Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such officer or director) any interest in a Portfolio Manager, except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser, or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by or is under common control with a Portfolio Manager.

4. The Adviser will provide general investment management and administrative services to the Funds and, subject to review and approval by the Board will (i) set the Funds' overall investment strategies; (ii) recommend Portfolio Managers; (iii) allocate and, when appropriate, reallocate the Funds' assets among Portfolio Managers; (iv) monitor and evaluate the investment performance of the Portfolio Managers; and (v) ensure that the Portfolio Managers comply with the investment objectives, policies and restrictions of the respective Funds.

5. At all times, a majority of the Board will be persons each of whom is not an ''interested person'' of the Company (as defined in Section 2(a)(19) of the Act) (the ''Independent Directors''), and the nomination of new or additional Independent Directors will be placed within the discretion of the then existing Independent Directors.

6. Neither the Company nor the Adviser will enter into a Portfolio Management Agreement for a Fund with any Affiliated Portfolio Manager without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

7. When a change of Portfolio Manager is proposed for a Fund with an Affiliated Portfolio Manager, the Board including a majority of the Independent Directors, will make a separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

8. Before a Future Fund may rely on the requested order, the operation of the Fund as described in the application will be approved by the vote of a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Future Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 1, by the initial shareholders before offering shares of that Fund to the public.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8364 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–23766, 812–11278]

Brantley Capital Corporation; Notice of Application

March 30, 1999.

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

ACTION: Notice of application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, Brantley Capital Corporation, seeks an order approving its Disinterested Director Option Plan (the ''Plan'').

FILING DATES: The application was filed on August 26, 1998 and amended on February 19, 1999. Applicant has agreed to file an amendment, the substance of which is reflected in the notice.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 26, 1999, 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 SEC's Secretary.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569 (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 SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Brantley Capital Management L.L.C., (''Brantley'') an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''), serves as Applicant's investment adviser. Brantley is compensated based upon a percentage of Applicant's assets, and receives no performance-based compensation. Applicant's officers receive compensation directly or indirectly from the fees paid to Brantley under the investment advisory agreement but do not receive any other cash compensation from Applicant. Applicant does not have a profit-sharing plan described in section 57(n) of the Act.

2. Applicant is managed by a board of directors (''Board'') currently consisting of nine members, six of whom are persons who are not officers or employees or otherwise considered ''interested persons'' of Applicant within the meaning of section 2(a)(19) of the Act. Every investment transaction by Applicant requires prior express approval by the Board. Applicant also relies on its directors to review and consider the best use of its resources. The directors review and evaluate reports of outstanding commitments, required reserves for follow-on financing, and funds available for future investment for the purpose of evaluating and making these resource allocations. At least once each calendar quarter, Applicant's directors review portfolio investments, including those that are non-performing or performing inadequately and evaluate Brantley's recommended course of action for Applicant under the circumstances. In addition, on a calendar quarter basis, Applicant's directors undertake a good faith valuation of Applicant's investments for which no independent market valuations are available.

3. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Plan for current or future directors who at the time of issuance of the options are neither officers nor employees of Applicant (''Non-officer Directors''. Each of Applicant's No-officer Directors currently receives a monthly fee of $500 for serving on the Board and an additional $1,000 for each meeting of the Board or a committee

[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.

attended. The Plan was adopted by the Board on October 21, 1996 and approved by Applicant's initial shareholders prior to the public offering on October 29, 1996. Applicant states that the Plan was disclosed in the prospectus and subsequent periodic shareholder reports. The Plan will become effective on the date it is approved by the SEC.

4. The Plan provides that (i) each of the Non-officer Directors will automatically be granted an option to purchase 2,000 shares of Applicant's common stock (the ''Shares''), upon approval of the Plan by the SEC, and (ii) immediately following Applicant's annual meeting of stockholders in 1997 and each annual meeting of stockholders of Applicant thereafter, each Non-officer Director then serving on the Board will be granted options to purchase 2,000 Shares, subject to adjustments for stock splits or combinations of Shares. A maximum of 75,000 Shares, or 2% of Applicant's outstanding shares, have been authorized for issuance under the Plan.

5. The exercise price of the options will be the greater of (a) the current market value [2] of the Shares on the date the option is granted (the ''Grant Date''), or (b) the current net asset value of the Shares. Each option will be exercisable during the period beginning twelve months after the Grant Date and ending not later than ten years after the Grant Date.

6. In the event that a Non-officer Director's services are terminated because of disability or death, the then outstanding options of the Non-officer Director will become exercisable upon the later of (a) six months after the Grant Date, and (b) the date of the termination by reason of disability or death, and thereafter may be exercised for a period of one year from the date of the termination, but in no event after the expiration date of the option. In the event that a Non-officer Director's services terminate for any reason other than disability or death, the Plan provides that the then-outstanding options of that Non-officer Director may be exercised for a period of 90 days from the date of such termination, but in no event after the stated expiration date of each option.

7. Applicant's officers and employees, including employee directors, are eligible to receive options under Applicant's stock option plan for its officers and employees (''Officer Option Plan''). Non-officer Directors are not entitled to receive stock option awards under the Officer Option Plan. The total number of shares authorized for issuance under the Officer Option Plan is 1,175,000 which represents 24% of Applicant's outstanding Shares. Applicant states that, under the Officer Option Plan, options for 325,000 Shares are currently outstanding, of which 216,667 have vested. Applicant represents and the Plan provides that the aggregate number of Shares it will issue under the Plan and the Officer Option Plan will not exceed the limits in section 61(a)(3)(C)(ii) of the Act. Applicant has no warrants, options or rights to purchase its outstanding voting securities other than those granted to its directors, officers and employees pursuant to these two Plans.

