

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23959, 812-11724]

Clarion CMBS Capital Value Fund and Clarion Capital, LLC; Notice of Application

August 20, 1999.

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants seek an order to permit in-kind redemptions of shares of Clarion CMBS Value Fund, Inc. (the "Fund") held by certain affiliated shareholders.

Applicants: The Fund and Clarion Capital, LLC (the "Adviser").

Filing Dates: The application was filed on August 6, 1999.

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 September 14, 1999, 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 notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants, c/o Shearman & Sterling 599, Lexington Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. The Fund is registered under the Act as an open-end management investment company and organized as a Maryland corporation. The Adviser is registered as an investment adviser under the Investment Advisers Act of

1940, and serves as investment adviser to the Fund.

2. Applicants request relief to permit the Fund, to satisfy redemption requests made by any shareholder who, at the time of such redemption request, is an affiliated person of the Fund solely by reason of owning, controlling, or holding with the power to vote, five percent or more of the Fund's shares ("Covered Shareholder") by distributing portfolio securities in-kind. The relief sought would not extend to shareholders who are "affiliated persons" of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

3. The Fund's prospectus provides that, generally, the Fund may satisfy all or part of a redemption request by a distribution in-kind of portfolio securities.¹ The board of directors of the Fund (the "Board"), including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act ("Non-Interested Directors"), have determined that it would be in the best interests of the Fund and its shareholders to pay to a Covered Shareholder the redemption price for shares of the Fund in-kind.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3)(A) of the Act defines "affiliated person" of another person to include any person owning 5% or more of the outstanding voting securities of the other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the Fund is not the issuer) by a Covered Shareholder, the proposed redemption in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

¹ The Fund has elected to be governed by rule 18f-1 under the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, 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.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting them from section 17(a) of the Act to permit Covered Shareholders to redeem their shares of the Fund in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicants submit that the terms of the proposed in-kind redemptions by Covered Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that neither the Fund nor the Covered Shareholders will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Covered Shareholder will have an opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed will be valued according to an objective, verifiable standard and that the in-kind redemptions are consistent with the investment policies of the Fund. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Covered Shareholders would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

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

1. The securities distributed to both Covered Shareholders and non-affiliated shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by the Fund on a pro rata basis after excluding: (a) securities which could not be publicly offered or sold in the United States without being registered under the Securities Act of 1933; (b) certain portfolio positions (such as futures and options contracts and repurchase agreements) that, although they may be liquid and

marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with an institutional counterparty to the transaction; (c) cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements); (d) other assets which are not readily distributable (including receivables and prepaid expenses); and (e) portfolio securities representing fractional shares or units, odd lot securities and accruals on such securities. Cash will be paid for the portion of the in-kind distribution represented by assets set forth in (a)–(e) less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Covered Shareholders and non-affiliated shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Fund's Board, including a majority of the Non-Interested Directors, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of the Fund as reflected in its prospectus. In addition, the Board will make and approve such changes in the procedures as it deems necessary for monitoring the Fund's compliance with the terms and conditions of this Application.

5. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption by a Covered Shareholder occurs, the first two years in an easily accessible place, a written record of each such redemption setting forth the identity of the Covered Shareholder, a description of each security distributed in-kind, the terms of the in-kind distribution, and the information or materials upon which the valuation was made.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22263 Filed 8–26–99; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Temporary Extension of Certain Provisions of the Special Textile and Apparel Regime Implemented Under the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Proclamation 7125 provides duty-free treatment for suit-type jackets imported from Mexico containing interlining fabric that was cut but not formed in the United States, and it authorizes the United States Trade Representative ("USTR") to extend this treatment for one additional year after fulfilling certain requirements. Effective upon publication of this notice, and pursuant to authority delegated by the President, the United States Trade Representative hereby extends the duty-free treatment provided for in Proclamation 7125 for one additional year.

FOR FURTHER INFORMATION CONTACT: Caroyl Miller, Deputy Chief Textile Negotiator, Office of USTR, 600 17th Street, NW, Washington, DC 20508, (202) 395–3026.

SUPPLEMENTARY INFORMATION: Pursuant to authority granted under section 201(b)(1)(A) of the NAFTA Implementation Act (19 U.S.C. 3331(b)(1)(A)), on September 18, 1998, the President issued Proclamation 7125, which provides duty-free treatment for suit-type jackets imported from Mexico containing interlining fabric that was cut but not formed in the United States (63 FR 50737). In addition, the President delegated to USTR authority to extend such duty-free treatment for one additional year after obtaining advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155).

In view of the fact that U.S.-formed interlinings currently are not available for all of the suit-type jackets subject to Proclamation 7125, USTR and the Committee for the Implementation of Textile Agreements requested advice from the Industry Sector Advisory Committees for Textiles and Apparel and for Wholesaling and Retailing (ISACs 15 and 17) on a proposal to extend the duty-free treatment provided for in Proclamation 7125 for one additional year. By letter dated August 11 and August 16, 1999, respectively, ISACs 17 and 15 responded with approval to this proposal.

Accordingly, pursuant to authority delegated by the President, USTR hereby extends for one additional year the duty-free tariff treatment proclaimed in Proclamation 7125. This action is effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:00 a.m. EDT September 1, 1999, and will expire at 11:59 p.m. EDT on August 31, 2000.

C. Donald Johnson,

Ambassador, Chief Textile Negotiator.

[FR Doc. 99–22279 Filed 8–26–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–29]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 5, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9_NPRM_cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G,