This notice is issued in Washington, DC, on April 11, 1997.

Stanley D. Suyat,

Associate Director for Management.

[FR Doc. 97–9856 Filed 4–15–97; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 20a–1, SEC File No. 270–132, OMB Control No. 3235–0158

Rule 489 and Form F–N, SEC File No. 270–361, OMB Control No. 3235–0411

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 20a–1 requires that the solicitation of a proxy, consent or authorization with respect to a security issued by a registered fund be in compliance with Regulation 14A (17 CFR 240.14a–1), Schedule 14A (17 CFR 240.14a–101), and all other rules and regulations adopted under section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)). Rule 20a–1 also requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation.

Regulation 14A and Schedule 14A establish the disclosure requirements applicable to the solicitation of proxies, consents and authorizations. In particular, Item 22 of Schedule 14A contains extensive disclosure requirements for registered investment company proxy statements. Among other things, it requires the disclosure of information about fund fee or expense increases, the election of directors, the approval of an investment advisory contract and the approval of a distribution plan.

The Commission requires the dissemination of this information to assist investors in understanding their fund investments and the choices they may be asked to make regarding fund operations. The Commission does not use the information in proxies directly, but reviews proxy statement filings for compliance with applicable rules.

It is estimated that approximately 1,000 registered investment companies are required to file one proxy statement annually. The total annual reporting and recordkeeping burden of the collection of information is estimated to be approximately 96,200 hours (1,000 responses × 96.2 hours per response).

Rule 489 and Form F–N requires certain entities that are excepted from the definition of investment company by virtue of rules 3a–1, 3a–5, and 3a–6 under the Investment Company Act of 1940 to file Form F–N to appoint a United States agent for services of process when making a public offering of securities in the United States.

It is estimated that approximately 21 entities are required by rule 489 to file Form F–N. The total estimated annual burden of complying with the filing requirement is approximately 25 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 8, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9716 Filed 4–15–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 22613; Investment Advisers Act Release No. 1628; 812–10388]

Equus II Incorporated, et al.; Notice of Application

April 10, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (''Investment Company Act'') and the Investment Advisers Act of 1940 (''Advisers Act'').

APPLICANTS: Equus II Incorporated (''Fund''), Equus Capital Corporation (''ECC''), the Equus Capital Management Corporation (''ECMC'').

RELEVANT INVESTMENT COMPANY ACT SECTIONS: Order requested under section 6(c) granting an exemption from section 63.

RELEVANT ADVISERS ACT SECTIONS: Order requested under section 206A granting an exemption from section 205(a)(1).

SUMMARY OF APPLICATION: Applicants request an order to permit the Fund to pay and the adviser and subadviser to the Fund to receive performance compensation on the basis of cumulative realized and unrealized gains net of realized and unrealized losses on securities in the Fund's portfolio.

FILING DATES: The application was filed on October 10, 1996, and amended on March 20, 1997, and April 1, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 5, 1997, and should be accompanied by proof of service on 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 such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 2929 Allen Parkway, Suite 2500, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Mercer E. Bullard, Branch Chief, at (202) 942–0564, or Elizabeth G. Osterman, Assistant Director, at (202) 942–0564 (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 for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund, a Delaware corporation, is the successor to Equus Investments II, L.P., a Delaware limited partnership (''Partnership''). The Fund has elected to be a business development company (''BDC'') pursuant to section 54(a) of the Investment Company Act. The Fund's investment objective is to achieve capital appreciation by making equity and equity-oriented investments in growth capital, leveraged buyouts or recapitalizations of existing companies or divisions thereof and subsequently disposing of such investments.

2. As an investor primarily in private securities, the Fund holds such securities until a portfolio company can be taken public or acquired by another company or other investors. The Fund's holding period generally exceeds five years and the Fund has held certain investments for more than nine years. The nature of venture capital investing is such that bad investments typically surface earlier than successful investments, and the ultimate success of the Fund may be dependent upon realizing substantial gains in a relatively small number of investments. The nature of the Fund's investments is such that the Fund's unrealized appreciation generally exceeds its unrealized depreciation.

3. At December 31, 1996, the Fund had total net assets of $103,223,308 and 4,300,682 shares of common stock of the Fund issued and outstanding. The shares of the Fund are listed for trading on the American Stock Exchange (''AMEX''). Since the listing of the Fund's shares on the AMEX, the Fund's shares have traded at a discount to the Fund's net asset value. At December 31, 1996, the closing sale price of the Fund's shares was $16.125 and the net asset value of the Fund was $24.00 per share, for a discount of approximately 33%.

