

GLADSTONE CAPITAL CORP
Form 10-K/A
January 27, 2004

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, DC 20549

FORM 10-K/A

Amendment No. 1

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES
EXCHANGE ACT OF 1934**
for the fiscal year ended September 30, 2003

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR
15(D) OF THE SECURITIES
EXCHANGE ACT OF 1934**
for the transition period from _____ to _____
Commission file number 814-00237

GLADSTONE CAPITAL CORPORATION

(Exact name of registrant as specified in its charter)

Maryland

(State or other jurisdiction of
incorporation or organization)

**1616 Anderson Road, Suite 208
McLean, Virginia**
(Address of principal executive offices)

54-2040781

(I.R.S. Employer
Identification No.)

22102
(Zip Code)

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(703) 286-7000

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: **None**

Securities registered pursuant to Section 12(g) of the Act: **Common Stock, \$0.001 par value per share**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act).

YES NO

The aggregate market value of the voting stock held by non-affiliates of the Registrant on March 31, 2003, based on the closing price on that date of \$16.18 on the Nasdaq National Market, was \$151,129,970. For the purposes of calculating this amount only, all directors and executive officers of the Registrant have been treated as affiliates.

There were 10,081,844 shares of the Registrant's Common Stock, \$0.001 par value, outstanding as of December 9, 2003.

Documents Incorporated by Reference. Portions of the Registrant's Proxy Statement relating to the Registrant's 2004 Annual Meeting of Stockholders are incorporated by reference into Part III of this Report.

EXPLANATORY NOTE

Gladstone Capital Corporation (the Company) is filing this Amendment No. 1 on Form 10-K (this Amendment) to amend the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2003, as filed with the Securities and Exchange Commission on December 11, 2003 (the Original 10-K). The purpose of this Amendment is to provide certain information in Item 12 of Part III of the Company's Form 10-K for the fiscal year ended September 30, 2003 that was to be incorporated by reference from the Company's 2004 Proxy Statement. The complete text, as amended, of Item 12 of Part III is set forth below.

As a result, the rules of the Securities and Exchange Commission require that certain exhibits previously provided in Item 15 be provided again. Item 15 is therefore amended to provide the certifications required by the Sarbanes-Oxley Act of 2002 as Exhibits 31.3, 31.4, 32.3 and 32.4.

This amendment is limited in scope to the portions of the Annual Report set forth above and does not amend, update, or change any other items or disclosures contained in the Annual Report. Accordingly, all other items that remain unaffected are omitted in this filing. None of the amendments to the Annual Report reflected in this amended Form 10-K resulted in a change to or restatement of the financial statements or other financial information included in the Annual Report.

This amended Form 10-K continues to speak as of the date of its original filing and we have not updated any disclosure to reflect any events that occurred at any subsequent date. The filing of this amended Form 10-K shall not be deemed an admission that the Original 10-K, when made, included any untrue statement of a material fact or omitted to state a material fact necessary to make a statement therein not misleading.

Item 12. Security Ownership of Certain Beneficial Owners and Management

The information required by Item 403 of Regulation S-K is incorporated by reference from our 2004 Proxy Statement under the caption Security Ownership of Certain Beneficial Owners and Management.

The following table gives information about our common stock that may be issued upon the exercise of options, warrants and rights under all of our existing equity compensation plans as of September 30, 2003.

Equity Compensation Plan Information

| | Number of securities to be issued upon exercise of outstanding options, warrant options, and rights (a) | Weighted-average exercise price of outstanding options, warrants and rights (b) | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c) |
|--|---|---|--|
| Equity compensation plans approved by security holders | 971,664 | 15.71 | 420,000 |
| Equity compensation plans not approved by security holders | 0 | n/a | n/a |
| Total | 971,664 | 15.71 | 420,000 |

Item 15. Exhibits, Financial Statement Schedules, and Reports on Form 8-K

a. DOCUMENTS FILED AS PART OF THIS REPORT

- The following financial statements are filed as part of this report on Form 10-K

