

MVC CAPITAL, INC.

FORM 8-K (Current report filing)

Filed 11/15/17 for the Period Ending 11/15/17

Address	RIVERVIEW AT PURCHASE 287 BOWMAN AVENUE, 3RD FLOOR PURCHASE, NY, 10577
Telephone	914-701-0310
CIK	0001099941
Symbol	MVC
Industry	Closed End Funds
Sector	Financials
Fiscal Year	10/31

**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 (Date of earliest event reported)
November 15, 2017

MVC CAPITAL, INC.
(the "Fund")
(Exact name of registrant as specified in its charter)

DELAWARE, 943346760
(Jurisdiction of Incorporation) (IRS Employer Identification Number)

287 Bowman Avenue
2nd Floor
Purchase, NY 10577
(Address of registrant's principal executive office)

914-701-0310
(Registrant's telephone number)

(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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§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 November 15, 2017, in connection with the closing of the previously-announced offering by MVC Capital, Inc. (the “Company”) of U.S. \$100 million in aggregate principal amount of 6.25% senior notes due 2022 (the “Notes”), the Company entered into a supplemental indenture (the “Second Supplemental Indenture”) with U.S. Bank National Association, as trustee (the “Trustee”).

The Notes are being issued pursuant to an indenture, dated as of February 26, 2013 (the “Base Indenture”), by and between the Company and the Trustee, as supplemented by the Second Supplemental Indenture. The Notes will be represented by a global security, executed by the Company, in the form attached to the Second Supplemental Indenture. The Notes will bear interest at a rate of 6.25% per annum and are scheduled to mature on November 30, 2022.

The foregoing description of the material terms of the Base Indenture and the Supplemental Indenture is qualified in its entirety by reference to each of the Base Indenture and the Supplemental Indenture, which are attached to this report as Exhibit 4.1 and Exhibit 4.2, respectively, and are incorporated herein by reference

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure contained in Item 1.01 of this Current Report on Form 8-K concerning the Second Supplemental Indenture, the Base Indenture and the Notes is incorporated by reference in its entirety into this Item 2.03.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits:

The following exhibits are filed herewith:

<u>Exhibit No.</u>	<u>Description</u>
4.1	Form of Indenture, dated February 26, 2013, between the Company and U.S. Bank National Association, as trustee. (Incorporated by reference to Exhibit d.2 filed with Registrant’s Post-Effective Amendment No. 1 to the Registration Statement on Form N-2 (File No. 333-184803) filed on February 26, 2013).
4.2	Second Supplemental Indenture, dated November 15, 2017, between the Company and U.S. Bank National Association, as trustee.
5.1	Opinion of Kramer Levin Naftalis & Frankel LLP, counsel for the Company, as to the legality of the Notes being sold by the Company.

EXHIBIT INDEX

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4.2	<u>Second Supplemental Indenture, dated November 15, 2017, between the Company and U.S. Bank National Association, as trustee.</u>
5.1	<u>Opinion of Kramer Levin Naftalis & Frankel LLP, counsel for the Company, as to the legality of the Notes being sold by the Company.</u>

SIGNATURE

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

MVC Capital, Inc.

DATE: November 15, 2017

/s/ Michael Tokarz

Michael Tokarz
Chairman

SECOND SUPPLEMENTAL INDENTURE

between

MVC CAPITAL, INC.

and

U.S. BANK NATIONAL ASSOCIATION,

as Trustee

Dated as of November 15, 2017

SECOND SUPPLEMENTAL INDENTURE

THIS SECOND SUPPLEMENTAL INDENTURE (this “Second Supplemental Indenture”), dated as of November 15, 2017, is between MVC Capital, Inc., a Delaware corporation (the “Company”), and U.S. Bank National Association, as trustee (the “Trustee”). All capitalized terms used herein shall have the meaning set forth in the Base Indenture (as defined below).

RECITALS OF THE COMPANY

The Company and the Trustee executed and delivered an Indenture, dated as of February 26, 2013 (the “Base Indenture” and, as supplemented by this Second Supplemental Indenture, the “Indenture”), to provide for the issuance by the Company from time to time of the Company’s unsecured debentures, notes or other evidences of indebtedness (the “Securities”), to be issued in one or more series as provided in the Indenture.

The Company previously entered into the First Supplemental Indenture, dated as of February 26, 2013 (the “First Supplemental Indenture”), which amended and supplemented the Indenture. The First Supplemental Indenture is not applicable to the 2022 Notes (as defined below).

The Company desires to issue and sell up to \$100,000,000 in aggregate principal amount of the Company’s 6.25% Senior Notes due 2022 (the “2022 Notes”).

Sections 9.01(iv) and 9.01(vi) of the Base Indenture provide that without the consent of Holders of the Securities of any series issued under the Indenture, the Company, when authorized by or pursuant to a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental to the Base Indenture to (i) change or eliminate any of the provisions of the Indenture when there is no Security Outstanding of any series created prior to the execution of a supplemental indenture that is entitled to the benefit of such provision and (ii) establish the form or terms of Securities of any series as permitted by Section 2.01 and Section 3.01 of the Base Indenture.

The Company desires to establish the form and terms of the 2022 Notes and to modify, alter, supplement and change certain provisions of the Base Indenture for the benefit of the Holders of the 2022 Notes (except as may be provided in a future supplemental indenture to the Indenture (“Future Supplemental Indenture”). The Company has duly authorized the execution and delivery of this Second Supplemental Indenture to provide for the issuance of the 2022 Notes and all acts and things necessary to

make this Second Supplemental Indenture a valid, binding, and legal obligation of the Company and to constitute a valid agreement of the Company, in accordance with its terms, have been done and performed.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the 2022 Notes by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the 2022 Notes, as follows:

ARTICLE I.
TERMS OF THE 2022 NOTES

Section 1.01 Terms of the 2022 Notes. The following terms relating to the 2022 Notes are hereby established:

- (a) The 2022 Notes shall constitute a series of Securities having the title “6.25% Senior Notes due 2022” and shall be designated as Senior Securities under the Indenture. The 2022 Notes shall bear a CUSIP number of 553829 409 and an ISIN number of US5538294092.
- (b) The aggregate principal amount of the 2022 Notes that may be initially authenticated and delivered under the Indenture (except for 2022 Notes authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of, other 2022 Notes pursuant to Sections 3.04, 3.05, 3.06, 9.06 or 11.07 of the Base Indenture) shall be \$100,000,000. Under a Board Resolution, Officers’ Certificate pursuant to Board Resolutions or an indenture supplement, so long as no Event of Default has occurred and is continuing, the Company may from time to time, without the consent of the Holders of 2022 Notes, issue additional 2022 Notes (in any such case “Additional 2022 Notes”) having the same ranking and the same interest rate, maturity and other terms as the 2022 Notes. Any Additional 2022 Notes and the existing 2022 Notes will constitute a single series under the Indenture and all references to the relevant 2022 Notes herein shall include the Additional 2022 Notes unless the context otherwise requires.
- (c) The entire outstanding principal of the 2022 Notes shall be payable on November 30, 2022.
- (d) The rate at which the 2022 Notes shall bear interest shall be 6.25% per annum (the “Applicable Interest Rate”). The date from which interest shall accrue on the 2022 Notes shall be November 15, 2017, or the most recent Interest Payment Date to which interest has been paid or provided for; the Interest Payment Dates for the 2022 Notes shall be January 15, April 15, July 15 and October 15 of each year, commencing January 15, 2018 (if an Interest Payment Date falls on a day that is not a Business Day, then the applicable interest payment will be made on the next succeeding Business Day and no additional interest will accrue as a result of such delayed payment); the initial interest period will be the period from and including November 15, 2017 (or the most recent Interest Payment Date to which interest has been paid or provided for), to, but excluding, the initial Interest Payment Date, and the subsequent interest periods will be the periods from and including an Interest Payment Date to, but excluding, the next Interest Payment Date or the Stated Maturity, as the case may be; the interest so payable, and punctually paid or duly provided for, on any Interest Payment Date, will be paid to the Person in whose name the 2022 Note (or one or more predecessor 2022 Notes) is registered at the close of business on the Regular Record Date for such interest, which shall be January 1, April 1, July 1 and October 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Payment of principal of (and premium, if any) and any such interest on the 2022 Notes will be made at the Corporate Trust Office of the Trustee in Boston, Massachusetts in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private

debts; *provided, however*, that at the option of the Company, payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register. Interest on the 2022 Notes will be computed on the basis of a 360-day year of twelve 30-day months.

(e) The 2022 Notes shall be initially issuable in global form (each such 2022 Note, a “Global 2022 Note”). The Global 2022 Notes and the Trustee’s certificate of authentication thereon shall be substantially in the form of Exhibit A to this Second Supplemental Indenture. Each Global 2022 Note shall represent the outstanding Notes as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global 2022 Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Security Registrar, in accordance with Sections 2.03 and 3.05 of the Base Indenture.

(f) The depository for such Global 2022 Notes (the “Depository”) shall be The Depository Trust Company, New York, New York. The Security Registrar with respect to the Global 2022 Notes shall be the Trustee.

(g) The 2022 Notes shall be defeasible pursuant to Section 14.02 or Section 14.03 of the Base Indenture. Covenant defeasance contained in Section 14.03 of the Base Indenture shall apply to the covenants contained in Sections 10.06, 10.08, 10.09 and 10.10 of the Indenture.

(h) The 2022 Notes shall be redeemable pursuant to Section 11.01 of the Base Indenture and as follows:

(i) The 2022 Notes will be redeemable in whole or in part at any time or from time to time, at the option of the Company, on or after November 30, 2019, at a redemption price of 100% of the outstanding principal amount thereof plus accrued and unpaid interest payments otherwise payable for the then-current quarterly interest period accrued to, but excluding, the date fixed for redemption.

(ii) Notice of redemption shall be given in writing and mailed, by first-class mail, postage prepaid, or by overnight courier guaranteeing next-day delivery, to each Holder of the 2022 Notes to be redeemed, not less than thirty (30) nor more than sixty (60) days prior to the Redemption Date, at the Holder’s address appearing in the Security Register. All notices of redemption shall contain the information set forth in Section 11.04 of the Base Indenture.

(iii) Any exercise of the Company’s option to redeem the 2022 Notes will be done in compliance with the Investment Company Act.

(iv) If the Company elects to redeem only a portion of the 2022 Notes, the Trustee or DTC, as applicable, will determine the method for selecting the particular 2022 Notes to be redeemed, in accordance with the Indenture, and in accordance with the rules of any national securities exchange system on which the 2022 Notes are listed and the Investment Company Act.

(v) Unless the Company defaults in payment of the Redemption Price, on and after the Redemption Date, interest will cease to accrue on the 2022 Notes called for redemption hereunder.

(i) The 2022 Notes shall not be subject to any sinking fund pursuant to Section 12.01 of the Base Indenture.

- (j) The 2022 Notes shall be issuable in denominations of \$25 and integral multiples of \$25 in excess thereof.
- (k) Holders of the 2022 Notes will not have the option to have the 2022 Notes repaid prior to the Stated Maturity.

ARTICLE II.
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 2.01 Except as may be provided in a Future Supplemental Indenture, for the benefit of the Holders of the 2022 Notes but no other series of Securities under the Indenture, whether now or hereafter issued and Outstanding (other than Securities issued under the First Supplemental Indenture, if applicable under the First Supplemental Indenture), Article One of the Base Indenture shall be amended by adding or amending and restating, as applicable, the following defined terms to Section 1.01 in appropriate alphabetical sequence, as follows:

“‘Affiliate’ of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.”

“‘Exchange Act’ means the Securities Exchange Act of 1934, as amended, and any statute successor thereto.”

“‘GAAP’ means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, the opinions and pronouncements of the Public Company Accounting Oversight Board and the statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession in the United States, which are in effect from time to time.”

“‘Investment Company Act’ means the Investment Company Act of 1940, as amended, and the rules, regulations and interpretations promulgated thereunder, to the extent applicable, and any statute successor thereto.”

“‘Significant Subsidiary’ means any direct or indirect Subsidiary of the Company that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act.”

ARTICLE III.
THE SECURITIES

Section 3.01 Except as may be provided in a Future Supplemental Indenture, for the benefit of the Holders of the 2022 Notes but no other series of Securities under the Indenture, whether now or hereafter issued and Outstanding (other than Securities issued under the First Supplemental Indenture, if applicable under the First Supplemental Indenture), the first paragraph of Section 3.03 of the Base Indenture shall be amended and restated with respect to the 2022 Notes as follows:

“The Securities shall be executed on behalf of the Company by the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer or its President, and attested by its Secretary. The

signature of any of these officers on the Securities may be manual or facsimile, .pdf attachment or other electronically transmitted signature (with an original manual signature to be sent to the Trustee via overnight mail, postage prepaid, immediately thereafter) of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Securities.”

Section 3.02 Except as may be provided in a Future Supplemental Indenture, for the benefit of the Holders of the 2022 Notes but no other series of Securities under the Indenture, whether now or hereafter issued and Outstanding (other than Securities issued under the First Supplemental Indenture, if applicable under the First Supplemental Indenture), the first sentence of the second paragraph of Section 3.03 of the Base Indenture shall be amended with respect to the 2022 Notes by adding, after the word “facsimile” and before the word “signatures,” the following:

“, .pdf attachment or other electronically transmitted”

ARTICLE IV. REMEDIES

Section 4.01 Except as may be provided in a Future Supplemental Indenture, for the benefit of the Holders of the 2022 Notes but no other series of Securities under the Indenture, whether now or hereafter issued and Outstanding (other than Securities issued under the First Supplemental Indenture, if applicable under the First Supplemental Indenture), Section 5.01 of the Base Indenture shall be amended by replacing clause (ii) thereof with the following:

“(ii) default in the payment of the principal of (or premium, if any) any 2022 Note when it becomes due and payable at its Maturity; or”

Section 4.02 Except as may be provided in a Future Supplemental Indenture, for the benefit of the Holders of the 2022 Notes but no other series of Securities under the Indenture (other than Securities issued under the First Supplemental Indenture, if applicable under the First Supplemental Indenture), whether now or hereafter issued and Outstanding, Section 5.01 of the Base Indenture shall be amended by replacing clauses (v) and (vi) thereof with the following:

“(v) the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, pursuant to or within the meaning of the Bankruptcy Law:

- (1) commences a voluntary case or proceeding under any Bankruptcy Law,
- (2) consents to the commencement of any bankruptcy or insolvency case or proceeding against it, or files a petition or answer or consent seeking reorganization or relief against it,
- (3) consents to the entry of a decree or order for relief against it in an involuntary case or proceeding,
- (4) consents to the filing of such petition or to the appointment of or taking possession by a Custodian of it or for all or substantially all of its property, or
- (5) makes an assignment for the benefit of creditors, or admits in writing of its inability to pay its debts generally as they become due or takes any corporate action in furtherance of any such action; or

(vi) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (1) is for relief against the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary in an involuntary case,
- (2) adjudges the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary bankrupt or insolvent, or approves as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company, any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary,
- (3) appoints a Custodian of the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, or
- (4) orders the winding up or liquidation of the Company or any of its Significant Subsidiaries or any group of Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary.”

Section 4.03 Except as may be provided in a Future Supplemental Indenture, for the benefit of the Holders of the 2022 Notes but no other series of Securities under the Indenture, whether now or hereafter issued and Outstanding, Section 5.02 of the Base Indenture shall be amended by replacing the first paragraph thereof with the following:

“If an Event of Default with respect 2022 Notes occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding 2022 Notes may declare the principal of all the 2022 Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration the principal thereof shall become immediately due and payable; provided however, if an Event of Default referred to in Section 5.01(v) or Section 5.01(vi) of the Indenture has occurred, the entire principal amount of all the 2022 Notes will automatically become due and immediately payable without any action by the Trustee or the Holders or any notice to the Company.”

ARTICLE V. COVENANTS

Section 5.01 Except as may be provided in a Future Supplemental Indenture, for the benefit of the Holders of the 2022 Notes but no other series of Securities under the Indenture, whether now or hereafter issued and Outstanding, Article Ten of the Base Indenture shall be amended by adding the following new Sections 10.08, 10.09 and 10.10 thereto, each as set forth below:

“Section 10.08 Section 18(a)(1)(A) of the Investment Company Act.

The Company hereby agrees that for the period of time during which 2022 Notes are Outstanding, the Company will not violate, whether or not it is subject to, Section 18(a)(1)(A) as modified by Section 61(a)(1) of the Investment Company Act or any successor provisions thereto of the Investment Company Act, in either case, giving effect to any exemptive relief granted to us by the Commission.”

“Section 10.09 Section 18(a)(1)(B) of the Investment Company Act.

The Company hereby agrees that for the period of time during which 2022 Notes are Outstanding, the Company will not violate Section 18(a)(1)(B) as modified by Section 61(a)(1) of the Investment Company Act or any successor provisions thereto of the Investment Company Act, giving effect to any exemptive relief granted to us by the Commission.”

“Section 10.10 Commission Reports and Reports to Holders.

If, at any time, the Company is not subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act to file any periodic reports with the Commission, the Company agrees to furnish to the Holders of 2022 Notes and the Trustee for the period of time during which the 2022 Notes are Outstanding: (i) within 90 days after the end of each fiscal year of the Company, which currently ends on October 31, audited annual consolidated financial statements of the Company and (ii) within 45 days after the end of each fiscal quarter of the Company (other than the Company’s fourth fiscal quarter), which currently end on January 31, April 30 and July 31, unaudited interim consolidated financial statements of the Company. All such financial statements shall be prepared, in all material respects, in accordance with GAAP.”

ARTICLE VI.
DEFEASANCE

Section 6.01 Except as may be provided in a Future Supplemental Indenture, for the benefit of the Holders of the 2022 Notes but no other series of Securities under the Indenture, whether now or hereafter issued and Outstanding, Section 14.04 of the Base Indenture shall be amended by replacing clause (vi) thereof with the following:

“(vi) The Company shall have delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that all conditions precedent to either the defeasance under Section 14.02 or the covenant defeasance under Section 14.03 (as the case may be) have been complied with and an Opinion of Counsel to the effect that as a result of a deposit pursuant to subsection (i) above and the related exercise of the Company’s option under Section 14.02 or Section 14.03 (as the case may be), registration is not required under the Investment Company Act of 1940, as amended, by the Company, with respect to the trust funds representing such deposit or by the trustee for such trust funds.”

ARTICLE VII.
MISCELLANEOUS

Section 7.01 This Second Supplemental Indenture and the 2022 Notes shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws that would cause the application of laws of another jurisdiction. This Second Supplemental Indenture is subject to the provisions of the Trust Indenture Act that are required to be part of the Indenture and shall, to the extent applicable, be governed by such provisions.

Section 7.02 Except as may be provided in a Future Supplemental Indenture, Article Six of the Base Indenture shall be amended by adding the following Section 6.14:

“Section 6.14 Trustee’s Cooperation .

So long as the outstanding 2022 Notes are registered in the name of Cede & Co. or its registered assigns, the Trustee shall cooperate with Cede & Co., as sole registered owner, and its registered assigns in effecting payment of the principal of, Redemption Price and interest on the 2022 Notes by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due. The Company acknowledges that in order for the Trustee to make funds for such payments immediately available to the Depository on the date they are due, the Company shall ensure the funds for such payments are remitted and made immediately available to the Trustee, no later than 1:00 p.m. Eastern Time on the date they are due to Cede & Co. in order for the Trustee to conform to the payment guidelines of the Depository. Funds for such payments received by the Trustee after 1:00 p.m. Eastern Time on the date they are due to Cede & Co. may not be assured of timely payment and detail payment notification to the Depository for subsequent allocation to the noteholders.”

Section 7.03 In case any provision in this Second Supplemental Indenture or in the 2022 Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 7.04 This Second Supplemental Indenture may be executed in any number of counterparts, each of which will be an original, but such counterparts will together constitute but one and the same Second Supplemental Indenture. The exchange of copies of this Second Supplemental Indenture and of signature pages by facsimile, .pdf transmission, email or other electronic means shall constitute effective execution and delivery of this Second Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, .pdf transmission, email or other electronic means shall be deemed to be their original signatures for all purposes.

Section 7.05 The Base Indenture, as supplemented and amended by this Second Supplemental Indenture, is in all respects ratified and confirmed, and the Base Indenture and this Second Supplemental Indenture shall be read, taken and construed as one and the same instrument with respect to the 2022 Notes. All provisions included in this Second Supplemental Indenture supersede any conflicting provisions included in the Base Indenture with respect to the 2022 Notes, unless not permitted by law. The Trustee accepts the trusts created by the Indenture, as supplemented by this Second Supplemental Indenture, and agrees to perform the same upon the terms and conditions of the Indenture, as supplemented by this Second Supplemental Indenture.

Section 7.06 The provisions of this Second Supplemental Indenture shall become effective as of the date hereof.

Section 7.07 Notwithstanding anything else to the contrary herein, the terms and provisions of this Second Supplemental Indenture shall apply only to the 2022 Notes and shall not apply to any other series of Securities under the Indenture, including, without limitation, the “Notes” under and as defined in the First Supplemental Indenture and this Second Supplemental Indenture shall not and does not otherwise affect, modify, alter, supplement or change the terms and provisions of any other series of Securities under the Indenture, whether now or hereafter issued and Outstanding, including, without limitation, the “Notes” under and as defined in the First Supplemental Indenture.

Section 7.08 The recitals contained herein and in the 2022 Notes shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Second Supplemental Indenture, the 2022 Notes or any Additional 2022 Notes, except that the Trustee represents that it is duly authorized to execute and deliver this Second Supplemental Indenture, authenticate the 2022 Notes and any Additional 2022 Notes and perform its obligations hereunder. The Trustee shall not be accountable for the use or application by the Company of the 2022 Notes or any Additional 2022 Notes or the proceeds thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed as of the date first above written.

MVC CAPITAL, INC.

By: /s/ Scott Schuenke
Name: Scott Schuenke
Title: Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Karen Beard
Name: Karen Beard
Title: Vice President

[Signature page to Second Supplemental Indenture]

Exhibit A — Form of Global 2022 Note

This Security is a Global 2022 Note within the meaning of the Indenture hereinafter referred to and is registered in the name of The Depository Trust Company or a nominee thereof. This Security may not be exchanged in whole or in part for a Security registered, and no transfer of this Security in whole or in part may be registered, in the name of any Person other than The Depository Trust Company or a nominee thereof, except in the limited circumstances described in the Indenture.

Unless this certificate is presented by an authorized representative of The Depository Trust Company to the issuer or its agent for registration of transfer, exchange or payment and such certificate issued in exchange for this certificate is registered in the name of Cede & Co., or such other name as requested by an authorized representative of The Depository Trust Company, any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful, as the registered owner hereof, Cede & Co., has an interest herein.

MVC Capital, Inc.

No. A-1

\$100,000,000
CUSIP No. 553829 409
ISIN No. US5538294092

6.25% Senior Notes due 2022

MVC Capital, Inc., a corporation duly organized and existing under the laws of Delaware (herein called the “Company,” which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of ONE HUNDRED MILLION DOLLARS (U.S. \$100,000,000) on November 30, 2022, and to pay interest thereon from November 15, 2017 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, quarterly January 15, April 15, July 15 and October 15 in each year, commencing January 15, 2018, at the rate of 6.25% per annum, until the principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security is registered at the close of business on the Regular Record Date for such interest, which shall be January 1, April 1, July 1 and October 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. This Security may be issued as part of a series.

Payment of the principal of (and premium, if any) and any such interest on this Security will be made at the Corporate Trust Office of the Trustee in Boston, Massachusetts in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; *provided, however*, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated:

MVC CAPITAL, INC.

By: _____

Name:

Title:

Exhibit A- 2

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Dated:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Exhibit A- 3

MVC Capital, Inc.

6.25% Senior Notes due 2022

This Security is one of a duly authorized issue of securities of the Company (herein called the “Securities”), issued and to be issued in one or more series under an Indenture, dated as of February 26, 2013 (herein called the “Base Indenture,” which term shall have the meaning assigned to it in such instrument), between the Company and U.S. Bank National Association, as Trustee (herein called the “Trustee,” which term includes any successor trustee under the Base Indenture), and reference is hereby made to the Base Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered, as supplemented by the Second Supplemental Indenture, dated as of November 15, 2017, by and between the Company and the Trustee (herein called the “Second Supplemental Indenture,” the Second Supplemental Indenture and the Base Indenture collectively are herein called the “Indenture”). In the event of any conflict between the Base Indenture and the Second Supplemental Indenture, the Second Supplemental Indenture shall govern and control.

This Security is one of the series designated on the face hereof, initially limited in aggregate principal amount to \$100,000,000. Under a Board Resolution, Officers’ Certificate pursuant to Board Resolutions or an indenture supplement, the Company may from time to time, without the consent of the Holders of Securities, issue additional Securities of this series (in any such case “Additional Securities”) having the same ranking and the same interest rate, maturity and other terms as the Securities. Any Additional Securities and the existing Securities will constitute a single series under the Indenture and all references to the relevant Securities herein shall include the Additional Securities unless the context otherwise requires. The aggregate amount of outstanding Securities represented hereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions.

The Securities of this series are subject to redemption in whole or in part at any time or from time to time, at the option of the Company, on or after November 30, 2019, at a redemption price of 100% of the outstanding principal amount thereof plus accrued and unpaid interest payments otherwise payable for the then-current quarterly interest period accrued to the date fixed for redemption.

Notice of redemption shall be given in writing and mailed, first-class postage prepaid or by overnight courier guaranteeing next-day delivery, to each Holder of the Securities to be redeemed, not less than thirty (30) nor more than sixty (60) days prior to the Redemption Date, at the Holder’s address appearing in the Security Register. All notices of redemption shall contain the information set forth in Section 11.04 of the Base Indenture.

Any exercise of the Company’s option to redeem the Securities will be done in compliance with the Investment Company Act, and the rules, regulations and interpretations promulgated thereunder, to the extent applicable.

If the Company elects to redeem only a portion of the Securities, the Trustee or DTC, as applicable, will determine the method for selecting the particular Securities to be redeemed, in accordance with the Indenture, and in accordance with the rules of any national securities exchange or quotation system on which the 2022 Notes are listed and the Investment Company Act, and the rules and regulations promulgated thereunder, to the extent applicable. In the event of redemption of this Security in part only, a new Security or Securities of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

Unless the Company defaults in payment of the Redemption Price, on and after the Redemption Date, interest will cease to accrue on the 2022 Notes called for redemption.

Holders of Securities do not have the option to have the Securities repaid prior to November 30, 2022.

The Indenture contains provisions for defeasance at any time of the entire indebtedness of this Security or certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the Indenture.

If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default, other than an Event of Default referred to in Section 5.01(v) or Section 5.01(vi) of the Indenture with respect to the Company, with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for sixty (60) days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein. If an Event of Default referred to in Section 5.01(v) or Section 5.01(vi) of the Indenture with respect to the Company has occurred, the entire principal amount of all the 2022 Notes will automatically become due and immediately payable.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of \$25 and any integral multiples of \$25 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company, Trustee, or Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee, the Security Registrar, and any agent of the Company, the Trustee, or the Security Registrar may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee, the Security Registrar, nor any such agent shall be affected by notice to the contrary.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Indenture and this Security shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of laws.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

November 15, 2017

MVC Capital, Inc.
287 Bowman Avenue, 2nd Floor
Purchase, NY 10577

Ladies and Gentlemen:

We have acted as counsel to MVC Capital, Inc., a Delaware corporation (the “Issuer”), in connection with the registration statement on Form N-2 (File No. 333-219377) (the “Registration Statement”) filed by the Issuer with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Act”), declared effective by the Commission, relating to the public offering of securities of the Issuer that may be offered by the Issuer from time to time as set forth in the prospectus dated September 26, 2017, which forms a part of the Registration Statement (the “Prospectus”), and as may be set forth from time to time in one or more supplements to the Prospectus. This opinion is delivered in connection with the issuance and sale of \$100,000,000 aggregate principal amount of the Issuer’s 6.25% Senior Notes due 2022 (the “Securities”) as described in the Prospectus and a prospectus supplement dated November 8, 2017 (the “Prospectus Supplement”). All of the Securities are to be sold by the Issuer as described in the Registration Statement, the Prospectus and the Prospectus Supplement.

In rendering this opinion, we have examined copies of the following documents:

- A. Registration Statement;
- B. Prospectus Supplement;
- C. Amendment of the Certificate of Incorporation of the Issuer;
- D. Sixth Amended & Restated Bylaws of the Issuer;
- E. Indenture dated as of February 26, 2013 (the “Base Indenture”), as supplemented by the Second Supplemental Indenture to be dated as of November 15, 2017 (the “Second Supplemental Indenture”) and, together with the Base Indenture, the “Indenture”), between the Company and U.S. Bank National Association, as trustee;
- F. Underwriting Agreement, dated as of November 8, 2017, between the Company and the several underwriters listed therein (the “Underwriting Agreement”), pursuant to which the Securities will be sold;

1177 AVENUE OF THE AMERICAS NEW YORK NY 10036-2714 PHONE 212.715.9100 FAX 212.715.8000

990 MARSH ROAD MENLO PARK CA 94025-1949 PHONE 650.752.1700 FAX 650.752.1800

47 AVENUE HOICHE 75008 PARIS FRANCE PHONE (33-1) 44 09 46 00 FAX (33-1) 44 09 46 01

WWW.KRAMERLEVIN.COM

- G. Certificate of Good Standing with respect to the Issuer issued by the Secretary of State for the State of Delaware as of a recent date; and
- H. Resolutions of the Board of Directors of the Issuer relating to the authorization of (i) the Securities and (ii) the execution and delivery of the Indenture and any supplements thereto.

We have also made such inquiries and reviewed such documents and records as we have deemed necessary or appropriate as a basis for our opinion. As to factual matters only, we have also relied upon the statements, representations and certificates of officers or other representatives of the Issuer, public officials and others. We have not independently verified the facts so relied on.

Based on the foregoing, and subject to the qualifications, limitations and assumptions set forth herein, we are of the opinion that the Securities, when (i) sold in accordance with the terms and conditions of the Underwriting Agreement and (ii) duly executed, authenticated, issued and delivered in accordance with the terms and conditions of the Indenture, will be legally issued and will constitute binding obligations of the Issuer, subject to applicable bankruptcy, insolvency, fraudulent conveyance or transfer and other similar laws relating to or affecting the rights and remedies of creditors generally and to general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law).

We express no opinion as to any laws other than the laws of the State of New York and the federal laws of the United States of America (the “Relevant Laws”).

The opinions expressed herein are based upon the Relevant Laws and interpretations thereof in effect on the date hereof, and the facts and circumstances in existence on the date hereof, and we assume no obligation to revise or supplement this opinion letter should any such law or interpretation be changed by legislative action, judicial decision or otherwise or should there be any change in such facts or circumstances.

We hereby authorize the addressee of this opinion to file it as an exhibit to a Current Report on Form 8-K of the Issuer and consent to the incorporation by reference of this opinion into the Registration Statement and the reference to us under the captions “Legal Matters” in the prospectus that is a part of the Registration Statement and the Prospectus Supplement, without admitting that we are an “expert” within the meaning of the United States Securities Act of 1933, as amended, or the rules and regulations of the Commission thereunder with respect to any part of the Registration Statement or the Prospectus Supplement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of said Act.

Very truly yours,

