

KEATING CAPITAL INC

FORM POS EX

(Post-effective amendment filed solely to add exhibits to a registration statement)

Filed 05/27/10

Address	5251 DTC PARKWAY SUITE 1000 GREENWOOD VILLAGE, CO 80111
Telephone	720-889-0139
CIK	0001444706
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

Form N-2
**REGISTRATION STATEMENT UNDER
THE SECURITIES ACT OF 1933**

Post-Effective Amendment No. 3

KEATING CAPITAL, INC.

(Exact name of registrant as specified in charter)

**5251 DTC Parkway, Suite 1000
Greenwood Village, CO 80111
(720) 889-0139**

*(Address and telephone number,
including area code, of principal executive offices)*

Timothy J. Keating
President and Chief Executive Officer
5251 DTC Parkway, Suite 1000
Greenwood Village, CO 80111
(Name and address of agent for service)

COPIES TO:

Cynthia M. Krus, Esq.
John J. Mahon, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004-2415
Tel: (202) 383-0100
Fax: (202) 637-3593

Approximate date of proposed public offering: As soon as practicable after the effective date of this Registration Statement.

If any securities being registered on this form will be offered on a delayed or continuous basis in reliance on Rule 415 under the Securities Act of 1933, as amended, other than securities offered in connection with a dividend reinvestment plan, check the following box.

It is proposed that this filing will become effective (check appropriate box): when declared effective pursuant to section 8(c).

If appropriate, check the following box:

- This post-effective amendment designates a new effective date for a previously filed post-effective amendment registration statement.
 - This form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act and the Securities Act registration statement number of the earlier effective registration statement for the same offering is _____.
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EXPLANATORY NOTE

This Post-Effective Amendment No. 3 to the Registration Statement on Form N-2 (File No. 333-157217) is being filed pursuant to Rule 462(d) under the Securities Act of 1933, as amended (the "Securities Act"), solely for the purpose of adding additional exhibits to such Registration Statement. Accordingly, this Post-Effective Amendment No. 3 consists only of a facing page, this explanatory note, and Part C of the Registration Statement on Form N-2. This Post-Effective Amendment No. 3 does not change the form of prospectus declared effective on May 26, 2010. As permitted by Rule 462(d), this Post-Effective Amendment No. 3 shall become effective upon filing with the SEC.

PART C — Other Information

Item 25. Financial Statements and Exhibits

(1) Financial Statements

The following financial statements of Keating Capital, Inc. (the “Registrant” or the “Company”) are included in Part A of this registration statement:

	PAGE
Report of Independent Registered Public Accounting Firm	F-2
Statements of Assets and Liabilities as of December 31, 2009 and December 31, 2008	F-3
Statement of Operations for the year ended December 31, 2009 and for the period from May 9, 2008 (Inception to December 31, 2008)	F-4
Statement of Changes in Net Assets for the year ended December 31, 2009 and for the period from May 9, 2008 (Inception) to December 31, 2008	F-5
Statement of Cash Flows for the year ended December 31, 2009 and for the period from May 9, 2008 (Inception) to December 31, 2008	F-6
Schedule of Investments as of December 31, 2009 and December 31, 2008	F-7
Financial Highlights for the year ended December 31, 2009 and for the period from May 9, 2008 (Inception) to December 31, 2008	F-8
Notes to Financial Statements	F-9
Statements of Assets and Liabilities as of March 31, 2010 (unaudited) and December 31, 2009	F-19
Statements of Operations for the three months ended March 31, 2010 and 2009 (unaudited)	F-20
Statements of Changes in Net Assets for the three months ended March 31, 2010 and 2009 (unaudited)	F-21
Statements of Cash Flows for the three months ended March 31, 2010 and 2009 (unaudited)	F-22
Schedules of Investments as of March 31, 2010 (unaudited) and December 31, 2009	F-23
Financial Highlights for the three months ended March 31, 2010 and 2009 (unaudited)	F-24
Notes to Financial Statements (unaudited)	F-25

