition, each Participating Company retained an independent financial adviser to render an opinion as to the fairness of the Exchange Ratios. Each Participating Company also obtained independent legal counsel to provide that Company's board of directors with legal advice concerning the directors' duties with respect to the consideration of the Consolidation.

7. In determining the relative value of each Participating Company, Morgan Stanley approached the Consolidation as a ''merger of equals.'' In preparing its analysis, Morgan Stanley, among other things, reviewed the strategic rationale for the Consolidation; conducted due diligence sessions with the management of Advisers; developed an independent valuation model for each of the Participating Companies; developed stand-alone valuations of each of the Participating Companies using, among other things, market valuation parameters, discounted cash flow analysis of projected cash flows and analysis of each Participating Company's contribution to ACC; and analyzed the *pro forma* impact of the Consolidation on each Participating Company and its stockholders in terms of contributable earnings and market value.

8. Morgan Stanley also compared the historical price movement of the Participating Companies' stock from June 22, 1994 through July 18, 1997. Morgan Stanley advised the management of Advisers and the board of each of the Participating Companies that the thirty-day period from June 16, 1997 to July 15, 1997 was the most appropriate period over which to measure market value for purposes of developing the Exchange Ratios for each of the Participating Companies. Morgan Stanley considered that during this period, no unusual events had occurred that could have influenced the movement of the Participating Companies' stock prices. In addition, July 15, 1997 was chosen as the ending date because on July 16, 1997 management of Advisers began to contact the independent financial advisers, which increased the number of persons with knowledge of the proposed transaction. The market prices for the stock of the Participating Companies from June 16, 1997 to July 15, 1997 formed the basis for Morgan Stanley's recommendation on valuation.

9. During the period beginning on July 30 and ending on August 5, 1997, each of the Participating Companies held its regular quarterly board of directors meeting, including a session devoted exclusively to the Consolidation. At those meetings, the management of Advisers provided the reasons for the Consolidation and the business plan for ACC. In addition, Morgan Stanley gave its report on its valuation analysis. Following the Morgan Stanley presentation, the respective Participating Company's independent financial adviser indicated that, based on available information provided through that date and subject to further analyses and review, the applicable Exchange Ratio appeared to be fair to the shareholders from a financial point of view. Further, the respective Participating Company's independent legal counsel made a presentation concerning the duties of the board of directors to the applicable Participating Company and its shareholders in connection with the consideration of the Consolidation. No formal action on the merger proposal was sought or taken at these board meetings.

10. Between August 11 and 14, 1997, each Participating Company's board of directors met again to consider and approve the Merger Agreement. Each meeting was attended by the respective independent financial adviser and legal counsel for that Participating Company. The independent financial advisers

presented their opinions that the Exchange Ratio was fair, from a financial point of view, to the shareholders of the respective Participating Company. After considering the presentation of the respective independent financial adviser and after discussion, each of the boards, including the directors who are not interested persons of the Company under section 2(a)(19) of the Act or officers of or otherwise affiliated with any of the other Participating Companies (''Independent Directors''), unanimously approved its Participating Company's participation in the Consolidation and agreed to the terms of the Merger Agreement.

11. The boards of directors considered, among other things: (a) Information concerning the financial performance and condition, business operations, capital levels, asset quality and prospects of each Participating Company, and its projected future financial performance as a separate entity and on a combined basis; (b) current industry, economic, and market conditions and trends; (c) the importance of economies of scale to competing effectively; (d) the Consolidation's structure as a tax-free merger of equals; (e) the possibility that achieving cost savings and operating efficiencies as a result of the Consolidation might not be the same for each Participating Company; (f) the terms and conditions of the Merger Agreement; (g) the current and historical market prices of the common stock of each Participating Company; (h) the opinions of the respective independent financial adviser as to the fairness, from a financial point of view, of the respective Exchange Ratios; (i) the portfolio holdings, liabilities, management, strategic objectives, competitive positions, and prospects of the respective Participating Company; and (j) the impact of the Consolidation on the shareholders and portfolios of each Participating Company and on the employees of Advisers.

12. A proxy statement was filed with the Commission on September 26, 1997. Proxy statements were mailed to shareholders on October 14, 1997, and shareholder meetings are scheduled for November 26, 1997. At least two-thirds of the voting shares of each Participating Company will be required to approve the Consolidation.