Reports of Independent Auditors

Consolidated Balance Sheets as of September 30, 2003 and September 30, 2002

Consolidated Schedule of Investments as of September 30, 2003

Consolidated Schedule of Investments as of September 30, 2002

Consolidated Statements of Operations for the years ended September 30, 2003 and September 30, 2002 and the period May 30, 2001 (inception) through September 30, 2001

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Consolidated Statement of Stockholders Equity for the years ended September 30, 2003 and September 30, 2002 and September 30, 2002 and the period May 30, 2001 (inception) through September 30, 2001

Consolidated Statements of Cash Flows for the years ended September 30, 2003 and September 30, 2002 and the period May 30, 2001 (inception) through September 30, 2001

Notes to Financial Statements

2. Financial statement schedules

No financial statement schedules are filed herewith because (1) such schedules are not required or (2) the information has been presented in the aforementioned financial statements.

3. Exhibits

The following exhibits are filed as part of this report or hereby incorporated by reference to exhibits previously filed with the SEC:

- 3.1 Articles of Amendment and Restatement of the Articles of Incorporation, incorporated by reference to Exhibit a.2 to Pre-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-63700), filed July 27, 2001.
- 3.2 By-laws, incorporated by reference to Exhibit b to Pre-Effective Amendment No. 1 to the Registration

Statement on Form N-2 (File No. 333-63700), filed July 27, 2001.

- 4.1 Form of Direct Registration Transaction Advice for the Company's common stock, par value \$0.001 per share, the rights of holders of which are defined in exhibits 3.1 and 3.2, incorporated by reference to Exhibit d to Pre-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-63700), filed July 27, 2001.
- 4.2 Specimen Stock Certificate, incorporated by reference to Exhibit d.2 to Pre-Effective Amendment No. 3 to the Registration Statement on Form N-2 (File No. 333-63700), filed August 23, 2001.
- 10.1* Employment Agreement, dated June 25, 2001, between the Company and David Gladstone, incorporated by reference to Exhibit k.2 to Pre-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-63700), filed July 27, 2001.
- 10.2* Employment Agreement, dated July 23, 2001, between the Company and Terry Lee Brubaker, incorporated by reference to Exhibit k.3 to Pre-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-63700), filed July 27, 2001.
- 10.3* Amendment to Employment Agreement, dated August 8, 2001, between the Company and David Gladstone, incorporated by reference to Exhibit k.4 to Pre-Effective Amendment No. 2 to the Registration Statement on Form N-2 (File No. 333-63700), filed August 10, 2001.
- 10.4* Employment Agreement, dated September 12, 2002, between the Company and George Stelljes III, incorporated by reference to Exhibit k.5 to Registration Statement on Form N-2 (File No. 333-100385), filed October 7, 2002.
- 10.5 Promissory Note of David Gladstone in favor of the Company, dated August 23, 2001, incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2001, filed October 4, 2001.
- 10.6 Promissory Note of Terry Brubaker in favor of the Company, dated August 23, 2001, incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2001, filed October 4, 2001.
- 10.7 Promissory Note of Harry Brill in favor of the Company, dated August 23, 2001, incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2001, filed October 4, 2001.
- 10.8 Subscription Agreement dated May 30, 2001, incorporated by reference to Exhibit p to the Registration Statement on Form N-2 (File No. 333-63700), filed June 22, 2001.
- 10.9 Facility Service License, dated November 1, 2001, between the Company and Teqcorner, LLC, incorporated by reference to Exhibit 10.8 to the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2001 (File No. 814-00237), filed December 21, 2001.
- 10.10* Amended and Restated 2001 Equity Incentive Plan, incorporated by reference to Exhibit i.1 to Pre-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-63700), filed July 27, 2001.
- 10.11* First Amendment to Amended and Restated 2001 Equity Incentive Plan, incorporated by reference to Exhibit i.3 to Pre-Effective Amendment No. 2 to the Registration Statement on Form N-2 (File No. 333-63700), filed August 10, 2001.
- 10.12* Form of Stock Option Agreement, incorporated by reference to Exhibit i.2 to Pre-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-63700), filed July 27, 2001.
- 10.13* Form of Early Exercise Stock Purchase Agreement, incorporated by reference to Exhibit i.4 to Pre-Effective Amendment No. 3 to the Registration Statement on Form N-2 (File No. 333-63700), filed August 23, 2001.
- 10.14* Second Amendment to Amended and Restated 2001 Equity Incentive Plan, incorporated by reference to Exhibit i.5 to the Registration Statement on Form N-2 (File No. 333-100385), filed October 7, 2002.
- 10.15* Third Amendment to Amended and Restated 2001 Equity Incentive Plan, incorporated by reference to Exhibit i.6 to Pre-Effective Amendment No. 2 to the Registration Statement on Form N-2 (File No. 333-100385), filed February 28, 2003.
- 10.16 Credit Agreement dated as of May 19, 2003 between Gladstone Business Loan LLC and CIBC World Markets Corporation, incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2003 (File No. 814-00237), filed August 14, 2003.
- 10.17 Amendment No. 1 to Credit Agreement dated as of September 17, 2003.
- 10.18 Facility License Agreement, dated November 1, 2003, between the Company and Teqcorner LLC.
- 11 Computation of Per Share Earnings (included in the notes to the audited financial statements contained in this report).