(2) Exhibits

- (a)(1) Amended and Restated Articles of Incorporation of the Registrant (Incorporated by reference to the Registrant's Post-Effective Amendment No.1 to the Registration Statement on Form N-2 (file No. 333-157217), filed on April 21, 2010)
- (a)(2) Articles of Amendment (filed herewith)
- (b) Amended and Restated Bylaws of the Registrant (Incorporated by reference to the Registrant's Current Report on Form 8-K (File No. 0-53504), filed on April 23, 2009)
- (d)(1) Form of Share Certificate (Incorporated by reference to Registrant's Annual Report on Form 10-K (File No. 000-535041) filed on March 9, 2009)
- (d)(2) Form of Subscription Agreement (Included in the prospectus as Appendix A and incorporated herein by reference)
- (e) Amended and Restated Dividend Reinvestment Plan (Incorporated by reference to the Registrant's Post-Effective Amendment No.2 to the Registration Statement on Form N-2 (file No. 333-157217), filed on May 21, 2010)
- (g) Form of Amended and Restated Investment Advisory and Administrative Services Agreement between Registrant and Keating Investments, LLC (Incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form N-2 (File No. 333-157217), filed on June 5, 2009)
- (h) Form of Dealer Manager Agreement (Incorporated by reference to Amendment No. 1 to the Registrant's Registration Statement on Form N-2 (File No. 333-157217), filed on April 30, 2009)
- (j) Custody Agreement between Registrant and Steele Street Bank & Trust, Denver (Incorporated by reference to the Registrant's Registration Statement on Form 10 (File No. 0-53504), filed on November 20, 2008)
- (k)(1) Form of Escrow Agreement between Registrant and UMB Bank, N.A. (Incorporated by reference to Amendment No. 1 to the Registrant's Registration Statement on Form N-2 (File No. 333-157217), filed on April 30, 2009)
- (k)(2) Trademark License Agreement between Registrant and Keating Investments, LLC (Incorporated by reference to the Registrant's Registration Statement on Form 10 (File No. 0-53504), filed on November 20, 2008)
- (k)(3) Form of Indemnification Agreement for Directors (Incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form N-2 (File No. 333-157217), filed on June 5, 2009)
- (l) Opinion of Sutherland Asbill & Brennan LLP (Incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form N-2 (File No. 333-157217), filed on June 5, 2009)
- (n)(1) Consent of Sutherland Asbill & Brennan LLP (incorporated by reference to exhibit I hereto)
- (n)(2) Consent of Grant Thornton LLP (Incorporated by reference to the Registrant's Post-Effective Amendment No.2 to the Registration Statement on Form N-2 (file No. 333-157217), filed on May 21, 2010)
- (r) Code of Ethics (Incorporated by reference to the Registrant's Registration Statement on Form N-2 (File No. 333-157217), filed on February 10, 2009)

Item 26. Marketing Arrangements

The information contained under the heading "Plan of Distribution" in this registration statement is incorporated herein by reference.

Item 27. Other Expenses of Issuance and Distribution

SEC registration fee	\$ 3,930
FINRA filing fee	\$ 10,500
Blue Sky expenses	\$ 100,000
Advertising and sales literature	\$ 100,000
Accounting fees and expenses	\$ 25,000
Legal fees and expenses	\$ 325,000
Printing and engraving	\$ 50,000
Seminars	\$ 225,000
Miscellaneous fees and expenses	\$ 160,570
Total	<u>\$1,000,000</u>

The amounts set forth above, except for the SEC and FINRA fees, are in each case estimated and assume that we sell all of the shares being registered by this registration statement. All of the expenses set forth above shall be borne by the Registrant.

Item 28. Persons Controlled by or Under Common Control

None.

Item 29. Number of Holders of Securities

The following table sets forth the number of record holders of the Registrant’s common stock at May 20, 2010.

<u>Title of Class</u>	<u>Number of Record Holders</u>
Common stock, \$0.001 par value	305

Item 30. Indemnification

Limitation on Liability

Our charter limits the personal liability of our directors and officers to the corporation or its stockholders for monetary damages. 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:

- (i) actual receipt of an improper benefit or profit in money, property or services; or
- (ii) active and deliberate dishonesty established by a final judgment and which is material to the cause of action.

