

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 34263; File No. 812-15111

Trinity Capital, Inc.

May 3, 2021

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

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 23(a), 23(b) and 63 of the Act; under sections 57(a)(4) and 57(i) of the Act and rule 17d-1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and under section 23(c)(3) of the Act for an exemption from section 23(c) of the Act.

Summary of the Application: Trinity Capital, Inc. (“Company” or “Applicant”) requests an order that would permit Applicant to (i) issue restricted shares of its common stock (“Restricted Stock”) as part of the compensation package for its non-employee directors (the “Non-Employee Directors”)¹ through its 2019 Company Non-Employee Director Restricted Stock Plan (the “Non-Employee Director Plan”), (ii) issue Restricted Stock as part of the compensation package for Employee Participants, excluding the Non-Employee Directors, through its 2019 Company Long Term Incentive Plan (the “Long Term Incentive Plan”), (iii) withhold shares of the Applicant’s common stock or purchase shares of Applicant’s common stock from Employee Participants to satisfy tax withholding obligations relating to the vesting of Restricted Stock or the exercise of options to purchase shares of Applicant’s common stock (“Options”) that will be

¹ Employees, officers and employee directors, together the “Employee Participants” and each an “Employee Participant.” The Employee Participants and the Non-Employee Directors, together the “Participants” and each, a “Participant.”

granted pursuant to the Long Term Incentive Plan² and (iv) permit Employee Participants to pay the exercise price of Options that will be granted to them pursuant to the Long Term Incentive Plan with shares of Applicant's common stock.

Applicant: Trinity Capital, Inc.

Filing Dates: The application was filed on March 19, 2020, and amended on July 29, 2020, January 6, 2021, and April 29, 2021.

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 emailing the Commission's Secretary at Secretarys-Office@sec.gov 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 May 24, 2021, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicant: Steven L. Brown, Chief Executive Officer, Trinity Capital, Inc., 3075 West Ray Road, Suite 525, Chandler, Arizona 85226, sstanton@trincapinvestment.com.

FOR FURTHER INFORMATION CONTACT: Stephan N. Packs, Senior Counsel, at (202) 551-6853, or David J. Marcinkus, Branch Chief, at (202) 551-6825, (Division of Investment Management, Chief Counsel's Office).

² No relief is sought in the application for the grant of Options to Non-Employee Directors because Options will not be granted pursuant to the Non-Employee Director Plan.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for the applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicant's Representations:

1. The Company is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act. Applicant provides debt, and to a lesser extent equipment lease financing, to growth stage companies. Applicant's investment objective is to generate current income and, to a lesser extent, capital appreciation. Applicant is a Maryland corporation that was formed in August 2019. Applicant had 26,415,275 shares of Common Stock outstanding as of April 26, 2021. Applicant's common stock is listed on the Nasdaq Global Select Market under the symbol TRIN. As of December 31, 2020, Applicant had 34 employees and Applicant's total assets were \$559,708,000.

2. Applicant currently has a five-member board of directors (the "Board") of whom three are Non-Employee Directors and non-interested persons of Applicant within the meaning of section 2(a)(19).

3. Applicant believes that, because the market for superior investment professionals is highly competitive, Applicant's successful performance depends on its ability to offer fair compensation packages to its professionals that are competitive with those offered by other investment management businesses. Applicant states that the ability to offer equity-based compensation to its employees and Non-Employee Directors, which both aligns employee and

Board behavior with stockholder interests and provides a retention tool, is vital to Applicant's future growth and success.

4. The Applicant's 2019 Non-Employee Director Plan and 2019 Long Term Incentive Plan were adopted on October 17, 2019 by the Board, including the required majority as defined in Section 57(o) (the "Required Majority").³

5. The Board, including the Required Majority, found that granting Restricted Stock Awards to each Non-Employee Director will allow the Applicant to align its business plan and stockholder interests based on the nature of the Applicant's business and the characteristics of Restricted Stock Awards. Applicant states that Restricted Stock Awards allow Participants, over time, to become owners of the Applicant's stock with a vested interest in value maintenance, income stream and stock appreciation, which interests align with those of the Applicant's stockholders.

6. The Non-Employee Director Plan will be administered by a committee designated by the Board ("Compensation Committee"), the composition of which consists of "non-employee directors" within the meaning of rule 16b-3 under the Securities Exchange Act of 1934 ("Exchange Act") each of whom also is not an "interested person" of Applicant within the meaning of section 2(a)(19) of the Act.

7. The Applicant's Non-Employee Director Plan provides that each Non-Employee Director may be granted shares of Restricted Stock at or about the beginning of each one-year term of service on the Board, subject to certain forfeiture restrictions. Applicant states that the number of such shares of Restricted Stock granted will be determined in the discretion of the

³ Section 57(o) of the Act provides that the term "required majority," when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

Board. Applicant states that shares of Restricted Stock Awards will not be transferable except to a permitted transferee: the spouse or lineal descendants (including adopted children) of the Non-Employee Director, any trust for the benefit of the Non-Employee Director or the benefit of the spouse or lineal descendants (including adopted children) of the Non-Employee Director, or the guardian or conservator of the participant. Applicant states that any shares of Restricted Stock held by a Non-Employee Director or such director's permitted transferee that have not vested shall be terminated, returned to Applicant, and again be available for issuance under the Non-Employee Director Plan. Applicant also states that any Restricted Stock Award granted pursuant to the Non-Employee Director Plan but that is forfeited pursuant to the terms of the Plan or an award agreement shall again be available under the Non-Employee Director Plan. Applicant states that the maximum aggregate number of shares of common stock that may be authorized for issuance as Restricted Stock Awards under the Non-Employee Director Plan is 60,000 shares.

