

## SECURITIES AND EXCHANGE COMMISSION

### Investment Company Act Release No. IC-31235; 812-14242; Monroe Capital Corporation, *et al.*; Notice of Application

August 28, 2014.

**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:* Monroe Capital Corporation (the "Company"), Monroe Capital BDC Advisors, LLC (the "Investment Adviser"), MCC SBIC GP, LLC (the "General Partner"), and Monroe Capital Corporation SBIC, LP ("Monroe SBIC").

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

*Filing Dates:* The application was filed November 21, 2013, and amended on May 23, 2014.

*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 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 September 22, 2014 and should be accompanied by proof of service on the Applicants, 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 Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants: Theodore L. Koenig, Monroe Capital Corporation, 311 South Wacker Drive, Suite 6400, Chicago, Illinois 60606.

**FOR FURTHER INFORMATION CONTACT:** Stephan N. Packs, Senior Counsel, at (202) 551-6853, or James M. Curtis, Branch Chief, at (202) 551-6825 (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 maximize the total return to its stockholders in the form of current income and capital appreciation through investments in senior, unitranche and junior secured debt and, to a lesser extent, unsecured subordinated debt and equity investments. The Investment Adviser, a Delaware limited liability company, is the investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. Monroe SBIC, a Delaware limited partnership, is a small business investment company ("SBIC") licensed by the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBIA"). Monroe SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company directly owns 99% of Monroe SBIC in the form of a limited partnership interest in Monroe SBIC. Since Monroe SBIC's inception, the General Partner, a Delaware limited liability company, has been the general partner of Monroe SBIC and owns 1% of Monroe SBIC in the form of a general partnership interest. The Company owns 100% of the General Partner's equity interests. As a result, the Company, directly or indirectly through the General Partner, wholly owns Monroe 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 a SBIC and relies on Section 3(c)(7) for an exemption from the definition of

<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.

"investment company" under the 1940 Act (each, a "SBIC Subsidiary").<sup>2</sup> Applicants state that companies operating under the SBIA, such as the SBIC Subsidiary, will be 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 a BDC, with certain modifications. Section 18(k) exempts an investment company 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 Monroe 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 Monroe 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 the SBIC Subsidiary's 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 authorizes the Commission to exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision or provisions of the Act or of any rule or regulation thereunder 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

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

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 itself, 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 shall not issue or sell any senior security, and the Company shall not cause or permit Monroe SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Monroe SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, Monroe SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of an 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.

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-72946; File No. SR-BYX-2014-019]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Rules 11.9 of BATS Y-Exchange, Inc.

August 28, 2014.

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 August 26, 2014, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.9 to add certain optional price sliding functionality.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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 parts of such statements.

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

###### 1. Purpose

The Exchange currently offers various forms of sliding which, in all cases, result in the re-pricing of an order to, or ranking and/or display of an order at, a price other than an order's limit price in order to comply with applicable securities laws and/or Exchange rules. Specifically, the Exchange currently offers price sliding to ensure compliance with Regulation NMS and Regulation SHO. Price sliding currently offered by the Exchange re-prices and displays an order upon entry and in certain cases again re-prices and re-displays an order at a more aggressive price one time if and when permissible ("single display-price sliding"), and optionally continually re-prices an order ("multiple display-price sliding") based on changes in the national best bid ("NBB") or national best offer ("NBO",

and together with the NBB, the "NBBO"). The Exchange proposes to add another optional process, the Price Adjust process, as described below. Price Adjust in all contexts for which it is being proposed will have to be elected by a User<sup>3</sup> in order to be applied by the Exchange.

In contrast to display-price sliding, which is based solely on Protected Quotations<sup>4</sup> at equities markets other than the Exchange, Price Adjust would be based on Protected Quotations at external markets and at the Exchange. If the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such order executes against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order would be executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively, or adjusted pursuant to the Price Adjust process, as described in further detail below. Because the Exchange will route orders to external markets with locking or crossing quotations, the Exchange notes that the Price Adjust process would only be applicable to non-routable orders, including BATS Only Orders, BATS Post Only Orders and Partial Post Only at Limit Orders. In turn, because BATS Only Orders will execute against locking or crossing interest on the Exchange (including both Protected Quotations as well as any non-displayed interest), the fact that Price Adjust would be based on Protected Quotations at the Exchange is only relevant for BATS Post Only Orders and Partial Post Only at Limit Orders.

With respect to price sliding offered to ensure compliance with Regulation NMS ("display-price sliding"), under the Exchange's current rules, if, at the time of entry, a non-routable order would cross a Protected Quotation displayed by another trading center the Exchange re-prices and ranks such order at the locking price, and displays such order at one minimum price variation below the NBO for bids and above the NBB for offers. Similarly, in the event a non-routable order that, at the time of entry, would lock a Protected Quotation displayed by another trading center, the

<sup>3</sup> As defined in BYX Rule 1.5(cc), a User is "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3."

<sup>4</sup> As defined in BYX Rule 1.5(t), a "Protected Quotation" is "a quotation that is a Protected Bid or Protected Offer." In turn, the term "Protected Bid" or "Protected Offer" means "a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association."

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

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