Our charter contains a provision which limits directors’ and officers’ liability to the maximum extent permitted by Maryland law, subject to the requirements of the 1940 Act and the Omnibus Guidelines published by the North American Securities Administrators Association. In addition, we have obtained director’s and officer’s liability insurance.

Indemnification

Under the Maryland General Corporation Law, a Maryland corporation may indemnify its directors, officers and certain other parties against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made a party by reason of their service to the corporation or at its request, unless it is established that the act or omission of the indemnified party was material to the matter giving rise to the proceeding and (i) the act or omission was committed in bad faith or was the result of active and deliberate dishonesty, or (ii) in the case of any criminal proceeding, the indemnified party had reasonable cause to believe that the act or omission was unlawful. Maryland law does not permit indemnification in respect of any proceeding in which the party seeking indemnification shall have been adjudged to be liable to the corporation. Further, a party may not be indemnified for a proceeding brought by that party against the corporation, except (i) for a proceeding brought to enforce indemnification or (ii) if the charter or bylaws, a resolution of the Board of Directors or an agreement approved by the Board of Directors to which the corporation is a party expressly provides otherwise.

Pursuant to our charter and bylaws, we are obligated to indemnify any present or former director or officer, and certain other individuals, from and against any claim or liability to which that person may become subject or which, that person may incur by reason of his status as a present or former director or officer or other role on our behalf, only if all of the following conditions are met:

- (i) we have determined, in good faith, that the course of conduct which caused the loss or liability was in the Company’s best interest;
- (ii) the indemnitee was acting on behalf of or performing services for the Company;
- (iii) the indemnitee’s liability or loss was not the result of the indemnitee’s negligence or misconduct, in the case of directors and officers who are affiliates of Keating Capital, Inc., and gross negligence or willful misconduct for independent directors of the Company; and
- (iv) such indemnification or agreement to hold harmless is recoverable only out of the Company’s net assets and not from that of a stockholder.

Furthermore, under our charter and bylaws, any director, officer, or any other individual, shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of federal or state securities laws unless one or more of the following conditions are met:

- (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee;
- (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee; or
- (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and related costs should be made, and the court of law considering the request for indemnification has been advised of the position of the Securities and Exchange Commission and the published position of any state securities regulatory authority in which securities of the Company were offered or sold as to indemnification for violations of securities laws.

Under our charter and bylaws, the Company may not incur the cost of that portion of liability insurance which insures the indemnitee for any liability as to which the indemnitee is prohibited from being indemnified under our charter and bylaws.

Under our charter and bylaws, the advancement of Company funds to an indemnitee or its affiliates for legal expenses and other costs incurred as a result of any legal action for which the indemnification is being sought is permissible only if all the following conditions are satisfied:

- (i) the legal action relates to acts or omissions with respect to the performance of duties or services on behalf of the Company;
- (ii) the legal action is initiated by a third party who is not a stockholder, or the legal action is initiated by a stockholder and a court of competent jurisdiction specifically approves of such advancement; and
- (iii) the indemnitee or its affiliates undertake to repay the advanced funds to the Company, together with the applicable legal rate of interest thereon, in cases in which such indemnitee is found not to be entitled to indemnification.

Indemnification may reduce the legal remedies available to us and our stockholders against the indemnified individuals. The aforementioned charter and bylaw provisions do not reduce the exposure of directors and officers to liability under federal or state securities laws, nor do they limit a stockholder's ability to obtain injunctive relief or other equitable remedies for a violation of a director's or an officer's duties to us or our stockholders, although the equitable remedies may not be an effective remedy in some circumstances.

Item 31. Business and Other Connections of Investment Advisers

A description of any other business, profession, vocation, or employment of a substantial nature in which Keating Investments, and each managing director, director or executive officer of the Adviser, is or has been during the past two fiscal years, engaged in for his own account or in the capacity of director, officer, employee, partner or trustee, is set forth in Part A of this registration statement in the sections entitled "Management" and Executive Officers and "Investment Advisory and Administrative Services Agreement." Additional information regarding Keating Investments and its officers and directors is set forth in its Form ADV, as filed with the Securities and Exchange Commission (SEC File No. 801-67305), and is incorporated herein by reference.