13. Applicants request an order to permit the Consolidation. In addition, applicants request an order to permit ACC and its Surviving and Future BDC Subsidiaries (the ''BDC Subsidiaries'') to file reports on a consolidated basis and to engage in certain transactions that would otherwise be permitted if ACC and its BDC Subsidiaries were one company. The order also would permit modified asset coverage requirements for ACC and its BDC Subsidiaries on a consolidated basis and for the Surviving SBLC Subsidiary individually. Further, the order would permit certain joint transactions between the Surviving SBIC and SSBIC Subsidiaries and two private venture capital partnerships.

14. ACC will own all of the outstanding common voting stock or membership interests of the Surviving and Future Subsidiaries (the ''Subsidiaries''). In addition, the following types of transactions may occur among ACC and the Subsidiaries:

(a) ACC may make additional investments in a Subsidiary, as a contribution to capital, purchase of additional stock, or loan.

(b) A Subsidiary may pay dividends and make other distributions to ACC. Each BDC Subsidiary and the Surviving REIT Subsidiary intend to qualify as a regulated investment company and a real estate investment trust, respectively, pursuant to Subchapter M of the Code. As such, each BDC Subsidiary and the Surviving REIT Subsidiary will be required to pay to ACC substantially all of its income in the form of a dividend in order not to incur any Federal income tax.

(c) A Subsidiary may make loans or other advances to ACC or another Subsidiary. None of the Subsidiaries will purchase or otherwise acquire any of the capital stock of ACC.

(d) One or more of ACC and the Subsidiaries may invest in the securities of the same unaffiliated issuer, together or at different times, and deal with such investments separately or jointly. In addition, ACC and the BDC Subsidiaries may engage in purchase or sale transactions with controlled portfolio affiliates of one another.

(e) ACC may purchase all or some of a portfolio investment held by a Subsidiary. Similarly, a Subsidiary may purchase all or some of a portfolio investment held by ACC or another Subsidiary.

(f) One or more of ACC and the Subsidiaries may enter into a financial arrangement with a third-party financial institution in which one or more of ACC and the Subsidiaries are co-borrowers or guarantors.

Applicants' Legal Analysis

A. The Consolidation

1. Section 57(a) generally prohibits, with certain exceptions, sales or purchases of securities between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes the investment adviser to, and any person under common control with, the BDC. Allied I, Allied II, and Commercial could be deemed to be affiliates of Allied Lending under section 57(b) because all are under common control by virtue of having a common investment adviser.

2. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and certain affiliated persons of the company as described in section 2(a)(3) of the Act. Affiliated persons under section 2(a)(3)(C) include persons under common control with the investment company. When the assets of Investment II and Financial II are transferred to Investment I and Financial I, respectively, all four investment companies will be under the common control of ACC.

3. Sections 57(c) and 17(b) of the Act provide that the SEC will exempt a proposed transaction from sections 57(a) and 17(a), respectively, if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; and the proposed transaction is consistent with the policy of each registered investment company concerned and consistent with the general purposes of the Act. Applicants believe that the requested relief from sections 57(a) and 17(a) meets these standards for the reasons discussed below.

4. Applicants believe that the Consolidation will benefit shareholders of the Participating Companies. Applicants state that ACC's increased size, increased portfolio diversity, and mix of current and capital gain income will provide increased benefits for all shareholders. Applicants state that ACC will have the ability to diversify into larger and varied transactions, and that ACC's greater size will provide opportunity for lower-cost debt capital and institutional ownership of its common stock. In addition, applicants believe that the Consolidation will eliminate the need for costly duplication of efforts related to maintaining and reporting for five separate public entities. Applicants further believe that the mergers of Investment II and Financial II into Investment I and Financial I, respectively, will result in similar benefits.

5. Applicants assert that the role of the Independent Directors of Allied I and II and Allied Lending, Morgan Stanley's valuation analysis, the fairness opinions given by each independent

financial adviser, and the representation by separate independent counsel of Allied I and II and Allied Lending ensure that no overreaching on the part of any person will occur in connection with the Consolidation. Applicants state that the Consolidation will be consistent with the public disclosures of each of the Participating Companies and with the general purposes of the Act, as will be the merger of Investment II and Financial II into Investment I and Financial I, respectively. Further, applicants state that the board of directors of each Participating Company has approved the transaction as being in the best interests of the Company.

