

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28228; 812-13368]

Kohlberg Capital Corporation; Notice of Application

March 28, 2008

Agency: Securities and Exchange Commission (the “Commission”).

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

Summary of Application: Applicant, Kohlberg Capital Corporation (“Kohlberg Capital”), requests an order approving the proposal to grant stock options to directors who are not also employees or officers of Kohlberg Capital (the “Non-Employee Directors”) under its 2008 Non-Employee Director Plan (the “Plan”).

Filing Dates: The application was filed on February 27, 2007, and amended on February 13, 2008, and March 21, 2008. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 22, 2008, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

Addresses: Secretary, U.S. Securities and Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicant, 295 Madison Avenue, 6th Floor, New York, NY, 10017.

For Further Information Contact: Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or Julia Kim Gilmer, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application is available for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-0102 (telephone 202-551-5850).

Applicant's Representations:

1. Kohlberg Capital, a Delaware corporation, is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.¹ Kohlberg Capital provides debt and equity growth capital to privately-held middle market companies and its investment objective is to generate current income and capital appreciation from the investments made by those companies in senior secured term loans, mezzanine debt and selected equity investments. Kohlberg Capital may also invest in loans to larger, publicly traded companies, high-yield bonds, distressed debt securities and debt and equity securities issued by collateralized debt obligation funds. Kohlberg Capital's business and affairs are managed under the direction of its board of directors ("Board"). Kohlberg Capital does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Kohlberg Capital requests an order under section 61(a)(3)(B) of the Act that would approve the proposal under the Plan to issue stock options to Non-Employee Directors to

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.

purchase shares of Kohlberg Capital's common stock, \$0.01 par value per share ("Common Stock"). Kohlberg Capital has a seven member Board, four of whom are not "interested persons" (as defined in section 2(a)(19) of the Act) ("Disinterested Directors"). The Non-Employee Directors are all Disinterested Directors, but it is possible that Kohlberg Capital may have Non-Employee Directors in the future who are interested persons of Kohlberg Capital.² The Board approved the Plan on February 5, 2008. Kohlberg Capital's shareholders will vote on the Plan at its 2008 annual meeting of shareholders.

3. Kohlberg Capital's Non-Employee Directors are eligible to receive stock options under the Plan. The Plan provides for the issuance of a maximum of 75,000 shares of Kohlberg Capital's Common Stock, in the aggregate, to Non-Employee Directors. The Plan also provides that each Non-Employee Director will automatically be granted options to purchase 5,000 shares of Kohlberg Capital's Common Stock on the date of each annual meeting of shareholders of Kohlberg Capital during the term of the Plan. One-half of the grant of options will vest immediately and the remaining one-half of the grant of options will vest on the earlier of (a) the first anniversary of the date of the grant, or (b) the date immediately preceding the next annual meeting of shareholders. A Non-Employee Director who is appointed to serve on the Board outside the annual election cycle will automatically be granted options for a number of shares of Common Stock equal to the product of (x) the number of full months remaining until the next annual meeting of shareholders divided by 12 and (y) 5,000. One-half of the pro-rata grant will vest immediately and the remaining one-half of the pro-rata grant on the earlier of (a) the first

² Each Non-employee Director receives an annual fee of \$25,000, \$500 for each committee meeting attended, and reimbursement of reasonable out-of-pocket expenses incurred in attending Board meetings. Each Non-employee Director who serves as chairperson of a Board committee receives an additional \$5,000 per year, except that the chairperson of the audit committee receives \$10,000 per year.

anniversary of the preceding annual meeting of shareholders, or (b) the date immediately preceding the next annual meeting of shareholders.

4. Under the terms of the Plan, the exercise price of an option will not be less than the current market value of, or if no such market value exists, the current net asset value per share of, Kohlberg Capital's Common Stock on the date of the issuance of the option.³ Options granted under the Plan will expire within ten years from the date of grant and may not be assigned or transferred other than by will or the laws of descent and distribution.

5. Kohlberg Capital's officers and employees have been eligible to receive options under Kohlberg Capital's 2006 equity incentive plan under which Non-Employee Directors are not entitled to participate (the "Employee Plan"). As of December 31, 2007, Kohlberg Capital had 18,017,699 shares of Common Stock outstanding.⁴ The 75,000 shares of Kohlberg Capital's Common Stock that may be issued to Non-Employee Directors under the Plan represent 0.42% of Kohlberg Capital's outstanding voting securities as of December 31, 2007. As of the same date, Kohlberg Capital had no outstanding warrants or rights to purchase its voting securities and the amount of voting securities that would result from the exercise of all outstanding options issued to Kohlberg Capital's officers and employees under the Employee Plan would be 1,315,000 shares of Common Stock, or approximately 7.30% of Kohlberg Capital's outstanding voting securities.

³ Under the Plan, "current market value" is the closing price of the Common Stock on the NASDAQ Global Select Market on the date the option is granted.

⁴ Kohlberg Capital's Common Stock constitutes the only voting security of applicant currently outstanding.

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). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee 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 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 Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) 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.

3. Kohlberg Capital represents that its proposal to grant certain stock options to Non-Employee Directors under the Plan meets all the requirements of section 61(a)(3)(B). Kohlberg Capital states that the Board is actively involved in the oversight of its affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, Kohlberg Capital states that the Non-Employee Directors provide guidance and advice on operational matters, asset valuation and strategic direction, as well as serving on committees. Kohlberg Capital believes that the availability of options under the Plan will provide significant at-risk incentives to Non-Employee Directors to remain on the Board and devote their best efforts to ensure Kohlberg Capital's success. Kohlberg Capital states that the options will provide a means for the Non-Employee Directors to increase their ownership interests in Kohlberg Capital, thereby ensuring close identification of their interests with those of Kohlberg Capital and its shareholders. Kohlberg Capital asserts that by providing incentives such as options, it will be better able to maintain continuity in the Board's membership and to attract and retain the highly experienced, successful and dedicated business and professional people who are critical to Kohlberg Capital's success as a BDC.

4. Kohlberg Capital states that the amount of voting securities that would result from the exercise of all outstanding options issued to its officers and employees under the Employee Plan would be 1,315,000 shares of Kohlberg Capital's Common Stock, or approximately 7.30% of its outstanding voting securities as of December 31, 2007, which is below the percentage limitations in the Act. Kohlberg Capital asserts that, given the relatively small amount of

Common Stock issuable to Non-Employee Directors upon their exercise of options under the Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of Kohlberg Capital's Common Stock.

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

Florence E. Harmon
Deputy Secretary