Item 32. Location of Accounts and Records

All accounts, books and other documents required to be maintained by Section 31(a) of the Investment Company Act of 1940, and the rules thereunder are maintained at the offices of:

- (1) the Registrant, Keating Capital, Inc., 5251 DTC Parkway, Suite 1000, Greenwood Village, Colorado 80111;
- (2) the Transfer Agent, DST Systems, Inc., 1055 Broadway, Seventh Floor, Kansas City, MO 64105;
- (3) the Custodian, Steele Street Bank & Trust, 55 Adams Street, Denver, CO, 80206; and

- (4) the investment adviser, Keating Investments, LLC, 5251 DTC Parkway, Suite 1000, Greenwood Village, CO 80111.

Item 33. Management Services

Not Applicable.

Item 34. Undertakings

We hereby undertake:

- (1) to suspend the offering of shares until the prospectus is amended if (i) subsequent to the effective date of this registration statement, our net asset value declines more than ten percent from our net asset value as of the effective date of this registration statement, or (ii) our net asset value increases to an amount greater than our net proceeds as stated in the prospectus;
- (2) to file, during any period in which offers or sales are being made, a post-effective amendment to this 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 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; and
 - (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.
- (3) 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 those securities at that time shall be deemed to be the initial *bona fide* offering thereof;
- (4) 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; and
- (5) that, for the purpose of determining liability under the Securities Act of 1933 to any purchaser, if the Registrant is subject to Rule 430C [17 CFR 230.430C]: Each prospectus filed pursuant to Rule 497(b), (c), (d) or (e) under the Securities Act of 1933 [17 CFR 230.497(b), (c), (d) or (e)] as part of a registration statement relating to an offering, other than prospectuses filed in reliance on Rule 430A under the Securities Act of 1933 [17 CFR 230.430A], shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use; and
- (6) that for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of securities, the undersigned Registrant undertakes that in a primary offering of securities of the undersigned Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to the purchaser
 - (i) any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 497 under the Securities Act of 1933 [17 CFR 230.497];
 - (ii) the portion of any advertisement pursuant to Rule 482 under the Securities Act of 1933 [17 CFR 230.482] relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and
 - (iii) any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

Signatures

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Post-Effective Amendment No. 3 to this Registration Statement on Form N-2 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Denver, in the State of Colorado, on May 27, 2010.

Keating Capital, Inc.

By: /s/ Timothy J. Keating

Name: **Timothy J. Keating**

Title: **President and Chief Executive Officer**

Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 3 to this Registration Statement on Form N-2 has been signed below by the following persons in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Timothy J. Keating</u> Timothy J. Keating	President and Chief Executive Officer and Director	May 27, 2010
<u>/s/ Ranjit P. Mankekar</u> Ranjit P. Mankekar	Chief Financial Officer and Treasurer and Director	May 27, 2010
* <u>J. Taylor Simonton</u>	Director	May 27, 2010
* <u>William F. Owens</u>	Director	May 27, 2010
* <u>Andrew S. Miller</u>	Director	May 27, 2010

*Signed by Timothy J. Keating pursuant to a power of attorney signed by each individual and filed with this Registration Statement on April 20, 2010.

KEATING CAPITAL, INC.

ARTICLES OF AMENDMENT

Keating Capital, Inc., a Maryland corporation (the “*Company*”), having its principal office in the State of Maryland, hereby certifies to the State Department of Assessments and Taxation of Maryland (the “*Department*”) that:

FIRST : The Company desires to, and does hereby, amend its charter (the “*Charter*”) as currently in effect as hereafter set forth.

SECOND : The Charter is hereby amended by deleting the existing Article II in its entirety and substituting in lieu thereof a new Article II which reads as follows:

ARTICLE II

PURPOSE

The purpose for which the Company is formed is to engage in any lawful act or activity for which corporations may be organized under the general laws of the State of Maryland as now or hereafter in force, including conducting and carrying on the business of a business development company, subject to making an election therefor under the Investment Company Act of 1940, as amended (the “Investment Company Act”). In the event an election to be regulated as a business development company under the Investment Company Act has been made and is continuing, the Company may only change the nature of its business so as to cease to be, or to withdraw its election as, a business development company, if such change or election is authorized by the vote of a majority of the outstanding voting securities as defined under the Investment Company Act.

