

so that article VII, section B of the Charter as amended shall read in full and in its entirety as follows:

B. No holder of Common Stock shall be entitled to preemptive rights and preemptive rights shall not exist with respect to shares or securities of the Corporation.

The affirmative vote of a majority of all the votes entitled to be cast is required for the approval of the proposal.

Allegheny states that elimination of preemptive rights will give the Board of Directors of Allegheny greater flexibility and reduce the cost of financings, such as the sale through private placements of new shares of common stock or senior securities convertible into common stock. The company states that the preemptive rights provision in the Charter serves as a significant impediment to any private sale of equity securities for cash to institutional or strategic investors. These types of issuances of equity can be important in times like these when both Allegheny and the capital markets, at least for energy companies, are under great stress, Allegheny states.

Allegheny would like to submit the proposed amendments to its Charter as described in this Application to stockholders and to solicit proxies from stockholders at a special meeting during the first quarter of 2003. Adoption of the proposed amendments will require the affirmative vote of the holders of a majority of the outstanding shares of Allegheny's common stock entitled to vote at the special meeting.

The cost of the solicitation of proxies will be borne by Allegheny. In addition to the solicitation of proxies by use of the mails, Allegheny, or its subsidiaries, may use the services of its officers, directors and regular employees (none of whom will receive any compensation other than their regular compensation) to solicit proxies, personally or by telephone. Arrangements may also be made with banks, brokerage houses and other custodians, nominees and fiduciaries to forward the proxy materials to the beneficial owners, and Allegheny may reimburse such banks, brokerage houses, custodians, nominees and fiduciaries for reasonable expenses. Allegheny has hired MacKenzie Partners, Inc. to assist in soliciting proxies and has agreed to pay a customary fee for these services, in addition to expenses incurred in connection with the solicitation of proxies.

The following estimated fees and expenses, including expenses of the special meeting of stockholders, are expected to be incurred by Allegheny in

connection with the proposed proxy solicitation and special meeting: Proxy Solicitation, \$50,000; Printing, \$15,000; Mailings, \$100 to \$150,000; Legal Fees, \$100,000. The total estimated fees and expenses are \$265,000 to \$315,000.

No state or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Allegheny has requested that an order be issued authorizing the solicitation of proxies from shareholders in connection with the proposed Charter amendment. It appears to the Commission that Allegheny's declarations regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62(d).

It is ordered, under rule 62 under the Act, that the declaration regarding the proposed solicitation of proxies from Allegheny shareholders in connection with the proposed Charter amendment become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-1701 Filed 1-24-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25907; 812-12730]

### System Capital Corporation and Golden Funding Corporation; Notice of Application

January 21, 2003.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from all provisions of the Act.

*Summary of Application:* Applicants request an order that would permit Golden Funding Corporation ("Golden Funding") to sell securities and use the proceeds to finance the business activities of its parent company, System Capital Corporation ("SCC"), and certain companies controlled by SCC ("Controlled Companies").

*Applicants:* SCC and Golden Funding.  
*Filing Dates:* The application was filed on December 18, 2001, and amended on January 16, 2003.

*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 February 18, 2003, 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, 676 N. Michigan Avenue, Suite 3650, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Goldstein, Senior Counsel (202) 942-0646, or Janet M. Grossnickle, Branch Chief (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. SCC, a Delaware corporation, is a holding company for subsidiaries that provide financing to the restaurant system operated by McDonald's Corporation ("McDonald's") and its owner/operators and suppliers (the "McDonald's Restaurant System"). SCC currently conducts its activities through three types of wholly-owned subsidiaries: (i) The Controlled Companies which provide financing for specific operations of the McDonald's Restaurant System, (ii) Golden Funding, which provides financing to the Controlled Companies, and (iii) System Capital Credit Corporation ("Credit"), which provides various credit support and financial services to Golden Funding, the Controlled Companies and other lenders to the McDonald's Restaurant System. Applicants state that SCC is not an investment company as defined in section 3(a) of the Act.

