

Triangle Capital CORP
Form S-8
January 04, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM S-8
REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

TRIANGLE CAPITAL CORPORATION

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

3700 Glenwood Avenue, Suite 530

Raleigh, North Carolina
(Address of Principal Executive Offices)

06-1798488
(I.R.S. Employer
Identification No.)

27612
(Zip Code)

TRIANGLE CAPITAL CORPORATION AMENDED AND RESTATED 2007 EQUITY INCENTIVE PLAN

(Full title of the plan)

Garland S. Tucker, III

Chairman, President and Chief Executive Officer

3700 Glenwood Avenue, Suite 530

Raleigh, North Carolina 27612

(Name and address of agent for service)

(919) 719-4770

(Telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer
 Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered (1)	Proposed	Proposed	Amount of registration fee
		maximum offering price per share (2)	maximum aggregate offering price (2)	
Common Stock \$0.001 par value per share	1,500,000	\$ 26.23	\$ 39,345,000	\$ 5,366.66

(1) Pursuant to Rule 416(a) under the Securities Act, this Registration Statement also covers an indeterminate number of additional shares of common stock as may be issued as a result of adjustment by reason of share dividend, share split, recapitalization or other similar

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- transaction effected without receipt of consideration that increases the number of outstanding shares of the Registrant's common stock
- (2) Estimated solely for the purposes of calculating the amount of the registration fee pursuant to Rule 457(c) and (h) on the basis of the average of the high and low price for shares of the Registrant's Common Stock as reported on the New York Stock Exchange on January 3, 2013.

EXPLANATORY NOTE

This Registration Statement on Form S-8 hereby registers 1,500,000 additional shares of Common Stock for issuance under Triangle Capital Corporation's (the Company) Amended and Restated 2007 Equity Incentive Plan (the Amended and Restated Plan). Previously, 900,000 shares of Common Stock under the Amended and Restated Plan were registered on April 3, 2007 (File No. 333-141827). At the Company's annual meeting of stockholders on May 2, 2012, the stockholders approved an amendment to the Amended and Restated Plan to increase the number of shares of Common Stock issuable under the Amended and Restated Plan by 1,500,000 shares of Common Stock. The Amended and Restated Plan allows the Company, under the direction of the Compensation Committee of the Board of Directors, to make grants of restricted stock other stock-based awards to the Company's directors and certain of its employees.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended, and the Note to Part I of Form S-8.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents filed with the Securities and Exchange Commission (the Commission) by the Company, are incorporated as of their respective dates in this Registration Statement by reference:

- a. Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed with the Commission on March 7, 2012;
- b. Current Report on Form 8-K filed with the Commission on March 19, 2012 (Item 5.02);
- c. Quarterly Report on Form 10-Q for the quarter ended March 31, 2012, filed with the Commission on May 2, 2012;
- d. Current Report on Form 8-K filed with the Commission on May 2, 2012 (Items 5.02, 5.07 and 9.01);
- e. Quarterly Report on Form 10-Q for the quarter ended June 30, 2012, filed with the Commission on August 1, 2012;
- f. Current Report on Form 8-K filed with the Commission on September 19, 2012 (Items 1.01, 2.03 and 9.01);

- g. Current Report on Form 8-K filed with the Commission on October 19, 2012 (Items 1.01, 2.03 and 9.01);
- h. Quarterly Report on Form 10-Q for the quarter ended September 30, 2012, filed with the Commission on November 7, 2012;
- i. All other reports of the Company filed pursuant to Section 13(a) or 15(d) of the Securities and Exchange Act of 1934, as amended (the Exchange Act), since December 31, 2011 (but excluding all information furnished to the Commission pursuant to Items 2.01 and 7.01 of any current report on Form 8-K); and
- j. The description of the Company's common stock referenced in the Company's Registration Statement on Form 8-A (No. 001-33130), filed on December 27, 2010, including any amendment or report filed for the purpose of updating such description prior to the termination of the offering of the common stock registered hereby.

All documents filed by the Company pursuant to Section 13(a), 13(c) 14 or 15(d) of the Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed incorporated by reference in this Registration Statement and to be a part hereof from the date of filing such documents.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment as being material to the cause of action. The Company's charter contains such a provision that eliminates directors' and officers' liability to the maximum extent permitted by Maryland law, subject to the requirements of the 1940 Act.

The Company's charter authorizes the Company, to the maximum extent permitted by Maryland law and subject to the requirements of the 1940 Act, to indemnify any present or former director or officer or any individual who, while a director or officer and at the Company's request, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee, from and against any

claim or liability to which such person may become subject or which such person may incur by reason of his or her service in any such capacity, except with respect to any matter as to which he or she is finally adjudicated in any proceeding not to have acted in good faith in the reasonable belief that his or her action was in the Company's best interest.

