

trust indenture provide that the trustee "shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust." Under these provisions, the only foreign entity that qualifies as a UIT custodian is an overseas branch of a U.S. bank.

2. Section 6(c) provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of person, securities, or transactions, from any provisions of the Act or any rule or regulation under the Act if, and to the extent that, the 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.

3. Rules 17f-5 and 17f-7 under the Act govern the custody of assets of registered management investment companies overseas. Applicants seek an order under section 6(c) exempting them and any U.S. bank that acts as Trustee for any Trust Series from section 26(a)(2)(D) of the Act to the extent necessary to permit a Trustee to deposit Foreign Investments with an eligible foreign custodian as that term is defined in Rule 17f-5 under the Act ("Eligible Foreign Custodian") or with an eligible securities depository as that term is defined in Rule 17f-7 under the Act ("Eligible Securities Depository").

4. Under the proposed arrangements, a Trust Series would comply with all of the requirements of rule 17f-5, except that the Trustee will perform the duties and responsibilities that are normally performed by the foreign custody manager as described in rule 17f-5(c) ("Foreign Custody Manager"). Applicants state that the Trustee will fulfill the duties of a Foreign Custody Manager under rule 17f-5 to select an Eligible Foreign Custodian and monitor the foreign custody arrangements. Applicants assert that the Trustee will have the expertise and generally be in the best position to make the determinations required by rule 17f-5. Under the proposed arrangements, a Trust Series also will comply with all of the requirements of rule 17f-7, with the Trustee providing the risk analysis to the Sponsor, monitoring the custody risks associated with maintaining Foreign Investments with an Eligible Securities Depository on a continuing basis, and promptly notifying the Sponsor of any material change in the risks. Applicants also state that the Sponsor will be required to take

appropriate action in response to a notification by the Trustee.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Trust Series against the risk of loss of Trust Series' Foreign Investments held with an Eligible Foreign Custodian in accordance with the foreign custody contract.

2. The Indenture will contain provisions under which the Trustee agrees to exercise reasonable care, prudence, and diligence such as a person having responsibility for the safekeeping of Trust Series assets would exercise, and to be liable to the Trust Series for any loss occurring as a result of the Trustee's failure to do so.

3. The Indenture will contain provisions under which the Trustee agrees to perform all the duties assigned by rule 17f-5, as now in effect, or as it may be amended in the future, to a Foreign Custody Manager. A Trustee's duties under this condition will not be delegated.

4. The Indenture will contain provisions under which the Trustee agrees that it (or the Trustee's agent) will (i) Provide the Sponsor with an analysis of the custody risks associated with maintaining assets with an Eligible Securities Depository; (ii) monitor the custody risks associated with maintaining assets with the Eligible Securities Depository on a continuing basis and promptly notify the Sponsor of any material change in these risks; and (iii) exercise reasonable care, prudence and diligence in performing the foregoing duties.

5. The Sponsor will be required to take appropriate action in response to a notification by the Trustee provided pursuant to condition 4 above.

6. The Trust Series' prospectus will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N-1A and N-2. The prospectus also will contain disclosure concerning the Sponsor's responsibilities pursuant to condition 5 above.

7. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the Trust Series was terminated, the first two years in an easily accessible place. The records will

be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the Commission or its staff.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25881; 812-12658]

Gladstone Capital Corporation; Notice of Application

January 3, 2003.

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, Gladstone Capital Corporation, requests an order approving a proposal to issue stock options to directors who are not officers or employees of the applicant (the "Non-employee Directors") pursuant to its Amended and Restated 2001 Equity Incentive Plan (the "Plan").

FILING DATES: The application was filed on October 11, 2001, and amended on October 2, 2002, and January 2, 2003.

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 January 28, 2003, 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, Commission, 450 5th Street, NW., Washington, DC 20549-0609. Applicant, 1616 Anderson Road, Suite 208, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at