

RESPONSE OF THE
EXEMPTIVE APPLICATIONS OFFICE
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 2013-1-EAO
MCG Capital Corporation

Your letter dated September 27, 2013, requests our assurance that we would not recommend enforcement action to the Securities and Exchange Commission (“Commission”) against MCG Capital Corporation (“MCG”) under sections 23(a), 23(b), 23(c), 57(a)(4), 57(i) and 63 of the Investment Company Act of 1940 (the “Act”) or rule 17d-1 thereunder if MCG does not rescind awards of its restricted stock (“Restricted Stock”) previously made in compliance with the terms and conditions of the Orders (as defined below) and makes new awards of Restricted Stock, both as described below.

MCG is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company under the Act. On April 4, 2006, the Commission issued MCG an exemptive order permitting it to issue Restricted Stock to its employees and directors subject to certain conditions (“2006 Order”).¹ MCG has two Restricted Stock plans: the Third Amended and Restated 2006 Employee Restricted Stock Plan (the “Employee Plan”), and the Third Amended and Restated 2006 Non-Employee Director Restricted Stock Plan (together with the Employee Plan, the “Plans”).

Condition 4 of the 2006 Order limits the maximum amount of Restricted Stock that may be issued under the Plans to no more than 10% of the outstanding shares of common stock of MCG on the effective date of the Plans plus 10% of the number of shares of MCG’s common stock issued or delivered by MCG (other than pursuant to compensation plans) during the term of the Plans (“Threshold”). You state that, for purposes of condition 4, the “effective date of the Plans” refers to June 12, 2006, the date that MCG’s stockholders initially approved the Plans. You state that MCG counts as Restricted Stock under the Orders all shares of MCG’s common stock that are issued pursuant to the Plans less any shares that are forfeited back to MCG and cancelled as a result of the forfeiture restrictions not lapsing. MCG also counts as Restricted Stock under the Orders the shares of MCG’s common stock that were issued in November 2001 in connection with the termination of MCG’s stock option plan. You state that as of June 30, 2013, MCG had made awards of Restricted Stock under the Plans equal to 6,436,996 shares, which are 9.93% of the total outstanding shares of common stock (excluding shares previously issued pursuant to compensation plans). You state that at the time each award was made, it was made in compliance with the then-effective Threshold calculation set forth in condition 4.

On January 17, 2012, you state that MCG’s board of directors approved a stock repurchase program (“Repurchase Program”) for reasons unrelated to the Plans. You state however, that MCG did not anticipate engaging in share repurchases at the time it sought the

¹ MCG Capital Corporation, Investment Company Release Nos. 27258 (March 8, 2006) (notice) and 27280 (April 4, 2006) (order). The Commission issued a second order to MCG on April 20, 2010, permitting MCG to withhold shares of its common stock or purchase shares of its common stock from plan participants to satisfy tax withholding obligations related to the vesting of Restricted Stock. MCG Capital Corporation, Investment Company Release Act Nos. 29191 (March 25, 2010) (notice) and 29210 (April 20, 2010) (order) (“2010 Order”). (The 2010 Order together with the 2006 Order, the “Orders”).

2006 Order, and, as a result, the 2006 Order was silent on how to incorporate such repurchases into the Threshold calculation. MCG therefore proposes to comply with the Orders by decreasing the Threshold by 10% of the amount of shares repurchased pursuant to the Repurchase Program. You further state that MCG will not issue additional Restricted Stock under any compensation plan unless the number of shares of MCG's common stock resulting from such issue together with all Restricted Stock outstanding under all compensation plans does not exceed 10% of MCG's outstanding common stock at the time of such issue less the total number of shares of MCG's common stock previously issued, in the aggregate, pursuant to the compensation plans.

You are concerned that existing awards of Restricted Stock under the Plans may exceed the Threshold after it is reduced by repurchases, thus causing MCG to be in violation of the Threshold as modified by the proposal described above. To address MCG's concern, MCG requests assurances that the staff would not recommend that the Commission institute enforcement action under sections 23(a), 23(b), 23(c), 57(a)(4), 57(i) and 63 of the Act or rule 17d-1 thereunder if MCG does not rescind awards of its Restricted Stock previously made in compliance with the terms and conditions of the Orders and makes new awards of Restricted Stock as described in this letter. In support of your request, you argue that the Repurchase Program will be accretive rather than dilutive to existing stockholders' equity. You also argue that reducing the Threshold for new awards by 10% of the amount of shares repurchased is consistent with the purpose of condition 4, which was designed to limit dilution of shareholders' equity. You state that MCG would exceed the Threshold only due to the decrease in the number of shares outstanding as a result of the Repurchase Program and not as a result of the issuance of additional Restricted Stock.