8. The Applicant's Long Term Incentive Plan provides for grants to Employee Participants of Restricted Stock and Options ("Plan Awards").⁴ The maximum aggregate number of shares of common stock that may be authorized for issuance under Plan Awards granted under the Long Term Incentive Plan is 3,600,00 shares. The maximum number of shares of common stock that any Employee Participant may be granted in a calendar year is 300,000 shares. Applicant states that any shares of common stock pursuant to a Plan Award that expires or otherwise terminates shall revert to and again become available for issuance under the Long Term Incentive Plan.

⁴ Although its Long Term Incentive Plan also permits the grant of Restricted Stock Units, Other Stock-Based Awards, Performance Based Awards, or Dividend Equivalent Rights, Applicant is not seeking relief from the Commission at this time to grant such units, awards, or rights. Applicant will not grant such units, awards, or rights unless and until Applicant requests and receives the necessary exemptive relief from the Commission with respect to such units, awards, or rights.

9. Unless the Board expressly provides otherwise, immediately upon the cessation of an Employee Participant's continuous service, that portion, if any, (i) of any Restricted Stock Award held by the Employee Participant or the Employee Participant's permitted transferee that is not then vested will terminate, and, in the case of a Restricted Stock Award, the unvested shares will be returned to the Applicant and will be available to be issued as Plan Awards under the Long Term Incentive Plan and (ii) of any Option held by an Employee Participant or such Employee Participant's Permitted Transferee that is not yet exercisable will terminate and the balance will remain exercisable for the lesser of (x) a period of three months or (y) the period ending on the latest date on which such Option could have been exercised, and will thereupon terminate subject to certain provisions. Plan Awards will not be transferable except for disposition by will or the laws of descent and distribution. In addition, a Non-Statutory Stock Option is transferable by gift to a permitted transferee to the extent provided by the Board.

Applicant's Legal Analysis:

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibit a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the Plans.

2. Section 23(b) of the Act generally prohibits a registered closed-end investment company from selling any common stock of which it is the issuer at a price below its current net asset value. Section 63(2) of the Act makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the Plans would not

meet the terms of section 63(2), sections 23(b) and 63 would prevent the issuance of Restricted Stock.

3. Section 6(c) provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of 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.

4. Applicant requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a), 23(b) and 63 of the Act. Applicant states that the Plans would not raise the concerns underlying these sections, which include: (a) preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (b) complication of the investment company's structure that made it difficult to determine the value of the company's shares; and (c) dilution of shareholders' equity in the investment company. Applicant asserts that the Restricted Stock element of the Plans does not raise concerns about preferential treatment of Applicant's insiders because this element is a bona fide compensation plan of the type that is common among corporations generally. In addition, section 61(a)(4)(B) of the Act permits a BDC to issue to its directors, officers, employees, and general partners warrants, options, and rights to purchase the BDC's voting securities pursuant to an executive compensation plan, subject to certain conditions. Applicant states that section 61 and its legislative history do not address the issuance by a BDC of restricted stock as incentive compensation. Applicant believes, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. Applicant

also asserts that the issuance of Restricted Stock would not become a means for insiders to obtain control of Applicant because the maximum amount of Restricted Stock that may be issued under the Plans at any one time will be ten percent of the outstanding shares of common stock of Applicant.

5. Applicant further states that the Restricted Stock feature will not unduly complicate Applicant's capital structure because equity-based incentive compensation arrangements are widely used among corporations and commonly known to investors. Applicant notes that the Plans will be submitted for approval to the Applicant's stockholders. Applicant represents that the proxy materials submitted to Applicant's stockholders will contain a concise "plain English" description of the Plans and their potential dilutive effect. Applicant also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Exchange Act. Applicant further notes that the Plans will be disclosed to investors in accordance with the requirements of the Form N-2 registration statement for closed-end investment companies and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. Applicant also will comply with the disclosure requirements for executive compensation plans applicable to BDCs.⁵ Applicant thus concludes that the Plans will be adequately disclosed to investors and appropriately reflected in the market value of Applicant's shares.