6. Applicants note that during the process of considering and approving the Consolidation, the board of directors of each Participating Company specifically considered the participation of Advisers in the Consolidation. Applicants state that each board of directors concluded that ACC would be a better business model than a Participating Company would be individually, in part because ACC will be internally managed. Applicants note that with external management, Advisers must not only cover its costs, but must earn a profit for its shareholders and pay a corporate level income tax. Applicants also note that external management creates perceived conflicts of interest because the goals of an external adviser may conflict with the goals of the fund. Applicants state that the directors concluded that Advisers' participation in the Consolidation was fair from a financial point of view and that the management of Advisers will receive no financial benefit from the consolidation to the detriment of any of the other Participating Companies or their shareholders.

B. Operation as One Company

1. Section 12(d)(1)

a. Section 12(d)(1)(A) of the Act, made applicable to BDCs by section 60 of the Act, limits the amount of securities a registered investment company or BDC (or company controlled by the registered investment company or BDC) may hold of other investment companies. Section 12(d)(1)(C) limits the amount of securities of a closed-end investment company that may be acquired by an investment company. Applicants state that any purchase of the voting stock of the Surviving SBLC Subsidiary or a Future BDC Subsidiary by ACC, or a contribution to capital of the Surviving SBLC Subsidiary or of a Future BDC Subsidiary by ACC, may violate section 12(d)(1).[2] In addition, applicants state that section 12(d)(1) may apply to each of the Subsidiaries with respect to their purchase or acquisition of debt securities issued by ACC or each other because each will be a BDC or an entity controlled by a BDC. Further, applicants state that the making of loans or advances by any of the Subsidiaries to ACC or to each other may violate section 12(d)(1).

b. Applicants request an exemption from sections 12(d)(1)(A) and (C) to permit: (a) the acquisition by ACC of any securities of the Surviving SBLC Subsidiary and the future BDC Subsidiaries; and (b) the acquisition by any of the Subsidiaries of any securities representing indebtedness of ACC or of any securities representing indebtedness issued by any of the other Subsidiaries. Applicants request the exemptions to the extent that the transactions would not be prohibited if each Subsidiary were deemed to be part of ACC and not a separate company.

c. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. For the following reasons, applicants believe that the proposal meets this standard.

d. Applicants assert that section 12(d)(1) is intended to prevent certain abuses associated with the pyramiding of investment companies, and that the holding company structure will not entail these types of abuses. Applicants state that these abuses include the investing fund exercising undue influence over the underlying funds, the layering of fees, and the creation of overly complex and confusing structures.

e. Applicants believe that ACC, as the sole shareholder of the Subsidiaries, will have no incentive to act contrary to the interests of a Subsidiary. Applicants also contend that the Consolidation will not result in investors incurring duplicative sales charges or advisory fees, and will result in a structure that is less complex than the current structure. Applicants also note that the parent/subsidiaries structure that will result from the Consolidation will serve a valid business purpose by facilitating more efficient public investment in the alternative asset class of small business debt securities.

2. Section 12(d)(3)

a. Section 12(d)(3) of the Act, made applicable to BDCs by section 60, generally makes it unlawful for any registered investment company to purchase any security issued by an investment adviser to an investment company. Applicants state that the Consolidation could be deemed to involve the purchase or acquisition by Allied I or II, Allied Lending, or ACC of securities issued by Advisers. Applicants request an exemption to permit the purchase of Advisers in connection with the Consolidation.

b. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is 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 believe that the requested relief meets the section 6(c) standard for the reasons discussed below.

c. Applicants state that section 12(d)(3) was intended to limit the exposure of registered investment companies to the entrepreneurial risks associated with securities related business and to prevent potential conflicts of interest and reciprocal practices. Applicants state that the Consolidation does not present the potential for these abuses. Applicants believe that the procedures and policies adopted by ACC with respect to its investment advisory operations will ensure that ACC and the Subsidiaries are being operated and managed in the best interests of ACC and its shareholders. Applicants also note that ACC could engage directly in the business of investment management without the need for exemptive relief.