Without necessarily agreeing with your analysis, based on the facts and representations made in your letter, and particularly based on your representations: that all Restricted Stock awards to date were made in compliance with the Threshold calculation set forth in Condition 4 of the 2006 Order; that the effective date of the Plans refers to June 12, 2006, the date MCG's stockholders initially approved the Plans; and that MCG will decrease the Threshold by 10% of the amount of shares repurchased pursuant to the Repurchase Program, we would not recommend that the Commission institute enforcement action under sections 23(a), 23(b), 23(c), 57(a)(4), 57(i) and 63 of the Act or rule 17d-1 thereunder if MCG does not rescind awards of its Restricted Stock previously made in compliance with the terms and conditions of the Orders and makes new awards of Restricted Stock as described herein.

This response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions on the questions presented. Because our position is based upon all of the facts and representations in your letter, any facts or representations different from those presented in your letter might require a different conclusion.



Steven I. Amchan
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September 27, 2013

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September 27, 2013

Elizabeth G. Osterman, Esq.
Associate Director, Exemptive Applications Office
Division of Investment Management
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: MCG Capital Corporation

Dear Ms. Osterman:

We are writing on behalf of MCG Capital Corporation ("**MCG**" or the "**Corporation**") to request the assurance of the staff of the Division of Investment Management ("Staff") that it would not recommend enforcement action to the Securities and Exchange Commission ("**Commission**") against the Corporation under Sections 23(a), 23(b), 23(c), 57(a)(4), 57(i) and 63 of the Investment Company Act of 1940 (the "1940 Act") or Rule 17d-1 thereunder if the Corporation does not rescind awards of its restricted stock ("**Restricted Stock**") previously made in compliance with the terms and conditions of the Exemptive Orders (as defined below) and makes new awards of Restricted Stock as described below.

MCG Capital Corporation

The Corporation is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("**BDC**") under the Investment Company Act of 1940, as amended (the "**1940 Act**").¹ The Corporation was incorporated in Delaware in 1998. On March 18, 1998, the Corporation changed its name from MCG, Inc. to MCG Credit Corporation and, on June 14, 2001, the Corporation changed its name from MCG Credit Corporation to MCG Capital Corporation. Shares of the Corporation's common stock are traded on the NASDAQ Global Select Market under the symbol "MCGC."

The Corporation is a solutions-focused commercial finance company that provides capital and advisory services to middle-market companies throughout the United States. Its investment objective is to achieve current income and capital gains. The Corporation also makes

¹ Unless otherwise specified, all section and rule references herein are to the 1940 Act and the rules thereunder.

investments in qualifying small businesses through Solutions Capital I, L.P., its wholly owned subsidiary licensed by the United States Small Business Administration to operate as a small business investment company under the Small Business Investment Act of 1958, as amended.

The Plans

The Corporation has two restricted stock plans: (1) Third Amended and Restated 2006 Employee Restricted Stock Plan (the “*Employee Plan*”); and (2) Third Amended and Restated 2006 Non-Employee Director Restricted Stock Plan² (the “*Director Plan*,” and, together with the Employee Plan, the “*Plans*”). Amendments to the Plans were last approved by the Corporation’s stockholders at the Corporation’s annual meeting of stockholders held on May 26, 2010. The number of shares authorized for issuance under the Employee Plan and the Director Plan is 6,050,000 shares³ and 150,000 shares,⁴ respectively. As of December 31, 2012, the Corporation had 71,721,209 shares of common stock outstanding and 6,421,996 shares of common stock issued or delivered by the Corporation under the Plans.⁵

The Employee Plan limits the total number of shares that may be awarded to any single participant in a single year to 500,000 shares. In addition, no participant may be awarded more than 25% of the shares reserved for issuance under the Plans. The Employee Plan is administered by the compensation committee of the Corporation’s board of directors. A “required majority” of directors, as defined under Section 57(o) of the 1940 Act, must approve each award to the participants in the Employee Plan from time to time as part of a participant’s compensation based on a participant’s actual or expected performance and value to the Corporation.

² Under the Director Plan, the Corporation’s non-employee directors each receive an award of 7,500 shares of Restricted Stock at the beginning of each three-year term of service on the Corporation’s board of directors, for which forfeiture restrictions will lapse as to one-third of such shares each year. The Corporation’s non-employee directors have agreed to waive the receipt of the annual award of 7,500 shares of Restricted Stock at the beginning of each three-year term of service in any year in which the Company is not in compliance with the Threshold (defined below).

