

LMP CAPITAL & INCOME FUND INC.
Form SC 13D/A
July 14, 2011

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

SCHEDULE 13D
(Rule 13d-101)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT
TO § 240.13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO
§ 240.13d-2(a)

(Amendment No. 5)1

LMP Capital and Income Fund Inc.

(Name of Issuer)

Common Stock, \$0.001 Par Value
(Title of Class of Securities)

50208A102

(CUSIP Number)

STEVEN WOLOSKY, ESQ.
OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP
Park Avenue Tower
65 East 55th Street
New York, New York 10022
(212) 451-2300

(Name, Address and Telephone Number of Person

Authorized to Receive Notices and Communications)

July 8, 2011

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box " .

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d-7 for other parties to whom copies are to be sent.

1 The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be “filed” for the purpose of Section 18 of the Securities Exchange Act of 1934 (“Act”) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

WESTERN INVESTMENT LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO, WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		1,086,298
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		1,086,298
	10	SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,086,298

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

5.2%

14 TYPE OF REPORTING PERSON

OO

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

ARTHUR D. LIPSON

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

USA

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		1,086,298
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		1,086,298
	10	SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,086,298

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

5.2%

14 TYPE OF REPORTING PERSON

IN

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

WESTERN INVESTMENT HEDGED PARTNERS L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		474,572
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		474,572
	10	SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

474,572

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

2.3%

14 TYPE OF REPORTING PERSON

PN

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

WESTERN INVESTMENT ACTIVISM PARTNERS LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		284,741
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		284,741
	10	SHARED DISPOSITIVE POWER
		- 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

284,741

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.4%

14 TYPE OF REPORTING PERSON

OO

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

WESTERN INVESTMENT TOTAL RETURN PARTNERS L.P.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A (a)
 GROUP (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF	7	SOLE VOTING POWER
SHARES		
BENEFICIALLY		326,654
OWNED BY	8	SHARED VOTING POWER
EACH		
REPORTING		- 0 -
PERSON WITH	9	SOLE DISPOSITIVE POWER
	10	326,654
		SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

326,654

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11)
 EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.6%

14 TYPE OF REPORTING PERSON

PN

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

WESTERN INVESTMENT TOTAL RETURN FUND LTD.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

CAYMAN ISLANDS

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		100
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		100
	10	SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

100

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

Less than 1%

14 TYPE OF REPORTING PERSON

CO

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

BENCHMARK PLUS INSTITUTIONAL PARTNERS, L.L.C.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		233,363
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		233,363
	10	SHARED DISPOSITIVE POWER
		- 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

233,363

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.1%

14 TYPE OF REPORTING PERSON

OO

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

BENCHMARK PLUS MANAGEMENT, L.L.C.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		233,363
	8	SHARED VOTING POWER
		- 0 -
	9	SOLE DISPOSITIVE POWER
		233,363
	10	SHARED DISPOSITIVE POWER
		- 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

233,363

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.1%

14 TYPE OF REPORTING PERSON

OO

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

ROBERT FERGUSON

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

USA

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER 233,363
	8	SHARED VOTING POWER - 0 -
	9	SOLE DISPOSITIVE POWER 233,363
	10	SHARED DISPOSITIVE POWER - 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

233,363

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.1%

14 TYPE OF REPORTING PERSON

IN

CUSIP NO. 50208A102

1 NAME OF REPORTING PERSON

SCOTT FRANZBLAU

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

USA

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER 233,363
	8	SHARED VOTING POWER - 0 -
	9	SOLE DISPOSITIVE POWER 233,363
	10	SHARED DISPOSITIVE POWER - 0 -

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

233,363

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

1.1%

14 TYPE OF REPORTING PERSON

IN

CUSIP NO. 50208A102

The following constitutes Amendment No. 5 to the Schedule 13D filed by the undersigned ("Amendment No. 5"). This Amendment No. 5 amends the Schedule 13D as specifically set forth herein.

Item 3. Source and Amount of Funds or Other Consideration.

Item 3 is hereby amended and restated to read as follows:

The aggregate purchase price of the 1,086,298 Shares beneficially owned by WILLC is approximately \$13,850,743. The Shares beneficially owned by WILLC consist of 231 Shares that were acquired with WILLC's working capital, 474,572 Shares that were acquired with WIHP's working capital, 284,741 Shares that were acquired with WIAP's working capital, 326,654 Shares that were acquired with WITRP's working capital and 100 Shares that were acquired with WITRL's working capital.

The aggregate purchase price of the 233,363 Shares beneficially owned by BPM is approximately \$2,787,013. The Shares beneficially owned by BPM consist of 233,363 Shares that were acquired with BPIP's working capital.

Item 5. Interest in Securities of the Issuer.