4. ECMC and ECC, both registered investment advisers under the Advisers Act, provide investment advisory services to the Fund. ECC is a wholly owned subsidiary of ECMC, which is in turn controlled by Equus Corporation International, a privately owned corporation engaged in a variety of investment activities. Certain directors and officers of ECMC and ECC are also directors and/or officers of the Fund.

5. ECMC serves the Fund's management company and, pursuant to a management agreement between the Fund and ECMC, performs, or arranges for third parties to perform, the management, administrative, investment advisory, and other services necessary for the operation of the Fund. Such management and administrative services include providing the Fund with office space, equipment, facilities, and supplies; keeping and maintaining the books and records of the Fund; preparing accounting, management, and other reports; and providing such other managerial and administrative services as may be necessary to identify, structure, monitor, and dispose of the Fund's investments. ECMC entered into a sub-adviser agreement with ECC, pursuant to which ECC provides certain investment advisory services to the Fund, including approving the Fund's quarterly net asset valuations and arranging for necessary financing for the Fund or its leverage transactions.

6. ECMC receives (1) a management fee at an annual rate of 2% of the net assets of the Fund, paid quarterly in arrears, (2) compensation for providing certain investor communication services at the rate of $50,000 per year, and (3) incentive compensation equal to 20% of the net realized capital gains of the Fund less unrealized capital depreciation, computed on a cumulative basis over the life of the Fund and its predecessors. ECC is entitled to a fee from ECMC equal to one-half of the incentive compensation that ECMC receives from the Fund, paid quarterly in arrears. If, at the end of any quarter or upon termination of the Fund, net payments previously made to ECMC exceed 20% of the Fund's cumulative net realized capital gains less unrealized capital depreciation, ECMC is required to repay such excess.

7. At December 31, 1996, the Fund had accrued a deferred management company incentive fee (''Deferred Fee'') of $10,784,028. This amount represents the unpaid computed incentive compensation fee on the excess of unpaid realized and unrealized appreciation of the Fund's investments over unrealized depreciation at December 31, 1996, and would be payable to ECMC upon sale of the Fund's investments at their current net asset values as of such date.

8. The Fund is managed by a board of directors, a majority of whom are not ''interested persons'' of the Fund, as defined in the Investment Company Act (''Independent Directors''). At its February 1995 meeting, the board of directors established a committee to review ways for the Fund to enhance shareholder value (''Committee''). The Committee reviewed and the Fund's board of directors approved a proposal to end the payment of incentive compensation to ECMC and ECC and to substitute in its place a stock option plan for the directors and officers of the Fund. The stock option plan adopted by the board of directors would comply with the provisions of section 61(a)(3)(B) of the Investment Company Act.[1]

9. The board of directors does not wish to penalize ECMC and ECC by terminating the incentive compensation provisions of their management agreements prematurely. The board of directors therefore proposes that, upon termination of the incentive compensation provisions of the current management agreement with ECMC, ECMC be vested with the amount of the Deferred Fee as of the effective date of termination (''Valuation Date''). The Fund has set the Valuation Date as March 31, 1997, contingent on approval of the stock option plan and the payment of the Deferred Fee in shares of the Fund's common stock by the shareholders of the Fund and the issuance of an exemptive order by the SEC. The proposal to pay the Deferred Fee in shares of the Fund's common stock will be submitted to the shareholders of the Fund for approval at a special shareholders meeting.

10. For purposes of determining the Deferred Fee, the investment portfolio of the Fund will be appraised by an independent appraiser selected by the Independent Directors, the cost of which will be borne one-half by ECMC and one-half by the Fund. All unrealized capital gains and losses of the Fund will be deemed realized at that time. ECMC will be paid the Deferred Fee in shares of the Fund's common stock valued at the net asset value of such shares on the Valuation Date. The appraisal will take into account the difficulties of determining the fair market value of the Fund's investments and provide for an independent analysis of such value.

11. The payment of the Deferred Fee in shares of the Fund's common stock valued at net asset value would result in ECMC receiving shares with a market value substantially less than the amount of the Deferred Fee. For example, if the

[1] The Fund has filed an application requesting relief from section 61(a)(3)(B) of the Act to permit it to offer the stock option plan as it applies to directors of the Fund who are neither officers or employees of the Fund (File No. 812–10574).

Deferred Fee at December 31, 1996, of $10,784,028 had been paid in shares at the net asset value of such shares at December 31, 1996 ($24.00), the Fund would have issued 449,334 shares with an aggregate current market value on that date of $7,245,511, or $16.125 per share, a discount of approximately 33%.

