
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report: August 5, 2022

(Date of earliest event reported)

Gladstone Capital Corporation

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction
of incorporation)

814-00237
(Commission
File Number)

54-2040781
(I.R.S. Employer
Identification No.)

1521 Westbranch Drive, Suite 100
McLean, Virginia 22102
(Address of principal executive offices) (Zip Code)

(703) 287-5800
Registrant's telephone number, including area code:

Not Applicable
(Former Name or Former Address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common stock, par value \$0.001 per share	GLAD	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement

On August 5, 2022, Gladstone Capital Corporation (the “Company”) entered into an amendment (the “Amendment”) to that certain equity distribution agreement, dated May 10, 2021 (as amended, the “Sales Agreement”), by and among the Company, Gladstone Management Corporation, Gladstone Administration, LLC and Jefferies LLC, as the sales agent. The Amendment, among other items, allows for sales pursuant to the Sales Agreement to continue under the Company’s currently effective shelf registration statement.

The description above is only a summary of the material provisions of the Amendment and is qualified in its entirety by reference to the full text of the Amendment, which is attached hereto as Exhibit 1.1 and is incorporated herein by reference.

This Current Report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of these securities in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

On August 5, 2022, Venable LLP delivered its legality opinion with respect to the shares of the Company’s common stock to be sold pursuant to the Sales Agreement, which is attached hereto as Exhibit 5.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

- 1.1 [Amendment No. 1 to Equity Distribution Agreement, dated as of August 5, 2022, by and among Gladstone Capital Corporation, Gladstone Management Corporation, Gladstone Administration, LLC and Jefferies LLC, as the sales agent.](#)
- 5.1 [Opinion of Venable LLP.](#)

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: August 5, 2022

Gladstone Capital Corporation

By: /s/ Nicole Schaltenbrand
Nicole Schaltenbrand
Chief Financial Officer & Treasurer

AMENDMENT NO. 1 TO THE EQUITY DISTRIBUTION AGREEMENT

August 5, 2022

JEFFERIES LLC
520 Madison Avenue
New York, New York 10022

Ladies and Gentlemen:

This Amendment No. 1 to the Equity Distribution Agreement (this “**Amendment**”) is entered into as of the date first written above by and among Gladstone Capital Corporation, a corporation organized under the laws of Maryland (the “**Company**”), Gladstone Management Corporation, a Delaware corporation registered as an investment adviser (the “**Adviser**”), Gladstone Administration, LLC, a Delaware limited liability company (the “**Administrator**”), and Jefferies LLC (“**Agent**”), that are parties to that certain Equity Distribution Agreement, dated May 10, 2021 (the “**Original Agreement**”). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The parties, intending to be legally bound, hereby amend the Original Agreement as follows:

1. The second paragraph of Section 1 to the Original Agreement is hereby deleted in its entirety and replaced with the following:

“The Company has entered into a fourth amended and restated investment advisory and management agreement, dated as of April 12, 2022 (the “Investment Advisory Agreement”), with the Adviser. The Company has entered into an administration agreement, dated as of October 1, 2006 (the “Administration Agreement”), with the Administrator.”

2. The third paragraph of Section 1 to the Original Agreement is hereby deleted in its entirety and replaced with the following:

“The Company has filed, pursuant to the 1933 Act, with the Commission a registration statement on FormN-2 (File No. 333-261398), which registers the offer and sale of certain securities to be issued from time to time by the Company, including the Shares.”

3. The fourth paragraph of Section 1 to the Original Agreement is hereby amended by adding the following after the first sentence thereof:

“The Company may file one or more registration statements after the date hereof which may be referred to as the Registration Statement, only to the extent that such registration statement relates to the Common Stock offered and sold pursuant to this Agreement.”

4. Any references in the Original Agreement to “Proskauer Rose LLP,” as counsel to the Company, the Adviser and the Administrator shall be replaced with “Kirkland & Ellis LLP”.

5. Section 11 to the Original Agreement is hereby deleted in its entirety and replaced with the following:

“Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Agent, will be mailed, delivered or telefaxed to (i) Jefferies LLC, at 520 Madison Avenue, New York, NY 10022, fax no. (646) 786-5719, Attention: General Counsel, respectively, and Cooley LLP, 55 Hudson Yards, New York, NY 10001, fax. no (212) 479-6275, Attention: Daniel I. Goldberg; or (ii) if sent to the Company, the Adviser or the Administrator, will be mailed, delivered or telefaxed to it at (703) 287-5801 and confirmed to it at Gladstone Capital Corporation, 1521 Westbranch Drive, Suite 100, McLean, VA 22102, Attention: David Gladstone, with a copy to William J. Tuttle, Kirkland & Ellis LLP, 1301 Pennsylvania Ave, N.W., Washington, D.C. 20004, fax. No. (202) 389 5200 (which copy shall not constitute notice).”