Item 5(a) is amended and restated to read as follows:

(a) The aggregate percentage of Shares reported owned by each person named herein is based upon 20,974,874 Shares outstanding, which is the total number of Shares outstanding as of May 10, 2011, as reported in Exhibit (a)(1)(i) to the Issuer's Schedule TO filed with the Securities and Exchange Commission on June 1, 2011 less the 8,989,232 Shares tendered in accordance with the Issuer's tender offer that expired on June 30, 2011, as reported in Exhibit 99.1 to the Issuer's Schedule TO filed with the Securities and Exchange Commission on July 8, 2011.

As of the close of business on July 13, 2011, WIHP, WIAP, WITRP and WITRL beneficially owned 474,572, 284,741, 326,654 and 100 Shares, respectively, constituting approximately 2.3%, 1.4%, 1.6% and less than 1%, respectively, of the Shares outstanding.

As the general partner of each of WIHP and WITRP, the managing member of WIAP and the investment manager of WITRL, WILLC may be deemed to beneficially own the 1,086,067 Shares owned in the aggregate by WIHP, WIAP, WITRP and WITRL, constituting approximately 5.2% of the Shares outstanding, in addition to the 231 Shares it holds directly.

As the managing member of WILLC, Mr. Lipson may be deemed to beneficially own the 1,086,298 Shares beneficially owned by WILLC, constituting approximately 5.2% of the Shares outstanding.

As of the close of business on July 13, 2011, BPIP beneficially owned 233,363 Shares, constituting approximately 1.1% of the Shares outstanding. As the managing member of BPIP, BPM may be deemed to beneficially own the 233,363 Shares owned by BPIP, constituting approximately 1.1% of the Shares outstanding. As managing members of BPM, each of Messrs. Franzblau and Ferguson may be deemed to beneficially own the 233,363 Shares beneficially owned by BPM, constituting approximately 1.1% of the Shares outstanding.

CUSIP NO. 50208A102

Item 5(c) is amended to add the following:

(c) Schedule B annexed hereto lists all transactions in securities of the Issuer during the past 60 days by the Reporting Persons. All of such transactions were effected in the open market unless otherwise noted.

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CUSIP NO. 50208A102

SIGNATURES

After reasonable inquiry and to the best of his knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: July 14, 2011

WESTERN INVESTMENT LLC

By: /s/ Arthur D. Lipson
Name: Arthur D. Lipson
Title: Managing Member

WESTERN INVESTMENT HEDGED PARTNERS L.P.

By: Western Investment LLC
General Partner

By: /s/ Arthur D. Lipson
Name: Arthur D. Lipson
Title: Managing Member

WESTERN INVESTMENT ACTIVISM PARTNERS LLC

By: Western Investment LLC
Managing Member

By: /s/ Arthur D. Lipson
Name: Arthur D. Lipson
Title: Managing Member

WESTERN INVESTMENT TOTAL RETURN PARTNERS L.P.

By: Western Investment LLC
General Partner

By: /s/ Arthur D. Lipson
Name: Arthur D. Lipson
Title: Managing Member

WESTERN INVESTMENT TOTAL RETURN FUND LTD.

By: Western Investment LLC
Investment Manager

By: /s/ Arthur D. Lipson

Name: Arthur D. Lipson
Title: Managing Member

/s/ Arthur D. Lipson
ARTHUR D. LIPSON

CUSIP NO. 50208A102

BENCHMARK PLUS INSTITUTIONAL PARTNERS, L.L.C.

By: Benchmark Plus Management, L.L.C.
Managing Member

By: /s/ Robert Ferguson
Name: Robert Ferguson
Title: Managing Member

By: /s/ Scott Franzblau
Name: Scott Franzblau
Title: Managing Member

BENCHMARK PLUS MANAGEMENT, L.L.C.

By: /s/ Robert Ferguson
Name: Robert Ferguson
Title: Managing Member

By: /s/ Scott Franzblau
Name: Scott Franzblau
Title: Managing Member

/s/ Robert Ferguson
ROBERT FERGUSON

/s/ Scott Franzblau
SCOTT FRANZBLAU

CUSIP NO. 50208A102

SCHEDULE B

Transactions in the Shares During the Past 60 Days

Date of Sale	Shares of Common Stock (Sold)	Price Per Share (\$)
WESTERN INVESTMENT HEDGED PARTNERS L.P.		
07/08/11	(12,714)*	14.1500
07/08/11	(6,347)*	14.1500
07/08/11	(535,109)*	14.1500
07/11/11	(1,500)	13.6972
WESTERN INVESTMENT ACTIVISM PARTNERS LLC		
07/08/11	(24,894)*	14.1500
07/08/11	(306,557)*	14.1500
WESTERN INVESTMENT TOTAL RETURN PARTNERS L.P.		
07/08/11	(9,736)*	14.1500
07/08/11	(370,506)*	14.1500
BENCHMARK PLUS INSTITUTIONAL PARTNERS, L.L.C.		
07/08/11	(271,645)*	14.1500
WESTERN INVESTMENT LLC		
07/08/11	(269)*	14.1500

* Shares tendered pursuant to the terms of the tender offer made by the Issuer.