12. The shares of Fund's common stock issued in payment of the Deferred Fee will not be registered under the Securities Act of 1933 (''Securities Act''). Consequently, they will be restricted from resale for a minimum of one year as ''restricted securities'' under rule 144(d) under the Securities Act and will be subject to the volume limitations on the amount of securities that may be sold thereafter. Under Rule 144(e), based on the 4,300,682 shares of Fund's common stock outstanding on December 31, 1996, and assuming that approximately 450,000 shares are issued to ECMC in payment of the deferred fee, ECMC could sell approximately 47,500 shares (1% of the shares of common stock outstanding) every three months after it has held the shares for one year.[2] Thus, without taking into account the average weekly trading volume of the shares (which did not exceed 47,500 shares in a recent four calendar week period), it would take more than three years for ECMC to realize the total value of the Deferred Fee after receiving the shares representing payment of the Fee.

Applicants' Legal Analysis

1. Section 63 of the Investment Company Act provides that section 23 of the Act shall apply to a BDC to the same extent as if it were a registered closed-end investment company, with certain exceptions. Section 23(a) prohibits registered closed-end companies from issuing their securities for services. Applicants believe that, to the extent that the payment of the Deferred Fee in shares of the Fund's common stock represents the issuance of such shares for services, the payment may be deemed to violate section 23(a).

2. Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser from having an advisory agreement that provides for it to receive compensation on the basis of a share of capital gains upon or capital appreciation of a client's funds. Section 205(b)(3) of the Advisers Act provides that section 205(a)(1) shall not apply to an agreement between an investment adviser and a BDC for the adviser to receive a limited performance fee based on realized gains computed net of realized and unrealized losses, provided that, among other things, the BDC does not also have outstanding any option issued pursuant to section 61(a)(3) of the Investment Company Act.[3] Applicants believe that, to the extent that the calculation of the Deferred Fee provides that all unrealized capital appreciation or gains be deemed realized, such calculation may be deemed to violate section 205(a)(1).

3. Section 6(c) of the Investment Company Act and section 206A of the Advisers Act provide that the SEC may exempt any person or transaction from any provision of the Investment Company Act and the Advisers Act if such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of each Act. Applicants believe that these standards are satisfied for the reasons stated below.

4. Applicants contend that payment of the Deferred Fee in shares of the Fund's common stock is beneficial to the Fund and its shareholders because it will permit the Fund to retain cash otherwise required to pay the Deferred Fee and assist in better aligning management's compensation with the Fund's shareholders' objective of increasing the market value of the Fund's shares. Applicants believe that the loss of the accrued incentive compensation by ECC and ECMC would not be in the best interest of the Fund because it would penalize the very persons for whom the board of directors wishes to create incentives.

5. Applicants argue that elimination of the Deferred Fee also will significantly reduce expenses and the expense ratio of the Fund. By eliminating the Deferred Fee, applicants note that the expenses of the Fund would have been reduced from $10,857,087 to $3,310,381 for the year ended December 31, 1996, and the expense ratio of the Fund would have been reduced from 13.1% to 4.0% for 1996.

6. Applicants believe that Congress may have excluded unrealized gains from the calculation of performance fees under section 205(b)(3) in part because it was concerned about the possible overcompensation of the BDC's adviser resulting from overvaluation of the BDC's portfolio securities. Applicants assert that this concern will be addressed by basing the Deferred Fee on a valuation of the Fund's portfolio securities provided by an independent appraiser selected by the Independent Directors.

7. Applicants state that Congress permitted the payment of incentive compensation under section 205(b)(3) only if the BDC did not also have a stock option plan. Applicants believe that this condition may have arisen from a concern that management might be paid twice with respect to the same capital gains. Applicants note that the Fund proposes to issue to directors and officers of the Fund stock options exercisable at the market price on the date of issuance. Applicants therefore believe there would be a risk that management may receive additional compensation based on the same capital gain if the shares of common stock issued in payment of the Deferred Fee were issued at market value and the subsequent realization of a capital gain previously deemed realized in determining the Deferred Fee reduced the market discount on the Fund's net asset value. Applicants assert that payment of the Deferred Fee in shares of common stock at net asset value eliminates this risk because ECMC and ECC would not receive any benefit from the current market discount on the Fund's net asset value.

Applicants' Condition

Applicants agree that any order of the SEC granting the requested relief will be subject to the condition that the shares of the Fund's common stock to be issued in payment of the Deferred Fee will be valued at the net asset value of such shares on the same date as of which the Deferred Fee is determined.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–9804 Filed 4–15–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Rule 144(e) provides that, after the one-year holding period has expired, a holder of restricted securities that is an affiliate of the issuer may not sell, in any three-month period, more than the greater of (1) 1% of the issuer's outstanding shares or (2) the average weekly reported volume of trading in the shares over the preceding four calendar weeks.

[3] Section 61(a)(3) permits a BDC to issue options pursuant to an executive compensation plan provided that certain requirements are satisfied.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22612; 812–10400]

Smith Barney Inc., et al.; Notice of Application

April 9, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').