

it crosses a non-displayed order on the NYSE Arca Book. As proposed, ALO Orders would trade if the limit price of such order crosses any displayed or non-displayed orders on the NYSE Arca Book, thus providing for similar treatment regardless of whether the contra-side order is displayed or not. In addition, currently, an ALO Order is re-priced so it would not lock the price of the BO or BB. As proposed, the Exchange would provide for similar treatment so that an ALO Order would not lock the price of a displayed order of any size. The proposed rule change would further reduce the burden on competition for its ETP Holders by harmonizing the operation of ALO Orders with how similar orders function on other exchanges.<sup>21</sup>

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>22</sup> and Rule 19b-4(f)(6) thereunder.<sup>23</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>24</sup> normally does not become operative for 30 days after the date of the filing. However Rule 19b-4(f)(6)(iii)<sup>25</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change would consistently treat ALO Orders if they cross the price of displayed or non-

displayed interest (*i.e.*, trade),<sup>26</sup> which would increase the potential for price improvement for ALO Orders. Also, according to the Exchange, the proposed rule change would consistently treat ALO Orders if they lock the price of any-sized displayed interest (*i.e.*, re-price), which would reduce the potential for ALO Orders to lock the displayed price of an odd lot order and therefore reduce confusion in the market. In addition, the Exchange states that it anticipates that it will be able to implement the technology changes supporting this proposed rule change in less than 30 days from the date of filing. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>27</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2016-80 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

<sup>26</sup> The Exchange states that this proposed change is based on the rules of BZX and Nasdaq. See *supra* note 7.

<sup>27</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSEARCA-2016-80. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2016-80 and should be submitted on or before June 23, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016-12891 Filed 6-1-16; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 32127; 812-14399]**

**Ares Capital Corporation, et al.; Notice of Application**

May 26, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a) and 61(a) of the Act.

*Applicants:* Ares Capital Corporation (the "Company"), Ares Capital

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>21</sup> See *supra* note 7.

<sup>22</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>23</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>24</sup> 17 CFR 240.19b-4(f)(6).

<sup>25</sup> 17 CFR 240.19b-4(f)(6)(iii).

Management LLC (the "Adviser"), Ares Venture Finance GP LLC (the "General Partner"), and Ares Venture Finance, L.P. ("Ares SBIC").

**SUMMARY:** *Summary of the Application:* The Company requests an order to permit it to adhere to a modified asset coverage requirement.

**DATES:** *Filing Dates:* The application was filed on December 12, 2014, and amended on May 11, 2015, and May 11, 2016.

*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 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 June 20, 2016, and should be accompanied by proof of service on applicants, 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, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: Kipp deVeer, Chief Executive Officer, and Joshua M. Bloomstein, General Counsel, Ares Capital Corporation, 245 Park Avenue, 44th Floor, New York, NY 10167.

**FOR FURTHER INFORMATION CONTACT:** Kieran G. Brown, Senior Counsel, at (202) 551-6773, or James M. Curtis, Branch Chief, at (202) 551-6712 (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 Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. The Company, a Maryland corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under

the Act.<sup>1</sup> The Company's investment objective is to generate both current income and capital appreciation through debt and equity investments. The Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Adviser is registered under the Investment Advisers Act of 1940.

2. Ares SBIC, a Delaware limited partnership, received approval for a license from the Small Business Administration ("SBA") to operate as a small business investment company ("SBIC") under the Small Business Investment Act of 1958 ("SBIA"). Ares SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The General Partner is the sole general partner of Ares SBIC and the Company is the sole member of the General Partner. The Company is the sole limited partner of Ares SBIC. The Company, directly or indirectly through the General Partner, wholly owns Ares SBIC.

### Applicants' Legal Analysis

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly-owned subsidiary of the Company that is licensed by the SBA to operate under the SBIA as an SBIC and relies on section 3(c)(7) for an exemption from the definition of "investment company" under the Act (each, an "SBIC Subsidiary").<sup>2</sup> Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, are subject to the SBA's substantial regulation of permissible leverage in their capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company

<sup>1</sup> 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 section 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

<sup>2</sup> All existing entities that currently intend to rely on the order are named as applicants. Any other existing or future entity that may rely on the order in the future will comply with the terms and condition of the order.

operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Ares SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Ares SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from its individual asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if and to the extent that such exemption is necessary or 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 state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it were a BDC, there is no policy reason to deny the benefit of that exemption to the Company.

### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition.