2. Golden Funding, a Delaware corporation, is a wholly-owned subsidiary of SCC whose primary purpose is to finance the activities of the Controlled Companies by issuing securities and by obtaining secured and unsecured loans pursuant to various credit and liquidity facilities. The debt

securities issued by Golden Funding include commercial paper, medium-term notes, and may include extendible maturity commercial paper (collectively, the "Securities"). The Securities are offered and sold under an exemption from registration provided by section 4(2) of the Securities Act of 1933 ("Securities Act") and are eligible for resale only to "qualified institutional buyers" under rule 144A of the Securities Act that are also "qualified purchasers" under the Act. Golden Funding also may borrow from banks and issue other debt securities or preferred stock in the United States pursuant to a registration statement or an applicable exemption from registration under the Securities Act. Golden Funding will comply with the applicable requirements in rule 3a-5(a)(1) through (4) and with rule 3a-5(b)(1)(i).

3. Golden Funding uses the proceeds from the Securities and loans to make loans to the Controlled Companies.<sup>1</sup> Each Controlled Company uses the proceeds of the loans to provide financing for a distinct segment of the McDonald's Restaurant System, either by purchasing accounts receivable or originating loans or leases to McDonald's or McDonald's Restaurant System participants. Applicants state that each of the Controlled Companies relies, or upon its formation will rely, on section 3(c)(5) of the Act for exclusion from regulation as an investment company under the Act.

4. Applicants state that in compliance with rule 3a-5(a)(5) under the Act, Golden Funding uses at least 85% of any cash or cash equivalents it raises to make loans to the Controlled Companies as soon as practicable, but in no event later than six months after Golden Funding's receipt of the cash or cash equivalents. In accordance with rule 3a-5(a)(6), all investments by Golden Funding, including temporary investments, will be made in Government securities (as defined in the Act), securities of Controlled Companies or debt securities that are exempted from the provisions of section 3(a)(3) of the Securities Act.

#### Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act exempting Golden Funding from all provisions of the Act. Rule 3a-5 under the Act provides an exemption from the Act for certain companies organized primarily

to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a-5(b)(3)(i) under the Act, in relevant part, defines a "company controlled by the parent company" to mean any corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act, or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules and regulations under section 3(a) of the Act. Applicants state that the Controlled Companies do not fit within the definition of "company controlled by the parent company" because they derive their non-investment company status from section 3(c)(5) of the Act. Accordingly, Applicants request exemptive relief to permit Golden Funding to issue and sell Securities to finance the operations of SCC and the Controlled Companies. Applicants state that neither SCC, Golden Funding nor the Controlled Companies engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or 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. Applicants submit that its exemptive request meets the standards set out in section 6(c) of the Act.

#### Applicants' Condition

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

Golden Funding will comply with all of the provisions of rule 3a-5 under the Act, except Golden Funding will be permitted to make loans to or make or hold investments in Controlled Companies that do not meet the portion of the definition of "company controlled by a parent company" in rule 3a-5(b)(3)(i) under the Act solely because they are excluded from the definition of investment company under section 3(c)(5) of the Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-1757 Filed 1-24-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### In the Matter of Emission Controls Corporation; Order of Suspension of Trading

January 23, 2003.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of adequate and accurate information concerning the management, business practices, and results of operations of Emission Controls Corporation ("Emission Controls"). The securities of Emission Controls are quoted on the OTC Pink Sheets under the symbol EMCS. Information has been provided to the Commission raising concerns as to the adequacy and accuracy of Emission Controls' publicly disseminated information concerning, among other things, Emission Controls' products and business prospects.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Emission Controls.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Emission Controls is suspended for the period from 9:30 a.m. e.s.t. January 23, 2003, through 11:59 p.m. e.s.t., on February 5, 2003.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>1</sup> Golden Funding also may from time to time make advances to Credit, which is a "company controlled by the parent company," as that term is defined in rule 3a-5(b)(3).