3. Section 18

a. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security unless the company complies with the asset coverage requirements set forth in section 18(a). Section 18(k) provides for modified asset coverage requirements for SBICs. Section 61 makes section 18, with certain modifications, applicable to a BDC.

b. Applicants believe that section 61 may require that ACC and the BDC Subsidiaries comply with the asset

[2] Rule 60a–1 under the Act exempts from sections 12(d)(1)(A) and (C) the acquisition by a BDC of the securities of a small business investment company licensed under the 1958 Act which is operated as a wholly-owned subsidiary of the BDC. Applicants state that, because the Surviving SBIC and SSBIC Subsidiaries are small business investment companies licensed under the 1958 Act, ACC's acquisition of shares of the Surviving SBIC and SSBIC Subsidiaries will be exempt from sections 12 (d)(1)(A) and (C) under rule 60a–1 under the Act. Applicants state that sections 12(d)(1)(A) and (C) do not apply to the non-BDC Subsidiaries because they are not investment companies.

coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because ACC could be deemed to be an indirect issuer of any class of senior securities issued by the Subsidiaries. In addition, applicants believe that the Surviving SBLC Subsidiary may not be permitted to rely on the modified asset coverage requirements of section 18(k) because section 18(k) does not apply to an SBLC licensee but only to SBIC licensees.

c. Applicants request an exemption under section 6(c) (a) for the Surviving SBLC Subsidiary from sections 18(a)(1)(A) and (B), and (b) for ACC to permit senior securities issued by the Surviving BDC Subsidiaries that are excluded from the individual asset coverage ratio by section 18(k) or this order to be excluded from ACC's consolidated asset coverage ratio. Applicants believe the relief satisfied the section 6(c) standard for the following reasons.

d. Applicants state that the Surviving SBLC Subsidiary should be treated like an SBIC licensee because SBLCs and SBICs are analogous in their common purpose to assist small business in raising capital and both are subject to the regulation and oversight of the SBA. Applicants assert that policy rationale for the section 18(k) exemption is that the SBA's regulation of the permissible leverage of an SBA-licensed investment company is an effective substitute for the SEC's regulation of asset coverage for senior securities issued by a registered closed-end company or a BDC. Applicants state that SBICs, SSBICs, and SBLCs are SBA-licensed investment companies and subject to the SBA's substantive regulations of permissible leverage in their capital structure.

e. Applicants contend that if ACC applies the asset coverage requirements of section 18(a) on a consolidated basis, ACC should be able to apply the same exemptions available to the Surviving BDC Subsidiaries. Applicants also contend that to the extent that the Surviving BDC Subsidiaries on a stand-alone basis are entitled to rely on section 18(k) for an exemption from the asset coverage requirements of section 18(a), there is no policy reason to deny the parent the benefit of the exemption when the parent consolidates its assets with the Surviving BDC Subsidiaries when testing compliance with section 18(a).

4. Sections 2(a)(48) and 55(a)

a. Section 2(a)(48) of the Act generally 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 (3) of the Act and makes available significant managerial assistance with respect to the issuers of these securities. Section 55(a) of the Act requires a BDC to have at least 70% of its assets invested in assets described in sections 55(a) (1) through (6) (''Qualifying Assets''). Qualifying Assets generally include securities issued by eligible portfolio companies as defined in section 2(a)(46) of the Act. Section 2(a)(46)(B) of this definition generally excludes (a) an investment company, as defined under section 3 of the Act, unless the company is an SBIC licensed by the SBA to operate under the 1958 Act and is a wholly-owned subsidiary of the BDC, and (2) a company that would be an investment company but for the exclusion from the definition of investment company in section 3(c) of the Act.

b. Applicants believe that the Surviving SBLC and REIT Subsidiaries may not be deemed eligible portfolio companies because the Surviving SBLC Subsidiary is not an SBIC licensed by the SBA but an SBLC, and the Surviving REIT Subsidiary may be an investment company but for the exclusion from the definition of investment company in section 3(c). Applicants request relief under section 6(c) from section 55(a) to permit ACC to treat the Surviving SBLC Subsidiary as an eligible portfolio company within the meaning of section 2(a) (46) solely to the extent that the Surviving SBLC Subsidiary may not qualify as an eligible portfolio company for reasons stated above. Further, applicants request relief from sections 2(a)(48) and 55(a) to permit the assets held by the REIT Subsidiary, rather than the REIT Subsidiary itself, to be treated as assets held by ACC for purposes of (1) determining whether ACC is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of sections 55(a), (2) determining whether ACC makes available managerial assistance to companies as described in section 2(a)(48), and (3) applying the 70% test in section 55(a). Applicants believe the relief satisfies the section 6(c) standard for the following reasons.

