

May 8, 2011.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29665; 812-13772]

### PennantPark Investment Corporation, et al.; Notice of Application

May 6, 2011.

**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:** PennantPark Investment Corporation (the "Company"), PennantPark SBIC GP, LLC (the "General Partner"), PennantPark SBIC LP ("PennantPark SBIC") and PennantPark Investment Advisers, LLC (the "Investment Adviser")

**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 May 12, 2010 and amended on September 7, 2010, February 18, 2011, and May 2, 2011.

**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 May 31, 2011 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, 590 Madison Avenue, 15th Floor, New York, New York 10022.

**FOR FURTHER INFORMATION CONTACT:** Laura J. Riegel, Senior Counsel, at (202) 551-6873, or Dalia Osman Blass, Branch

Chief, at (202) 551-6874 (Division of Investment Management, Office of Investment Company Regulation). **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 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 objectives are to generate both current income and capital appreciation in the form of mezzanine debt, senior secured loans and equity investments through debt and equity investments primarily in U.S. middle market private companies. The Investment Adviser, a Delaware limited liability company, is the external investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. PennantPark SBIC, a Delaware limited liability company, is a small business investment company ("SBIC") licensed by the Small Business Administration ("SBA") to operate under the Small Investment Act of 1958 ("SBIA"). PennantPark SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company directly owns 99% of PennantPark SBIC in the form of limited partnership interests. The General Partner, which is a wholly-owned subsidiary of the Company, owns 1% of PennantPark SBIC in the form of a general partnership interest. The Company is the sole member of the General Partner.

### 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

<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.

SBIC and relies on Section 3(c)(7) for an exemption from the definition of "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 its 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 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 PennantPark 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 PennantPark 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, 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

<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.

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 PennantPark SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, PennantPark 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, PennantPark 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 PennantPark SBIC or another SBIC Subsidiary 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.

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64420; File No. SR-NYSE-2011-21]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rule 80C To Include Additional Securities in the Pilot by Which Such Rule Operates and Amending Rule 104 To Simplify Certain Aspects of the Text While Also Conforming Certain of the Percentages Thereunder to the Proposed Changes to Rule 80C

May 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 4, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NYSE. 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 Rule 80C to include additional securities in the pilot by which such rule operates and amend Rule 104 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 80C. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 self-regulatory organization 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 those 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 proposes to amend Rule 80C to include additional securities in the pilot by which such rule operates and amend Rule 104 to simplify certain aspects of the text while also conforming certain of the percentages thereunder to the proposed changes to Rule 80C.

The Commission approved Rule 80C on a pilot basis on June 10, 2010 to provide for trading pauses in individual securities due to extraordinary market volatility ("Trading Pause") in all securities included within the S&P 500® Index ("S&P 500") ("Trading Pause Pilot" or "Pilot").<sup>3</sup> The Exchange noted in its filing to adopt Rule 80C that during the Pilot period it would continue to assess whether additional securities need to be added and whether the parameters of Rule 80C would need to be modified to accommodate trading characteristics of different securities. The Exchange subsequently received approval to add to the Pilot the securities included in the Russell 1000® Index ("Russell 1000").<sup>4</sup>

<sup>3</sup> The Commission approved the Trading Pause Pilot for all equities exchanges and FINRA. See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR-BATS-2010-014; SR-EDGA-2010-01; SR-EDGX-2010-01; SR-BX-2010-037; SR-ISE-2010-48; SR-NYSE-2010-39; SR-NYSEAmex-2010-46; SR-NYSEArca-2010-41; SR-NASDAQ-2010-061; SR-CHX-2010-10; SR-NSX-2010-05; and SR-CBOE-2010-047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR-FINRA-2010-025). The Exchange submitted a proposed rule change shortly after the initial Commission approval order to clarify the procedures applicable to reopening. See Securities Exchange Act Release No. 62284 (June 11, 2010), 75 FR 34498 (June 17, 2010) (SR-NYSE-2010-45).

<sup>4</sup> The Commission approved the addition to the Trading Pause Pilot of the securities included in the Russell 1000 and a specified list of Exchange Traded Products ("ETPs"), where applicable, for all equities exchanges and FINRA. See Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR-BATS-2010-018; SR-BX-2010-044; SR-CBOE-2010-065; SR-CHX-2010-14; SR-EDGA-2010-05; SR-EDGX-2010-05; SR-ISE-2010-66; SR-NASDAQ-2010-079; SR-NYSE-2010-49; SR-NYSEAmex-2010-63; SR-NYSEArca-2010-61; and SR-NSX-2010-08) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR-FINRA-2010-033). The Exchange submitted a proposed rule change shortly after the addition of the Russell 1000 securities to extend the operation of the Pilot, which was set to expire on December 10, 2010, until April 11, 2011. See Securities Exchange Act Release No. 63500 (December 9, 2010), 75 FR 78309 (December 15, 2010) (SR-NYSE-2010-81). The Pilot is currently set to expire on the earlier of August 11, 2011 or the date on which a limit up/

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

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