The Company will not itself issue or sell any senior security and the Company will not cause or permit Ares SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Ares SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61(a)); provided that, immediately after the issuance or sale of any such senior security by any of the Company, Ares SBIC or any other SBIC Subsidiary, the Company, individually and on a consolidated basis, shall have

the asset coverage required by section 18(a) (as modified by section 61(a)). In determining whether the Company, Ares SBIC and any other SBIC Subsidiary on a consolidated basis have the asset coverage required by section 18(a) (as modified by section 61(a)), any senior securities representing indebtedness of Ares SBIC or another SBIC Subsidiary if that SBIC Subsidiary has issued indebtedness that is held or guaranteed by the SBA shall not be considered senior securities and, for purposes of the definition of “asset coverage” in section 18(h), shall be treated as indebtedness not represented by senior securities.

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

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-12878 Filed 6-1-16; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77926; File No. SR-CBOE-2016-045]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

May 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2016, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its Fees Schedule.<sup>3</sup> Specifically, the Exchange proposes to allow Market-Makers to designate a Trading Permit Holder with agency operations (“Order Flow Provider” or “OFP”) and Order Flow Providers to designate a Market-Maker for purposes of being able to take advantage of credits available under the Affiliate Volume Plan (“AVP”).

By way of background, the Exchange currently has in place various incentive programs that benefit “affiliated” Trading Permit Holders (“TPHs”). Particularly, under AVP, if a TPH Affiliate of a Market-Maker (including a Designated Primary Market-Maker (“DPM”) or Lead Market-Maker (“LMM”)) qualifies under the Volume Incentive Program (“VIP”), that Market-Maker will also qualify for a discount on that Market-Maker’s Liquidity Provider Sliding Scale (“Sliding Scale”) transaction fees (“Liquidity Provider Sliding Scale Credit”). More specifically, if a Market-Maker’s Affiliate reaches Tier 2, Tier 3 or Tier 4 of VIP, that Market-Maker will receive a Liquidity Provider Sliding Scale Credit of 10%, 20% or 30%, respectively. Additionally, if a Market-Maker’s Affiliate receives a credit under VIP, that Market-Maker will also receive a credit on its Market-Maker Trading Permit fees<sup>4</sup> corresponding to the VIP tier reached (10% Market-Maker Trading Permit fee credit for reaching Tier 2 of the VIP, 20% Market-Maker Trading Permit fee credit for reaching

<sup>3</sup> The Exchange initially filed the proposed fee change on May 2, 2016 (SR-CBOE-2016-044). On May 16, 2016, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> This credit does not apply to Market-Maker Trading Permits used for appointments in SPX, SPXpm, RUT, VIX, OEX and XEO.

Tier 3 of the VIP, and 30% Market-Maker Trading Permit fee credit for reaching Tier 4 of the VIP) (“Access Credit”). “Affiliate” for purposes of AVP (*i.e.*, the Liquidity Provider Sliding Scale Credit and Access Credit) is currently defined as having at least 75% common ownership between the two entities as reflected on each entity’s Form BD, Schedule A.

The Exchange now proposes to expand the availability of the credits under AVP. Specifically, the Exchange proposes to allow any Market-Maker to designate an OFP as its “Appointed OFP” and any OFP to designate a Market-Maker to be its “Appointed Market-Maker” for purposes of qualifying for credits under AVP. TPHs would effectuate the designation by submitting a form to the Exchange.<sup>5</sup> The form would need to be submitted to the Exchange by 3:00 p.m. on the first business day of a month in order to be eligible to qualify for credits under AVP for that month. The Exchange would view transmittal of the completed form as acceptance of such an appointment and would only recognize one such designation for each party once every calendar month, which designation would remain [sic] automatically renew each month and remain in effect unless or until the Exchange receives an email from either party indicating that the appointment has been terminated.

The Exchange notes that the proposal would be available to all Market-Makers and OFPs, even those who already have an “Affiliate” under the current definition. More specifically, the proposed change would enable a Market-Maker without an Affiliate OFP (*i.e.*, an OFP with at least 75% common ownership between itself and that Market-Maker as reflected on each entity’s Form BD, Schedule A)—or with an Affiliate OFP—to enter into a relationship with an Appointed OFP. Similarly, an OFP with or without an Affiliate Market-Maker would be able to enter into a relationship with an Appointed Market-Maker. The proposed change increases opportunities for TPHs to qualify for credits under AVP, as it would enable TPHs that are not currently eligible for AVP (*i.e.*, doesn’t have an “Affiliate”) to avail themselves of AVP, as well as assist TPHs that are currently eligible for AVP (*i.e.*, has an Affiliate) to potentially achieve a higher AVP tier, thus qualifying for higher credits. The Exchange notes that a Market-Maker that has both an Affiliate OFP and Appointed OFP may only qualify based upon the volume of its

<sup>5</sup> The Appointed Affiliate Form may be submitted to [Registration@cboe.com](mailto:Registration@cboe.com).