³ The 6,050,000 shares authorized for issuance under the Employee Plan consists of 3,500,000 shares approved by the Corporation’s stockholders on June 12, 2006 (at which time 53,378,309 shares of the Corporation’s common stock were outstanding) and 2,550,000 shares approved by the Corporation’s stockholders on May 26, 2010 (at which time 76,549,537 shares of the Corporation’s common stock were outstanding).

⁴ The 150,000 shares authorized for issuance under the Director Plan consists of 100,000 shares approved by the Corporation’s stockholders on June 12, 2006 and 50,000 shares approved by the Corporation’s stockholders on May 26, 2010.

⁵ The 6,421,996 shares of common stock issued or delivered by the Corporation under the Plans consist of the following: (i) 4,814,544 shares under the Employee Plan; (ii) 115,000 shares under the Director Plan; and (iii) 1,492,452 shares issued in consideration for the cancellation of stock options in 2001.

The Restricted Stock Exemptive Orders

On April 4, 2006, the Corporation received an exemptive order from the Commission permitting it to issue Restricted Stock to its employees and directors subject to certain conditions (the “**2006 Order**”).⁶ Among the conditions the Corporation agreed to comply with in the 2006 Order, the Corporation agreed in condition 4 that the maximum amount of Restricted Stock that may be issued under the Plans will be 10% of the outstanding shares of common stock of the Corporation on the effective date of the Plans plus 10% of the number of shares of the Corporation’s common stock issued or delivered by the Corporation (other than pursuant to compensation plans) during the term of the Plans (the “**Threshold**”).⁷ For purposes of condition 4 of the 2006 Order, the effective date of the Plans refers to June 12, 2006 (the “**Effective Date**”), which is the date the Corporation’s stockholders initially approved the Plans.

On the Effective Date, the Corporation had approximately 53,378,309 shares of common stock outstanding. As a result, the Threshold for Restricted Stock as of the Effective Date was 5,337,831 shares of Restricted Stock, less the 1,492,452 shares deemed issued in connection with the conversion of the Corporation’s stock option plan, leaving 3,845,379 shares of Restricted Stock for further issuance. As of December 31, 2011, prior to the date the Company commenced the Repurchase Program (defined below), the Corporation had issued 18,183,589 additional shares of its common stock other than pursuant to compensation plans, raising the Threshold by 1,818,359 to 7,156,190. During the same period, the Corporation issued 4,817,979 shares of Restricted Stock under the Employee Plan and 115,000 under the Director Plan for a total of 4,932,979 aggregate shares of Restricted Stock issued and 1,720,969 remaining under the Threshold. As of June 30, 2013, the Corporation had made awards of Restricted Stock under the Plans equal to 6,436,996 shares, which constitute 9.93% of the Corporation’s total outstanding common stock excluding shares issued pursuant to compensation plans.

⁶ MCG Capital Corporation, Notice of Application, Investment Company Act of 1940 Release No. 27258 (March 8, 2006), MCG Capital Corporation, Order, Investment Company Act of 1940 Release No. 27280 (April 4, 2006) (granting an exemption from Sections 23(a), 23(b) and 63 and pursuant to Sections 57(a)(4) and 57(i) and Rule 17d-1 under the 1940 Act authorizing certain joint transactions otherwise prohibited by Section 57(a)(4) in order to permit the Corporation to issue Restricted Stock as part of the compensation packages for certain of its employees and directors, and certain employees of its wholly owned consolidated subsidiaries).

⁷ The Notice of Application for the 2006 Order provides that, “For purposes of calculating compliance with this limit, Applicant will count as Restricted Stock all shares of Applicant’s common stock that are issued pursuant to the Plans less any shares that are forfeited back to Applicant and cancelled as a result of the forfeiture restrictions not lapsing. Applicant will also count as Restricted Stock the shares of Applicant’s common stock that were issued in November 2001 in connection with the termination of Applicant’s stock option plan [1,492,452 shares, representing 1,539,851 shares of common stock that were issued in November 2001 in connection with the termination of the Corporation’s stock option plan, less 47,399 shares that were forfeited], pursuant to the same calculation formula.”

On April 20, 2010, the Corporation received another exemptive order from the Commission related to its issuance of Restricted Stock (the “**2010 Order**” and, together with the 2006 Order, the “**Exemptive Orders**”).⁸ The 2010 Order amended the 2006 Order to permit the Corporation to withhold shares of its common stock or purchase shares of its common stock from Plan participants to satisfy tax withholding obligations related to the vesting of Restricted Stock. Under the 2010 Order, shares that are withheld from an award to satisfy tax withholding obligations are treated as having been awarded under the Plans for purposes of the Threshold.