6. Applicant acknowledges that awards granted under the Plans may have a dilutive effect on the stockholders' equity per share in Applicant, but believes that effect would be outweighed by the anticipated benefits of the Plans to Applicant and its stockholders. Moreover,

⁵ See Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655 (Jan. 27, 2006) (proposed rule); Executive Compensation and Related Party Disclosure, Securities Act Release No. 8732A (Aug. 29, 2006) (final rule and proposed rule), as amended by Executive Compensation Disclosure, Securities Act Release No. 8756 (Dec. 22, 2006) (adopted as interim final rules with request for comments).

based on the manner in which the issuance of Restricted Stock pursuant to the Plans will be administered, the Restricted Stock will be no more dilutive than if Applicant were to issue only Options to Employee Participants, as is permitted by section 61(a)(4) of the Act. Applicant asserts that it needs the flexibility to provide the requested equity-based compensation in order to be able to compete effectively for talented personnel with commercial banks, investment banks, and other publicly traded companies that also are not investment companies registered under the Act. Applicant believes that awards of Restricted Stock will benefit Applicant's stockholders and business prospects. Applicant also asserts that equity-based compensation would more closely align the interests of Applicant's employees and Non-Employee Directors with those of its stockholders. In addition, Applicant states that its stockholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plans by the Board.

Section 57(a)(4), Rule 17d-1

7. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) ("57(b) persons"), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d-1, made applicable to BDCs by section 57(i), proscribes participation in a "joint enterprise or other joint arrangement or profit-sharing plan," which includes a stock option or purchase plan. Employees and directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d-1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (a) whether the participation of the BDC in a joint enterprise is consistent with the

policies and purposes of the Act and (b) the extent to which such participation is on a basis different from or less advantageous than that of other participants.

8. Applicant requests an order pursuant to sections 57(a)(4) and 57(i) of the Act and rule 17d-1 under the Act to permit Applicant to issue Restricted Stock under the Plans.

Applicant acknowledges that its role is necessarily different from the other participants because the other participants are its directors, officers, and employees. It notes, however, that the Plans are in the interest of the Applicant's stockholders, because the Plans will help align the interests of Applicant's employees with those of its stockholders, which will encourage conduct on the part of those employees designed to produce a better return for Applicant's stockholders.

Additionally, section 57(j)(1) of the Act expressly permits any director, officer or employee of a BDC to acquire warrants, options and rights to purchase voting securities of such BDC, and the securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan which meets the requirements of section 61(a)(4)(B) of the Act. Applicant submits that the issuance of Restricted Stock pursuant to the Plans poses no greater risk to stockholders than the issuances permitted by section 57(j)(1) of the Act.

Section 23(c)

9. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market pursuant to tenders, or under other circumstances as the Commission may permit to ensure that the purchases are made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that the withholding or purchase of shares of Restricted Stock and common stock in payment of applicable withholding tax obligations or of common stock in payment for the

exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

10. Section 23(c)(3) of the Act permits a BDC to purchase securities of which it is the issuer in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant believes that the requested relief meets the standards of section 23(c)(3).

11. Applicant submits that these purchases will be made in a manner that does not unfairly discriminate against Applicant's stockholders because all purchases of Applicant's stock will be at the closing price of the shares of its common stock on any applicable stock exchange or national market system on the relevant date (*i.e.*, the public market price on the date of grant of Restricted Stock and the date of grant of Options). Applicant submits that because all transactions with respect to the Plans will take place at the public market price for the Applicant's common stock, these transactions will not be significantly different than could be achieved by any stockholder selling in a market transaction. Applicant represents that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving Applicant's shares.

12. Applicant represents that the withholding provisions in the Plans do not raise concerns about preferential treatment of Applicant's insiders because each Plan is a bona fide compensation plan of the type that is common among corporations generally. Furthermore, the vesting schedule is determined at the time of the initial grant of the Restricted Stock and the option exercise price is determined at the time of the initial grant of the Options. Applicant represents that all purchases may be made only as permitted by the Plans, which will be approved by the Applicant's stockholders prior to any application of the relief. Applicant

believes that granting the requested relief would be consistent with the policies underlying the provisions of the Act permitting the use of equity compensation as well as prior exemptive relief granted by the Commission under section 23(c) of the Act.

Applicant's Conditions:

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The Plans will be authorized by Applicant's stockholders.
2. Each issuance of Restricted Stock to an officer, employee, or Non-Employee Director will be approved by the Required Majority of Applicant's directors on the basis that such grant is in the best interest of Applicant and its stockholders.
3. The amount of voting securities that would result from the exercise of all of Applicant's outstanding warrants, options and rights, together with any Restricted Stock issued under the Plans, at the time of issuance shall not exceed 25% of the outstanding voting securities of the Company, except that if the amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options and rights issued to the Company's directors, officers and employees, together with any Restricted Stock issued pursuant to the Plans, would exceed 15% of the outstanding voting securities of the Company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options and rights, together with any Restricted Stock issued pursuant to the Plans, at the time of issuance shall not exceed 20% of the outstanding voting securities of the Company.
4. The amount of Restricted Stock issued and outstanding will not at the time of issuance of any shares of Restricted Stock exceed ten percent of Applicant's outstanding voting securities.

5. The Board will review the Plans at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the Plans could have on Applicant's earnings and net asset value per share, such review to take place prior to any decisions to grant Restricted Stock under the Plans, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the issuance of Restricted Stock under the Plans will be in the best interest of Applicant's stockholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plans. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

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

J. Matthew DeLesDernier
Assistant Secretary