

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 32742; File No. 812-14740

Capital Southwest Corporation

July 25, 2017

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application for an order under section 23(c)(3) of the Investment Company Act of 1940 (the “Act”) for an exemption from section 23(c) of the Act.

Summary of the Application: Capital Southwest Corporation (“Company”) requests an order to amend a prior order<sup>1</sup> that permits the Company to issue Restricted Stock<sup>2</sup> to the Company’s Participants<sup>3</sup> under the terms of its 2010 Restricted Stock Award Plan, as amended on January 25, 2017 (the “Amended Plan”). The Company seeks to amend the Prior Order to permit it to engage in certain transactions in connection with the Amended Plan and the Company’s 2009 Stock Incentive Plan, as amended on May 23, 2017 (the “Amended 2009 Plan”) that may constitute purchases by the Company of its own securities within the meaning of section 23(c) of the Act.

Applicant: Capital Southwest Corporation

Filing Dates: The application was filed on January 30, 2017, and amended on May 23, 2017, June 19, 2017, and July 19, 2017.

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<sup>1</sup> Investment Company Act Release Nos. 29450 (September 29, 2010) (notice) and 29491 (October 26, 2010) (order) (the “Prior Order”).

<sup>2</sup> As defined in the Prior Order.

<sup>3</sup> As defined in the Prior Order.

Hearing or Notification of Hearing: An order granting the requested relief 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 August 21, 2017 and should be accompanied by proof of service on applicant, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, 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, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicant: Bowen S. Deihl, Chief Executive Officer and President, Capital Southwest Corporation, 5400 Lyndon B Johnson Freeway, Suite 1300, Dallas, Texas 75240.

FOR FURTHER INFORMATION CONTACT: Asen Parachkevov, Senior Counsel, or Robert Shapiro, Branch Chief, at (202) 551-6821, (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for the applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicant's Representations:

1. The Company is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act. The Amended Plan authorizes the Company, among other things, to grant to Participants, in

accordance with the terms and conditions of the Prior Order, Restricted Stock. Further, under the terms of the Amended 2009 Plan, the Company is authorized, among other things to grant to Participants options to acquire shares of the Company's common stock ("Common Stock"). The Company seeks to amend the Prior Order to permit it to withhold shares of the Company's Common Stock or purchase shares of Common Stock from the Participants to satisfy tax withholding obligations related to the vesting of Restricted Stock granted pursuant to the Amended Plan or the exercise of options to purchase shares of Common Stock granted pursuant to the Amended 2009 Plan. In addition, the Company seeks to permit employees to pay the exercise price of options to purchase shares of Common Stock granted pursuant to the Amended 2009 Plan with shares of Common Stock already held by them or pursuant to a net share settlement feature.<sup>4</sup> The Company will continue to comply with all of the terms and conditions of the Prior Order.

2. On the date that the Restricted Stock vests (assuming no election has been made under section 83(b) of the Internal Revenue Code of 1986, as amended), the shares are released to the Participant and are available for sale or transfer (subject to the Company's share retention guidelines).<sup>5</sup> The Company states the value of the Restricted Stock will generally be taxable to the recipient as ordinary income in the years in which the restrictions on the shares lapse. Such

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<sup>4</sup> Net share settlement allows the Company to deliver directly to the optionee only the number of shares underlying the portion of the option exercised less such number of shares as is equal to (X) the aggregate exercise price for the portion of the option being exercised divided by (Y) the Fair Market Value (as defined below) on the date of exercise. The Company states that the Compensation Committee of the Board has determined to use the closing sales price of the Common Stock on the NASDAQ Global Select Market (or any other such exchange on which the Common Stock may be traded in the future) on the date of the applicable transaction or other event as the fair market value ("Fair Market Value") with respect to the Common Stock for all purposes under the Amended 2009 Plan.

<sup>5</sup> During the restriction period (i.e., prior to the lapse of the forfeiture restrictions), the Restricted Stock may not be sold, transferred, pledged, hypothecated, margined, or otherwise encumbered by a Participant.

value will be the fair market value of the shares on the dates the restrictions lapse. The Company states that its obligations to make cash payments pursuant to a Restricted Stock award or deliver the shares is subject to the Participant's satisfaction of all applicable federal, state and local income and employment tax withholding obligations.

3. As discussed more fully in the application, upon the exercise of an option, the amount by which the fair market value of the shares of the Company's Common Stock received, determined as of the date of exercise, exceeds the exercise price will be treated as ordinary income to the recipient of the option in the year of exercise. The Company states that in accordance with applicable regulations of the IRS, the Company requires the optionee to pay to it an amount sufficient to satisfy taxes required to be withheld in respect of such compensation income at the time of the exercise of the option.

4. The Amended Plan and the Amended 2009 Plan were approved by the Company's board of directors ("Board"), including the required majority of the Company's directors with the meaning of section 57(o) of the Act. The Company states that the Compensation Committee of the Board, in its discretion, may permit a Participant to irrevocably elect to have the Company withhold Common Shares, or to deliver to the Company Common Shares that the Participant already owns, having a value equal to the amount required to be withheld to satisfy the Participant's tax withholding obligations related to the vesting of Restricted Stock under the Amended Plan, or the exercise of options to acquire Common Stock granted pursuant to the Amended 2009 Plan. The Company states that the Amended 2009 Plan further provides the Compensation Committee of the Board with discretion to permit the Company's employees to pay the exercise price of options to purchase shares of Common Stock with shares of Common Stock already held by them or pursuant to net share settlement.

Applicant's Legal Analysis:

1. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers or under such other circumstances as the Commission may permit to ensure that the purchase is made on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. The Company states that the withholding or purchase of shares of Common Stock in payment of applicable withholding tax obligations or of Common Stock in payment for the exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

2. Section 23(c)(3) provides that the Commission may issue an order that would permit a BDC to purchase its shares in circumstances in which the purchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. The Company states that it believes that the requested relief meets the standards of section 23(c)(3).

3. The Company states that these purchases will be made on a basis which does not unfairly discriminate against the stockholders of the Company because all purchases of Common Stock will be at the closing sales price of the Common Stock on the NASDAQ Global Select Market (or any primary exchange on which its shares of Common Stock may be traded in the future) on the relevant date (i.e., the public market price on the date of vesting of the Restricted Shares and the date of grant of options). The Company further states that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving the Common Stock. The Company submits that because all transactions

would take place at the public market price for the Company's Common Stock, the transactions would not be significantly different than could be achieved by any shareholder on the Nasdaq Global Select Market.

4. The Company submits that the proposed purchases do not raise concerns about preferential treatment of the Company's insiders because the Amended Plan and the Amended 2009 Plan are bona fide compensation plans of the type that is common among corporations generally. Further, the Company argues that the vesting schedule is determined at the time of the initial grant of the Restricted Stock and the option exercise price is determined at the time of the initial grant of the options. The Company represents that that all purchases may be made only as permitted by the Amended Plan and the Amended 2009 Plan, which were approved by the Board prior to the application for relief. The Company argues that granting the requested relief would be consistent with policies underlying the provisions of the Act permitting the use of equity compensation as well as prior exemptive relief granted by the Commission for relief under section 23(c) of the Act.

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

Eduardo A. Aleman  
Assistant Secretary