The Repurchase Program

On January 17, 2012, the Corporation’s board of directors approved a stock repurchase program (the “**Repurchase Program**”) for reasons unrelated to the Plans. Under the Repurchase Program, the Corporation may repurchase up to \$35.0 million of its common stock. Stock repurchases may be purchased in open market transactions, including through block purchases, in accordance with regulatory requirements. The Corporation anticipates that the manner, timing and amount of any stock repurchases will be determined by the Corporation’s management based upon the evaluation of market conditions, stock price and additional factors. Repurchases made pursuant to the Repurchase Program will decrease the number of outstanding shares of the Corporation’s common stock, which is part of the Threshold calculation. As of June 30, 2013, the Corporation had repurchased 6,686,685 shares of its common stock.

The Corporation has and will continue to comply with Section 23(c) of the 1940 Act by mailing the required notice to all stockholders regarding the possibility of share repurchases over a six month period. The Repurchase Program may be extended, modified or discontinued at any time for any reason. The Repurchase Program does not obligate MCG to acquire any specific number of shares, and all repurchases will be made in accordance with rule 10b-18 under the Securities Exchange Act of 1934, which sets certain restrictions on the method, timing, price and volume of stock repurchases.

Discussion

The Corporation did not anticipate engaging in share repurchases at the time it sought the 2006 Order, and, as a result, the 2006 Order was silent on how to incorporate such repurchases into the Threshold calculation set forth in condition 4.

⁸ MCG Capital Corporation, Notice of Application Investment Company Act of 1940 Release Act No. 29191 (March 25, 2010), MCG Capital Corporation, Order, Investment Company Act of 1940 Release No. 29210 (April 20, 2010) (amending the 2006 Order to permit the Corporation to withhold shares of its common stock or purchase shares of its common stock from the participants to satisfy tax withholding obligations related to the vesting of Restricted Stock).

The Corporation proposes to address this silence and comply with condition 4 of the 2006 Order by reducing the Threshold by 10% of the number of shares repurchased. The Corporation notes that at the time of each award of Restricted Stock made to date, the award was made in compliance with the Threshold as then in effect. Further, the Corporation believes that under condition 4 the Threshold calculation is performed only on the Restricted Stock's award date. Therefore, if the Corporation repurchases shares and consequently the Threshold drops below the number of the Corporation's already-outstanding Restricted Stock issued pursuant to the Plans, such change in the Threshold should not require rescission of those outstanding awards of Restricted Stock.

The Corporation acknowledges that any new awards of Restricted Stock issued under the Plans would be subject to the Threshold calculation on the date of the new award. The Corporation will not issue additional Restricted Stock under any compensation plan unless such issuance together with all Restricted Stock outstanding under all compensation plans does not exceed 10% of the Corporation's outstanding common stock at the time of such issuance less the total number of shares previously issued, in the aggregate, pursuant to compensation plans.

The Corporation does not believe that there is a concern about dilution of stockholders' equity in connection with this no-action relief. The simplest assessment is that the decrease in the amount of the Corporation's common stock outstanding as a result of the Repurchase Program will be accretive rather than dilutive to existing stockholders. Stockholders may retain their current beneficial ownership in the Corporation's common stock while the number of the Corporation's shares outstanding decreases as a result of the Repurchase Program. The Corporation believes that reducing the Threshold for new awards by 10% of the amount of shares repurchased is consistent with the purpose of condition 4, which was designed to limit dilution of shareholders' equity. The Corporation states that it would exceed the Threshold only due to the decrease in the number of shares outstanding as a result of the Repurchase Program and not as a result of the issuance of additional Restricted Stock.

Conclusion

Accordingly, we respectfully request that the Staff agree not to recommend enforcement action to the Commission against the Corporation under Sections 23(a), 23(b), 23(c), 57(a)(4), 57(i) and 63 of the 1940 Act or Rule 17d-1 thereunder if the Corporation does not rescind awards of its Restricted Stock previously made in compliance with the terms and conditions of the Exemptive Orders and makes new awards of Restricted Stock as described herein.

Elizabeth G. Osterman, Esq.
September 27, 2013
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Should you have any questions or require any additional information concerning this request, please contact the undersigned at (202) 383-0218.

Sincerely,



Cynthia M. Krus

cc: Tod Reichert, Esq. / MCG Capital Corporation