| | |
|------|---|
| 21 | Subsidiaries of the Registrant. |
| 23.1 | Consent of PricewaterhouseCoopers LLP. |
| 23.2 | Consent of Ernst & Young LLP. |
| 31.1 | Certification of Chief Executive Officer pursuant to section 302 of The Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of Chief Financial Officer pursuant to section 302 of The Sarbanes-Oxley Act of 2002. |
| 31.3 | Certification of Chief Executive Officer pursuant to section 302 of The Sarbanes-Oxley Act of 2002. |
| 31.4 | Certification of Chief Financial Officer pursuant to section 302 of The Sarbanes-Oxley Act of 2002. |
| 32.1 | Certification of Chief Executive Officer pursuant to section 906 of The Sarbanes-Oxley Act of 2002. |
| 32.2 | Certification of Chief Financial Officer pursuant to section 906 of The Sarbanes-Oxley Act of 2002. |
| 32.3 | Certification of Chief Executive Officer pursuant to section 906 of The Sarbanes-Oxley Act of 2002. |
| 32.4 | Certification of Chief Financial Officer pursuant to section 906 of The Sarbanes-Oxley Act of 2002. |

* Denotes management contract or compensatory plan or arrangement.

Previously filed as an exhibit to the Original 10-K

b. REPORTS ON FORM 8-K

On August 14, 2003, the Company filed a Current Report on Form 8-K to indicate it had issued a press release announcing the financial result for the quarter ended June 30, 2003.

On September 11, 2002, the Company filed a Current Report on Form 8-K to indicate it had issued a press release announcing the declaration of the fiscal year 2003 fourth quarter dividend.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

GLADSTONE CAPITAL CORPORATION

Date: January 27, 2004

By: /s/ HARRY BRILL
Harry Brill
Chief Financial Officer and Treasurer

EXHIBIT INDEX

| Exhibit No. | Description of Exhibit |
|------------------------|---|
| 31.3 | Certification of Chief Executive Officer pursuant to section 302 of The Sarbanes-Oxley Act of 2002. |
| 31.4 | Certification of Chief Financial Officer pursuant to section 302 of The Sarbanes-Oxley Act of 2002. |
| 32.3 | Certification of Chief Executive Officer pursuant to section 906 of The Sarbanes-Oxley Act of 2002. |
| 32.4 | Certification of Chief Financial Officer pursuant to section 906 of The Sarbanes-Oxley Act of 2002. |