THIRD : The Charter is hereby amended by deleting the existing Section 4.1 of Article IV in its entirety and substituting in lieu thereof a new Section 4.1 of Article IV which reads as follows:

Section 4.1 Number, Vacancies and Classification of Directors. The business and affairs of the Company shall be managed under the direction of the Board of Directors. The number of Directors of the Company initially shall be one, which number may be increased or decreased only by the Board of Directors pursuant to the Bylaws, but shall never be less than the minimum number required by the Maryland General Corporation Law (the “*MGCL*”). The name of the initial director who shall serve until the first annual meeting of stockholders and until his successor is duly elected and qualifies is Timothy J. Keating.

A majority of the Board of Directors shall be Independent Directors, except for a period of up to 60 days after the death, removal or resignation of an Independent Director pending the election of such Independent Director’s successor. A Director is considered independent if he is not an “interested person” as that term is defined under Section 2(a)(19) of the Investment Company Act.

The Company elects, at such time as the Company becomes eligible to make an election provided for under Section 3-802(b) of the MGCL, that, subject to applicable requirements of the Investment Company Act and except as may be provided by the Board of Directors in setting the terms of any class or series of Preferred Stock (as hereinafter defined), any and all vacancies on the Board of Directors may be filled only by the affirmative vote of a majority of the remaining Directors in office, even if the remaining Directors do not constitute a quorum, and any Director elected to fill a vacancy shall serve for the remainder of the full term of the directorship in which such vacancy occurred and until a successor is duly elected and qualifies.

At each annual meeting of the stockholders after these Articles of Amendment become effective, each Director's term will expire, and each Director shall be elected to hold office for a term expiring at the next annual meeting of stockholders and until their successors are duly elected and qualify. Directors may be elected to an unlimited number of successive terms.

FOURTH: The Charter is hereby amended by deleting the existing Section 4.9 of Article IV in its entirety and substituting in lieu thereof a new Section 4.9 of Article IV which reads as follows:

Section 4.9 Removal of Directors. Subject to the rights of holders of one or more classes or series of Preferred Stock to elect or remove one or more Directors, any Director, or the entire Board of Directors, may be removed from office at any time only for cause and only by the affirmative vote of the holders of a majority of the votes entitled to be cast generally in the election of Directors. For the purpose of this paragraph, "cause" shall mean, with respect to any particular Director: (a) conviction of a felony or a final judgment of a court of competent jurisdiction holding that such Director caused demonstrable, material harm to the Company through bad faith or active and deliberate dishonesty, (b) conviction of a felony or misdemeanor involving the purchase or sale of securities; and (c) by reason of any misconduct, the permanent or temporary enjoinder by court order or judgment from participating in any activity involving the purchase or sale of securities.

FIFTH: The amendments to the Charter as set forth above have been approved by the Board of Directors of the Company and by the stockholders of the Company in accordance with the requirements of the Maryland General Corporation Law and the Company's Charter.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the Company has caused these Articles of Amendment to be signed in its name and on its behalf by its Chief Executive Officer and attested by its Corporate Secretary on May 21, 2010.

KEATING CAPITAL, INC.

Attest: /s/Kyle L. Rogers
Kyle L. Rogers
Corporate Secretary

By: /s/Timothy J. Keating
Timothy J. Keating
Chief Executive Officer

THE UNDERSIGNED, Timothy J. Keating, Chief Executive Officer of Keating Capital, Inc., who executed on behalf of said corporation the foregoing Articles of Amendment, of which this certificate is made a part, hereby acknowledges, in the name and on behalf of said corporation, the foregoing Articles of Amendment to be the corporate act of said corporation and further certifies that, to the best of his knowledge, information, and belief, the matters and facts set forth herein with respect to the approval thereof are true in all material respects, under penalties of perjury.

/s/Timothy J. Keating
Timothy J. Keating