6. The Company, the Adviser and the Administrator, jointly and severally, represents and warrants to, and agrees with the Agent that: this Amendment has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, the Adviser and the Administrator, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles.

7. Except as expressly amended by this Amendment, the Original Agreement remains in full force and effect. Neither this Amendment nor any term hereof may be amended except pursuant to a written instrument executed by the Company, the Adviser and the Administrator and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Amendment. All references in the Original Agreement to the “Agreement” shall mean the Original Agreement as amended by this Amendment; *provided, however*, that all references to “date of this Agreement” in the Original Agreement shall continue to refer to the date of the Original Agreement.

8. This Amendment shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed within the State of New York. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is

brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof (certified or registered mail, return receipt requested) to such party at the address in effect for notices to it under the Original Agreement and this Amendment and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. The provisions of this paragraph shall survive any termination of this Amendment.

9. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed amendment by one party to the other may be made by facsimile transmission or by electronic delivery of a portable document format (PDF) file (including any electronic signature covered by the U.S. federal E-SIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docusign.com).

[Remainder of Page Intentionally Blank]

If the foregoing correctly sets forth your understanding of our agreement, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding amendment to the Original Agreement by and among the Company, the Adviser, the Administrator and the Agent.

Very truly yours,

JEFFERIES LLC

By: /s/ Michael Magarro

Name: Michael Magarro

Title: Managing Director

ACCEPTED as of the date

first-above written:

GLADSTONE CAPITAL CORPORATION

By: /s/ David Gladstone

Name: David Gladstone

Title: Chief Executive Officer

GLADSTONE MANAGEMENT CORPORATION

By: /s/ Michael LiCalsi

Name: Michael LiCalsi

Title: General Counsel and Secretary

GLADSTONE ADMINISTRATION, LLC

By: /s/ Michael B. LiCalsi

Name: Michael B. LiCalsi

Title: President

[Signature Page to Amendment No. 1 to the Sales Agreement]

[LETTERHEAD OF VENABLE LLP]

August 5, 2022

Gladstone Capital Corporation
1521 Westbranch Drive
Suite 100
McLean, Virginia 22102

Re: Registration Statement on Form N-2, File No. 333-261398

Ladies and Gentlemen:

We have served as Maryland counsel to Gladstone Capital Corporation, a Maryland corporation (the “Company”) and a business development company under the Investment Company Act of 1940, as amended, in connection with certain matters of Maryland law relating to the registration by the Company of shares (the “Shares”) of common stock, \$0.001 par value per share (the “Common Stock”), of the Company having an aggregate offering price of up to \$60,000,000 (the “Offering”). The Shares are covered by the above-referenced Registration Statement, and all amendments thereto (the “Registration Statement”), filed by the Company with the United States Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “1933 Act”).

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (collectively, the “Documents”):

1. The Registration Statement;
2. The Prospectus, dated December 22, 2021, as supplemented by a Prospectus Supplement, dated August 5, 2022 (the “Prospectus Supplement”), each filed with the Commission pursuant to Rule 424(b) or Rule 497 of the General Rules and Regulations promulgated under the 1933 Act;
3. The charter of the Company (the “Charter”), certified by the State Department of Assessments and Taxation of Maryland (the “SDAT”);
4. The Bylaws of the Company, as amended, certified as of the date hereof by an officer of the Company;
5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;

6. Resolutions (the “Resolutions”) adopted by the Board of Directors of the Company relating to, among other matters, (a) the authorization of the execution, delivery and performance by the Company of the Equity Distribution Agreement (as defined below), (b) the sale and issuance of the Shares and (c) the delegation to certain officers of the Company (the “Authorized Officers”) of the power to determine, subject to certain parameters, the number of Shares and the offering price of each Share to be sold from time to time pursuant to the Equity Distribution Agreement, certified as of the date hereof by an officer of the Company;

7. The Equity Distribution Agreement, dated May 10, 2021 (the “Original Equity Distribution Agreement”), as amended by Amendment No. 1 to the Equity Distribution Agreement, dated August 5, 2022 (the “Amendment” and, together with the Original Equity Distribution Agreement, the “Equity Distribution Agreement”), by and among the Company, Gladstone Management Corporation, a Delaware corporation, Gladstone Administration LLC, a Delaware limited liability company, and Jefferies LLC;

8. A certificate executed by an officer of the Company, dated as of the date hereof; and

9. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.

2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.

3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party’s obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.

4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all such Documents are genuine. All public records reviewed or

relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

5. Upon the issuance of any of the Shares, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.

2. The issuance of the Shares has been duly authorized and, when and to the extent issued against payment therefor in accordance with the Registration Statement, the Prospectus Supplement, the Equity Distribution Agreement, the Resolutions and any instructions from the Authorized Officers, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning federal law or the laws of any other state. We express no opinion as to compliance with, or the applicability of, federal or state securities laws, including the securities laws of the State of Maryland. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of judicial decisions which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Offering (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Current Report and the said incorporation by reference and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP