

RAND CAPITAL CORP  
Form DEF 14A  
April 18, 2019

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

SCHEDULE 14A  
(RULE 14a-101)

Proxy Statement Pursuant to Section 14(a) of the  
Securities Exchange Act of 1934

Filed by the Registrant  Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

RAND CAPITAL CORPORATION  
(Name of Registrant as Specified In Its Charter)

N/A  
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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**Rand Capital Corporation**

**2200 Rand Building**

**Buffalo, New York 14203**

*Dear Fellow Shareholders:*

You are cordially invited to attend the special meeting of the shareholders of Rand Capital Corporation (the “Company”) to be held on May 16, 2019, at 1:00 p.m., local time, at The Buffalo Club, the Millard Fillmore Room, 388 Delaware Avenue, Buffalo, New York, 14202 (Business Attire Required). Only shareholders of record at the close of business on April 12, 2019 are entitled to notice of, and to vote at, the special meeting, or any adjournment or postponement thereof. You will find the details of the business to be conducted at the special meeting in the accompanying Notice of Special Meeting of Shareholders (“Notice”) and proxy statement.

**Background**

Historically, the Company has focused on a strategy that involved seeking to achieve long-term capital appreciation on the Company’s equity investments, while maintaining a current cash flow from the Company’s debt investments and pass-through equity instruments to fund expenses. Under this strategy, the Company has not declared dividends to shareholders, but instead has sought to return value to shareholders through public share price appreciation on the Company’s common stock, par value \$0.10 per share (the “Common Stock”) based upon realizing gains in the Company’s equity investment portfolio. Over the last many years, it became apparent to the Company’s board of directors (the “Board”) that its strategy has become disfavored among investors, which the Company believes has resulted in an increasingly larger spread between the public share price for the Common Stock and the Company’s net asset value per share.

Consequently, in 2015, the Board established a strategic committee of the Board (the “Strategic Committee”) to consider potential strategic alternatives to increase the public share price of the Common Stock and to enhance shareholder value. As part of this process, the Board considered and evaluated various potential strategic options. From this evaluation, the Board determined to pursue the strategy of seeking to accelerate growth, and the Company’s management reported on the Board’s evaluation process and determination during a presentation made at the Company’s 2016 annual meeting of shareholders. In addition, since the Company’s 2016 annual meeting of shareholders, the Company’s management has consistently stated during earnings calls and in other public communications to investors that the Company was continuing to evaluate potential alternatives and was willing to consider pursuing potential transactions as they may arise.

On January 25, 2019, the Company announced that it had entered into a stock purchase agreement (the “Stock Purchase Agreement”) with East Asset Management, LLC (“East”). Under the Stock Purchase Agreement, East will purchase approximately 8.3 million shares of Common Stock, at a price of \$3.00 per share, for total consideration payable to the Company of \$25.0 million (the “Stock Purchase Transaction”). The consideration will consist of a combination of cash and the contribution of income-producing portfolio assets. As a result of the stock purchase, East will hold approximately 57% of the outstanding shares of the Company. The sale price per share of Common Stock in the Stock Purchase Transaction represents a 33% premium over the closing price of the Common Stock on January 24, 2019, the day prior to the announcement of the Stock Purchase Transaction.

In connection with the closing of the Stock Purchase Transaction, which is described in greater detail in the Notice and the accompanying proxy statement, the Company and East will enter into a shareholder agreement. This shareholder agreement provides East with the right to designate two or three persons for nomination for election to the Board. The number of persons that East will be eligible to designate for nomination at any given time will depend upon the size of the Board. East will have the right to designate (i) up to two persons if the size of the Board is composed of fewer than seven directors or (ii) up to three persons if the size of the Board is composed of seven or more directors. Upon closing, it is expected that the Board will consist of five members, of which East will have the right to designate two persons for nomination for election to the Board.

In addition, a new entity, Rand Capital Management LLC (the “Adviser”), has been established as an external management company and will be retained by the Company to be its external investment adviser. The Adviser will initially be owned by East and Brian Collins. The Company’s operations and the operations of the Adviser will remain in Buffalo, New York.

Following the closing of the transactions, Allen F. “Pete” Grum will become an employee of the Adviser in the role of President and Chief Executive Officer. He will also remain the President and Chief Executive Officer of the Company. Daniel P. Penberthy will be hired as an employee by the Adviser in the role of Executive Vice President and Chief Financial Officer and also remain the Executive Vice President and Chief Financial Officer of the Company. Messrs. Grum and Penberthy will also be members of the Adviser’s investment committee, along with representatives of East and the Adviser.

### **Future Plans and Expected Benefits to Shareholders**

After the closing of the transactions, the Company intends to declare and pay a special dividend to shareholders in an amount equal to the Company’s “accumulated earnings and profits” for tax purposes since the Company’s inception (the “Special Dividend”). As of December 31, 2018, the estimated aggregate amount of the Special Dividend is approximately \$22.0 million, or approximately \$1.50 per share, based upon 14,655,321 shares of Common Stock expected to be outstanding after completion of the Stock Purchase Transaction. Shareholders will have the option to elect to receive the Special Dividend in cash or Common Stock, subject to a 20% cap on the cash portion of the Special Dividend. East is expected to elect to receive its portion of the Special Dividend in shares of Common Stock. In addition, each member of the Board and Mr. Penberthy also intend to elect to receive their respective portion of the Special Dividend in shares of Common Stock. Assuming that each of the foregoing elects to receive their respective

portion of the Special Dividend in shares of Common Stock, this has the effect of making more of the cash portion of the Special Dividend available for distribution to the Company's other shareholders. If too many shareholders elect to receive their distribution in cash, the amount of cash available for distribution will be allocated pro rata among the shareholders electing to receive the distribution in cash and the remaining portion of their distribution will be paid in shares of Common Stock.

After payment of the intended Special Dividend and contingent upon meeting certain tax-related conditions, the Company and its subsidiary, Rand Capital SBIC, Inc., each expect to elect to be taxed for U.S. tax purposes as a regulated investment company (“RIC”), and, in connection therewith, the Company expects to adopt a new dividend policy that includes regular cash dividends to shareholders.

You should understand that, despite it being our current intention to declare and pay the Special Dividend to shareholders after the completion of the transactions, because any such dividend payment will require action of the Board in the future based on relevant factors and considerations affecting the Company at that time, we cannot assure you that the Special Dividend, or any other dividend or distribution, will be paid to shareholders after the completion of the transactions or at all, or that the Company will ever adopt a new dividend policy that includes regular cash dividends to shareholders.

We believe the transactions are important in the transformation of the Company to drive future growth and to increase shareholder value. We believe that with the expanded investment opportunities expected to be made available to the Company through the business networks of the Adviser and the members of its investment committee, the Company will be able to broaden its pipeline of potential investment opportunities in order to build its portfolio and grow its net investment income. The Adviser, in its capacity as the investment adviser to the Company after the closing of the transactions, expects over time to transition the Company’s portfolio to include more interest-yielding debt securities. The Company anticipates that having the Adviser serve as investment adviser and administrator to the Company, under the Investment Management Agreement (as defined below) and the Administration Agreement, respectively, will reduce the Company’s expense-to-asset ratio.

The proposed transactions, which are subject to certain shareholder and regulatory approvals and consents, are expected to close during the third quarter of 2019.

## **Shareholder Proposals**

We are holding a special meeting to ask our shareholders to approve several proposals that are required in order to complete the transactions. At the special meeting, we are asking you to approve the following items, which are more fully described in the Notice and in the accompanying proxy statement, both of which we encourage you to read in full.

We ask that you approve the sale of 8,333,333.33 shares of Common Stock to East, at a price of \$3.00 per share, which sale price per share of Common Stock is below the Company’s current net asset value per share of Common Stock pursuant to the Stock Purchase Agreement for cash and income-producing portfolio assets having an aggregate value of \$25.0 million. We refer to this proposal as the “Sale Below NAV Proposal”.

We ask that you approve, pursuant to Nasdaq Listing Rules 5635(a) and 5635(b), (i) the issuance of shares of Common Stock to East (a) having voting power equal to or in excess of 20% of the voting power of the Common Stock outstanding prior to the issuance of the Common Stock to East in the Stock Purchase Transaction and (b) 2. resulting in the issuance of shares of Common Stock by the Company in excess of 20% of the number of shares of Common Stock outstanding prior to the issuance of the Common Stock to East in the Stock Purchase Transaction, and (ii) a change of control (as defined by the Nasdaq Listing Rules) of the Company. We refer to this proposal as the “Nasdaq Proposal”.

We ask that you approve the Company’s entry into an investment advisory and management agreement with the Adviser (the “Investment Management Agreement”). Under this Investment Management Agreement, the Adviser 3. will be hired as the investment adviser for the Company effective with the closing of the Stock Purchase Transaction. We refer to this proposal as the “Investment Management Agreement Proposal”.

We ask that you approve an amendment to the Company’s certificate of incorporation to increase the number of 4. shares of Common Stock that the Company is authorized to issue from 10 million shares of Common Stock to 100 million shares of Common Stock. We refer to this proposal as the “Certificate of Incorporation Amendment Proposal”.

We also ask that you approve a proposal to adjourn the special meeting, if needed, to solicit additional proxies if 5. we do not have enough votes at the time of the special meeting to approve (i) the Sale Below NAV Proposal, (ii) the Nasdaq Proposal, (iii) the Investment Management Agreement Proposal or (iv) the Certificate of Incorporation Amendment Proposal. We refer to this proposal as the “Adjournment Proposal”.



Shareholder approval of proposals 1 through 4 listed above are contingent upon each other. In other words, we need all four of these proposals to be approved for any of the transactions to take place.

**Your vote is very important. The Board unanimously recommends that you vote “FOR” the approval of (i) the Sale Below NAV Proposal, (ii) the Nasdaq Proposal, (iii) the Investment Management Agreement Proposal, (iv) the Certificate of Incorporation Amendment Proposal and (v) the Adjournment Proposal.**

Whether or not you expect to be present in person at the special meeting, please sign the enclosed proxy card and return it promptly in the envelope provided, or vote via Internet or telephone. Instructions are provided on the proxy card. Returning the proxy card does not deprive you of your right to attend the special meeting and to vote your shares in person.

**Abstentions and broker non-votes – which occur when you do not provide voting instructions to your bank, broker or other nominee when your shares are held in “street name” – will have the same effect as a vote “AGAINST” (i) the Sale Below NAV Proposal, (ii) the Investment Management Agreement Proposal and (iii) the Certificate of Incorporation Amendment Proposal. Abstentions will have the same effect as a vote “AGAINST” the Adjournment Proposal and broker non-votes will have no effect on the vote for the Adjournment Proposal. Abstentions and broker non-votes will have no effect on the Nasdaq Proposal.**

If you have any questions concerning the special meeting or the accompanying proxy statement or need help voting your shares of Common Stock, please contact our proxy solicitor, Alliance Advisors, LLC, by calling Toll-Free: (844) 853-0931.

Again, **your vote is very important** and we ask that you submit your vote in a timely fashion. Thank you for your anticipated support.

Sincerely,

**Erland E. Kailbourne    Allen F. Grum**

**Chairman of the Board    President and Chief Executive Officer**

Buffalo, New York

April 18, 2019

**Rand Capital Corporation**

**2200 Rand Building**

**Buffalo, New York 14203**

**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**

**To be held at:**

**The Buffalo Club**

**Millard Fillmore Room,**

**388 Delaware Avenue, Buffalo, New York, 14202**

**May 16, 2019, 1:00 p.m., local time**

A special meeting of the shareholders of Rand Capital Corporation (the "Company") will be held on May 16, 2019, at 1:00 p.m., local time, at The Buffalo Club, the Millard Fillmore Room, 388 Delaware Avenue, Buffalo, New York, 14202, (Business Attire Required), to consider and vote on the following proposals:

- the sale of 8,333,333.33 shares of the Company's common stock, par value \$0.10 per share (the "Common Stock"), at a price of \$3.00 per share, which sale price per share of Common Stock is below the Company's current net asset value ("NAV") per share of Common Stock, to East Asset Management, LLC ("East") pursuant to a Stock Purchase Agreement, dated as of January 24, 2019 (the "Stock Purchase Agreement"), by and among the Company, East and, solely for purposes of Sections 7.10 and 10.9(a) and (b) thereof, Rand Capital Management LLC (the "Adviser"), whereby East will contribute cash and assets having an aggregate value of \$25.0 million to the Company in exchange for shares of Common Stock (the "Stock Purchase Transaction") on the terms, and subject to the conditions, set forth in the Stock Purchase Agreement and described in the accompanying proxy statement (the "Sale Below NAV Proposal").
2. in accordance with Nasdaq Listing Rules 5635(a) and 5635(b), the issuance of shares of Common Stock to East in the Stock Purchase Transaction resulting in (i) the issuance of shares of Common Stock (A) having voting power equal to or in excess of 20% of the voting power of the Common Stock outstanding prior to the issuance of the Common Stock to East in the Stock Purchase Transaction and (B) in excess of 20% of the number of shares of Common Stock outstanding prior to the issuance of the Common Stock to East in the Stock Purchase Transaction, and (ii) a change of control (as defined by the Nasdaq Listing Rules) of the Company (collectively the "Nasdaq

Proposal”).

the Company entering into the investment advisory and management agreement with the Adviser (the “Investment Management Agreement”), pursuant to which the Adviser will be hired as the investment adviser for the Company effective as of the closing of the Stock Purchase Transaction (this transaction being the “Externalization Transaction,” and, together with the Stock Purchase Transaction, each, a “Transaction,” and collectively, the “Transactions”), as more fully described in the accompanying proxy statement (the “Investment Management Agreement Proposal”).

an amendment to the Company’s certificate of incorporation increasing the number of shares of Common Stock that the Company is authorized to issue from 10 million shares of Common Stock to 100 million shares of Common Stock (the “Amendment,” and the proposal being the “Certificate of Incorporation Amendment Proposal”).

a proposal to approve the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the (i) Sale Below NAV Proposal, (ii) the Nasdaq Proposal, (iii) the Investment Management Agreement Proposal or (iv) the Certificate of Incorporation Amendment Proposal (the “Adjournment Proposal”).

**The Board unanimously recommends that you vote “FOR” the approval of (i) the Sale Below NAV Proposal, (ii) the Nasdaq Proposal, (iii) the Investment Management Agreement Proposal, (iv) the Certificate of Incorporation Amendment Proposal and (v) the Adjournment Proposal.**

Only shareholders of record at the close of business on April 12, 2019 are entitled to notice of, and to vote at, the special meeting or any adjournment or postponement thereof.

By the Order of the Board of Directors,

**Daniel P. Penberthy**

**Executive Vice President, Chief Financial Officer and Secretary**

Buffalo, New York

April 18, 2019

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