c. Applicants believe that relief for the Surviving Subsidiary is appropriate because the loans to be made by the SBLC will be made to the same category of small business borrowers that represent the type of securities included in the definition of Qualifying Assets. In addition, applicants note that the Surviving SBLC Subsidiary will invest all of its assets in Qualifying Assets and itself will be a BDC.

d. Applicants believe that relief for the REIT Subsidiary is appropriate because all of the voting securities of the REIT Subsidiary will be held by ACC and ACC will control the operations of the REIT Subsidiary, including the acquisition and disposition of its assets. Applicants also state the assets of the REIT Subsidiary will be held by the REIT Subsidiary and not directly by ACC only for bona fide business reasons that are unrelated to the policies underlying the Act and that do not reflect a substantive economic difference from the assets being held by ACC. Applicants therefore contend that the assets held by the REIT Subsidiary are, in economic effect, assets held by ACC, and should be treated as such in determining ACC's compliance with the relevant provisions of sections 2(a) (48) and 55(a) of the Act.

5. Sections 57(a) (1) and (2)

a. As discussed above, sections 57(a) (1) and (2) generally prohibit, with certain exceptions, sales or purchases of securities between BDCs and certain of their affiliates as described in section 57(b) of the Act. Because they are under the common control of ACC, each Subsidiary will be an affiliated person of each other Subsidiary within the meaning of section 57(b).

b. Applicants request relief from sections 57(a) (1) and (2) under section 57(c) to exempt any transaction between ACC and any BDC Subsidiary and any transaction between any BDC Subsidiaries and any Subsidiary with respect to the purchase or sale of securities or other property. In addition, applicants request relief from sections 57(a) (1) and (2) to exempt any purchase or sale transaction between ACC and a controlled portfolio affiliate of a BDC Subsidiary and any purchase or sale transaction between a BDC Subsidiary and a controlled portfolio affiliate of ACC or of another BDC Subsidiary, but only to the extent that any such transaction would not be prohibited if the BDC Subsidiary were deemed to be part of ACC and not a separate company. For the following reasons, applicants believe that the requested relief satisfies the section 57(c) standard.

c. Applicants state that there may be cases when it is in the interest of ACC's shareholders for a BDC Subsidiary to invest in securities of an issuer that may be an affiliated person of ACC or for ACC to invest in securities of an issuer that may be an affiliated person of a BDC Subsidiary. Likewise, applicants state that a BDC Subsidiary may want to invest in securities of an issuer that is an affiliated person of another BDC

Subsidiary. Applicants note that the relief would permit ACC and the BDC Subsidiaries to do what the Act would otherwise permit if they were one company.

6. Sections 21(b) and 57(a)(3)

A. Section 57(a)(3) generally prohibits the borrowing of money or other property by an affiliated person of a BDC, as described in section 57(b), from the BDC except as permitted in section 21(b). Section 21(b) (made applicable to BDCs by section 62) of the Act generally prohibits loans between BDCs and persons controlling or under common control with the BDC, except for loans to a company that owns all of the outstanding securities of the BDC. As described above, each Subsidiary will be under the common control of ACC and, therefore, will be affiliated under section 57(b) and subject to section 21(b).

b. Applicants request relief from section 57(a)(3) under section 57(c) to exempt any transaction between a BDC Subsidiary and another Subsidiary with respect to the borrowing of money or other property and any borrowing of money or other property by ACC from a BDC Subsidiary. Applicants also request relief from section 21(b) under section 6(c) to exempt the lending of money or other property by a BDC Subsidiary to ACC or another Subsidiary. For the following reasons, applicants believe that the requested relief satisfies the section 57(c) standard.

c. Applicants state that the proposed transactions will have no substantive economic effect because they will either be between ACC and its wholly-owned Subsidiaries, or be between Subsidiaries under the common ownership of ACC. Applicants note that the relief would permit ACC and its Subsidiaries to do what the Act would otherwise permit if they were one company.

7. Section 57(a)(4) and Rule 17d–1

a. Section 17(d) and rule 17d–1 make it unlawful for an affiliated person of a registered investment company or any affiliated person of an affiliated person, acting as principal, to participate in or effect any joint transaction in which the registered company or a company it controls participates, unless the transaction has been approved by the SEC. Section 57(a)(4) imposes substantially the same prohibitions on joint transactions involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) provides that the rules and regulations under section 17(d) shall apply to transactions subject to section 57(a)(4) in the absence of rules under that section. No rules with respect to joint transactions have been adopted under section 57(a)(4) and, therefore, the standard set forth under rule 17d–1 governs applicants' request.

b. Applicants state that a joint transaction in which a BDC Subsidiary and ACC or another Subsidiary participates will be deemed to be prohibited under section 57(a)(4). Therefore, applicants request relief under section 57(i) and rule 17d–1 to permit any joint transaction in which a BDC Subsidiary and ACC or another Subsidiary participate to the extent that the transaction will not be prohibited if the BDC Subsidiary were deemed to be part of ACC and not a separate company.

c. In passing upon applications filed pursuant to rule 17d–1, the SEC considers whether the participation of the registered investment company in the 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. Applicants believe that this standard is satisfied because the request would simply permit ACC and its Subsidiaries to conduct their operations as if they were one company.

C. Consolidated Reporting

1. Section 54 of the Act provides that a closed-end investment company may elect BDC treatment under the Act if the company has registered or filed a registration statement under section 12 of the Exchange Act for a class of its equity securities. Section 13(a) of the Exchange Act requires that issuers of securities registered under the Exchange Act file certain information and reports with the SEC. Applicants request an order that the BDC Subsidiaries be exempt from the reporting requirements of section 13(a) of the Exchange Act in order to permit them to file consolidated reports with ACC.[3]

2. Section 12(h) of the Exchange Act provides that the SEC may exempt an issuer from section 13 of the Exchange Act if the SEC finds that by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, the exemption is not inconsistent with the public interest or the protection of investors. Applicants believe that the requested exemption meets this standard for the following reasons.

3. Applicants state that each BDC Subsidiary will have only one investor and no public investors and, therefore, there will be no trading in the securities of the BDC Subsidiaries. Applicants further state that the nature and extent of the activities of the BDC Subsidiaries will be fully disclosed through consolidated reporting in accordance with Commission rules and generally accepted accounting principles.

D. Co-Investing

1. Allied Venture Partnership (''Venture'') and Allied Technology Partnership (''Technology'') are private venture capital limited partnerships organized under the laws of the District of Columbia. They are not registered under the Act in reliance on the exemptions provided by sections 3(c)(1) and (7) of the Act. After the Consolidation, ACC will be the investment adviser to Venture and Technology.

2. In reliance on certain prior orders (''Prior Orders''), Allied I and its wholly-owned subsidiaries, and Allied II and its wholly-owned subsidiaries have co-invested with Venture and Technology.[4] Venture and Technology are fully invested in portfolio companies and are not expected to raise additional capital or to make new investments (other than possible ''follow-on investments'' as permitted by the Prior Orders). Venture and Technology are gradually liquidating their existing investments in portfolio companies and distributing the proceeds to their partners. The Prior Orders were subject to detailed conditions regarding liquidation transactions and follow-on investments (''Co-investing Conditions'').

3. As noted above, section 57(a)(4) and rule 17d–1 generally prohibit joint transactions involving BDCs and certain of their affiliates unless the SEC has approved the transaction. Venture and Technology will be affiliated persons of the Surviving SBIC and SSBIC Subsidiaries within the meaning of section 57(b) because they all will be under the common control of ACC. Because many of the investments being liquidated are previous co-investments, the liquidation transactions could be deemed to constitute joint transactions otherwise prohibited by section 57(a)(4) and rule 17d–1. The Surviving SBIC and SSBIC Subsidiaries request an order

[3] Applicants state that there is no separate requirement under the Exchange Act that the BDC Subsidiaries register their shares because they do not have the requisite number of shareholders under the relevant provisions of the Exchange Act.

[4] Investment Company Act Release Nos. 14694 (Aug. 26, 1985) (notice) and 14725 (Sept. 17, 1985) (order); 15787 (June 9, 1987 (notice) and 15833 (June 30, 1987) (order; and 17124 (Sept. 1, 1989) (notice) and 17155 (Sept. 26, 1989) (order).

pursuant to section 57(i) and rule 17d–1 to permit them to participate in the liquidation transactions and possible follow-on investments with Venture and/or Technology, to the extent that the transactions may otherwise be prohibited by section 57(a)(4) and rule 17d–1.

4. Applicants believe that the transactions satisfy rule 17d–1(b)'s standard, as described above, and that the Co-investing Conditions are unnecessary, because ACC, the parent of the SBIC and SSBIC Subsidiaries, will be internally managed; Venture and Technology are in the process of liquidation and will not be engaging in a broad range of transactions; and Venture and Technology and the SBIC and SSBIC Subsidiaries will be treated on an equal basis in any transaction. Applicants also contend that the relief is consistent with rule 57b–1, which exempts from section 57(a)(4) any transactions in which the BDC controls the relevant affiliate. Applicants asset that the SBIC and SSBIC Subsidiaries should be deemed to control Venture and Technology, for purposes of rule 57b–1, because they are wholly-owned subsidiaries of ACC.

Applicants' Conditions

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

1. ACC will at all times own and hold, beneficially and of record, all of the outstanding voting capital stock of the Subsidiaries.

2. No person will serve or act as investment adviser to any Subsidiary unless the directors and stockholders of ACC will have taken the action with respect thereto also required to be taken by the directors and sole stockholder of the Subsidiary.

3. The Consolidation will not be consummated unless it has been approved by the holders of a majority of outstanding common stock of Allied I, Allied II, and Allied Lending.

4. ACC will: (a) file with the Commission, on behalf of itself and the Subsidiaries, all information and reports required to be filed with the SEC under the Exchange Act and other applicable federal securities laws, including information and financial statements prepared solely on a consolidated basis as to ACC and the Subsidiaries, these reports to be in satisfaction of any separate reporting obligations of the Subsidiaries; and (b) provide to its stockholders the information and reports required to be disseminated to ACC's stockholders, including information and financial statements prepared solely on a consolidated basis as to ACC and the Subsidiaries, these reports to be in satisfaction of any separate reporting obligations of the Subsidiaries. Notwithstanding anything in this condition, ACC will not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statements of the Subsidiaries required by rule 6–03(c) of Regulation S–X.

5. ACC and the Subsidiaries may file on a consolidated basis under condition 4 above only so long as the amount of ACC's total consolidated assets invested in assets other than (a) securities issued by the Subsidiaries or (b) securities similar to those in which the Subsidiaries invest, does not exceed ten percent.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 97–31395 Filed 11–28–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22901; File No. 812–10788]

The Western National Life Insurance Company, et al.; Notice of Application

November 21, 1997.

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

ACTION: Notice of application for an order under Section 26(b) of the Investment Company Act of 1940 (''1940 Act'') approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants request an order approving the substitution of shares of the Salomon Brothers U.S. Government Securities Portfolio of WNL Series Trust (the ''Salomon Portfolio'') for shares of the Black Rock Managed Bond Portfolio of WNL Series Trust (the ''BlackRock Portfolio'') to fund individual fixed and variable deferred annuity contracts (the ''Contracts'') issued by Western National Life Insurance Company (''Western National'').

APPLICANTS: Western National and WNL Separate Account A (the ''Account'').

FILING DATE: The application was filed on September 17, 1997.

HEARING OR NOTIFICATION OF HEARING: And order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission 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 December 16, 1997, and 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 requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Raymond A. O'Hara III, Esq., Blazzard, Grodd & Hasenauer, PC., 943 Post Road East, Westport, Connecticut 06880.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Western National, a stock life insurance company incorporated in Texas, is a wholly-owned subsidiary of Western National Corporation. American General Life Insurance Company (''AG Life''), a Missouri-domiciled life insurer, owns approximately 40% of Western National Corporation. In turn, AG Life is a wholly-owned subsidiary of American General Corporation, also a Texas corporation. Western National is the depositor of the Account.

2. The Board of Directors of Western National authorized the Account on November 9, 1994. The Account is registered under the 1940 Act as a unit investment trust for the purpose of funding the Contracts. Security interests under the Contracts have been registered under the Securities Act of 1933 (''Securities Act'') (File No. 33–86464). The Account currently is divided into eight sub-accounts, each of which reflects the investment performance of a corresponding portfolio of WNL Series Trust (the ''Trust'').

3. The Trust was organized as a Massachusetts business trust on December 12, 1994. It is registered under the 1940 Act as an open-end management investment company. The