The Company's bylaws obligate the Company, to the maximum extent permitted by Maryland law and subject to the requirements of the 1940 Act, to indemnify any present or former director or officer or any individual who, while a director or officer and at the Company's request, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee and who is made, or threatened to be made, a party to the proceeding by reason of his or her service in any such capacity from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her service in any such capacity. The Company's bylaws also require the Company, to the maximum extent permitted by Maryland law, without requiring a preliminary determination of the ultimate entitlement to indemnification, to pay or reimburse reasonable expenses incurred by any such indemnified person in advance of the final disposition of a proceeding.

Maryland law requires a corporation (unless its charter provides otherwise, which the Company's charter does not) to indemnify a director or officer who has been successful in the defense of any proceeding to which he or she is made, or threatened to be made, a party by reason of his or her service in that capacity. Maryland law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made, or threatened to be made, a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (1) was committed in bad faith or (2) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that a personal benefit was improperly received, unless in either case a court orders indemnification, and then only for expenses. In addition, Maryland law permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

The Company has purchased directors' and officers' insurance policies covering our directors and officers and the Company for any acts and omissions committed, attempted or allegedly committed by any director or officer during the policy period. The policy is subject to customary exclusions.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

- 4.2 Form of Common Stock Certificate (Filed as Exhibit (d) to the Registrant's post-effective amendment to the Registration Statement on Form N-2/N-5 (File No. 333-138418) filed with the Securities and Exchange Commission on February 15, 2007 and incorporated herein by reference).
- 4.3 Articles of Amendment and Restatement of the Registrant (Filed as Exhibit (a)(3) to the Registrant's Registration Statement on Form N-2/N-5 (File No. 333-138418) filed with the Securities and Exchange Commission on December 29, 2006 and incorporated herein by reference).
- 4.4 Amended and Restated Bylaws of the Registrant (Filed as Exhibit (b) to the Registrant's Registration Statement on Form N-2/N-5 (File No. 333-138418) filed with the Securities and Exchange Commission on December 29, 2006 and incorporated herein by reference).
- 5.1 Opinion of Venable LLP.
- 23.1 Consent of Ernst & Young LLP.
- 23.2 Consent of Venable LLP is contained in Exhibit 5.1 to this Registration Statement.
- 24.1 Power of Attorney (incorporated in the Signature Page).
- 99.1 Triangle Capital Corporation Amended and Restated 2007 Equity Incentive Plan (Incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K, filed on May 2, 2012).

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to the Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set

forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement;

- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply to information required to be included in a post-effective amendment by those paragraphs that is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be an initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification

against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or other controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Raleigh, State of North Carolina, on this 4th day of January, 2013.

TRIANGLE CAPITAL CORPORATION

By: /s/ Garland S. Tucker, III
Garland S. Tucker, III
President, Chief Executive Officer, and Chairman

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Garland S. Tucker, III, Steven C. Lilly and C. Robert Knox, Jr., and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following person in the capacities and on the dates indicated:

Signature	Title	Date
/s/ Garland S. Tucker, III Garland S. Tucker, III	President, Chief Executive Officer, and Chairman of the Board (Principal Executive Officer)	January 4, 2013
/s/ Steven C. Lilly Steven C. Lilly	Chief Financial Officer, Secretary, Treasurer and Director (Principal Financial Officer)	January 4, 2013
/s/ C. Robert Knox, Jr. C. Robert Knox, Jr.	Controller (Principal Accounting Officer)	January 4, 2013
/s/ Brent P. W. Burgess Brent P. W. Burgess	Chief Investment Officer and Director	January 4, 2013
/s/ W. McComb Dunwoody W. McComb Dunwoody	Director	January 4, 2013
/s/ Mark M. Gambill Mark M. Gambill	Director	January 4, 2013
/s/ Benjamin S. Goldstein Benjamin S. Goldstein	Director	January 4, 2013
/s/ Simon B. Rich, Jr. Simon B. Rich, Jr.	Director	January 4, 2013
/s/ Sherwood H. Smith, Jr. Sherwood H. Smith, Jr.	Director	January 4, 2013

EXHIBIT INDEX

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- 4.4 Third Amended and Restated Bylaws of the Registrant (Incorporated by reference to Exhibit 3.2 to the Registrant's Quarterly Report for the quarter ended March 31, 2011, filed on May 4, 2011).
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