[2] ''Current market value'' is defined in the Plan as the average of the closing sale prices, as reported in The Wall Street Journal, at which Shares were traded on the last five days on which trading in the Shares was reported to have taken place on the Nasdaq National Market prior to the option grant.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Non-officer Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market value exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser for the BDC receives any compensation described in paragraph (1) of section 205 of the Advisers Act, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Plan would comply with the requirements of section 61(a)(3)(B) of the Act. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of Applicant or its shareholders. Applicant states that because the options may not be exercised until twelve months after the Grant Date, the Plan provides Non-officer Directors with an incentive to remain with the Applicant. In addition, Applicant states that under the Plan, the amount of stock options that would be granted, assuming the six current Non-officer Directors, would be up to 24,000 Shares in 1998 and 12,000 Shares each year commencing in 1999, or less than 1% of the Shares outstanding. Applicant asserts that the exercise of stock options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of the Shares. In addition, Applicant states that the Shares underlying options outstanding under the Officer Option Plan, together with Shares underlying options that would be granted to Non-officer Directors under the Plan and Shares that would result from the exercise of any other warrants, rights or options issued by Applicant, if any, will not exceed the limits in section 61(a)(3)(C)(ii) of the Act. Applicant states that, other than stock options provided for under the Plan and the Officer Option Plan, it does not currently have outstanding warrants, options or rights to purchase its voting securities.

5. Applicant states that its directors make a significant contribution to the management of its business and to the review and supervision of its portfolio investments. Applicant states that Non-officer Directors provide it with skills and experience which are critical to its success, including the approval of each proposed investment, restructuring, follow-on financing, or disposition of an existing investment. Applicant believes that its ability to make grants of options under the Plan to Non-officer Directors provides a means of retaining the services of its current Non-officer Directors and of attracting qualified persons to serve as Non-officer Directors in the future.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8365 Filed 4–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41215; File No. SR–CBOE–99–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to New Series of Options Based on the Standard and Poor's 100 Index

March 26, 1999.

I. Introduction

On January 21, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to change the permissible range of new series of Standard and Poor's 100 Index options (''OEX'') under unusual market conditions. Notice of the proposed rule change appeared in the **Federal Register** on February 23, 1999.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend CBOE Rule 24.9, Interpretation and Policy .01(d), to increase the permissible range of additional series that may be listed for OEX options during unusual market conditions. Interpretation and Policy .01(d) currently requires that when the Exchange introduces trading in a new expiration month, or when additional series of options in an existing expiration month are opened, the Exchange shall only list series of options with exercise prices that are ''reasonably related to the current value of the underlying index.'' In the case of OEX options, ''reasonably related to the current value of the underlying index'' is defined to be within eight percent of the current index value under normal market conditions. Under unusual market conditions, ''reasonably related to the current value of the underlying index'' is defined to be within ten percent of the index value. The Exchange now proposes that, for options on OEX, exercise prices within twenty percent of the current index value, instead of within ten percent, be deemed ''reasonably related to the value of the underlying index'' under unusual market conditions.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes the proposal is consistent with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.[5]

The Commission believes that the proposal should enable the CBOE to respond to changing market conditions by listing OEX options series that provide market participants with an effective means to manage risk and implement their trading strategies. The Commission further believes that the discretion to list additional series of OEX options should help to ensure the consistent availability of index options series tailored to meet the needs of investors during periods of market volatility. Additionally, the CBOE's proposal strikes an appropriate balance between accommodating the needs of market participants and avoiding the excessive proliferation of options series.

The proposal affects only OEX options and the unusual market conditions that would trigger the availability of additional OEX series under the proposal occur infrequently. The CBOE represents that unusual market conditions occur no more than once a month on average.[6] To help determine whether unusual market conditions exist, the Exchange can look to a variety of factors and objective tools, including VIX, a volatility indicator.[7] Moreover, even when the CBOE determines that unusual market conditions exist, the Exchange explains that customer demand and market maker interest ultimately will determine how many additional series will be listed.[8] This should help to ensure adequate liquidity in new series.

In addition to representing that the number of additional series resulting from the proposal will not be significant, the CBOE does not believe that any additional series will pose a capacity problem. In this regard, the Commission notes that the Exchange retains the ability to limit new series and remove existing series. In addition, the Options Price Reporting Authority (''OPRA'') has represented that OPRA's capacity is sufficient to meet the expected demands of the additional strike prices.[9]

Accordingly, the Commission believes that the proposal should provide the Exchange with flexibility to open additional index options series and, at the same time, minimize capacity and continue to appropriately limit the number of index options series that may be outstanding at any one time. Indeed, the Exchange is not obligated to open new series every time the index value changes, and the CBOE should only open new series in a manner that is consistent with the maintenance of a fair and orderly market.

IV. Conclusion

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–99–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–8368 Filed 4–5–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 41052 (February 12, 1999), 64 FR 8893.

[4] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* Letter from Stephanie C. Mullins, Attorney, CBOE, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, SEC, dated March 3, 1999 (''CBOE Letter'').

[7] According to the Exchange, VIX currently is at approximately 28 to 30, and unusual market conditions may occur if VIX reaches approximately 40 or above.

[8] *See* CBOE Letter, *supra* note 6.

[9] *See* CBOE Letter, *supra* note 6 and Letter from Joe P. Corrigan, Executive Director, Options Price Reporting Authority, to Stephanie C. Mullins, Attorney, Chicago Board Options Exchange, dated February 9, 1999.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).