

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27968; 812-13388]

Hercules Technology Growth Capital, Inc.; Notice of Application

September 12, 2007

Agency: Securities and Exchange Commission (the “Commission”).

Action: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the “Act”).

Summary of Application: Applicant, Hercules Technology Growth Capital, Inc.

(“HTGC”), requests an order that would approve the proposal to issue stock options to directors who are not officers or employees of HTGC (“Non-employee Directors”) under HTGC’s amended and restated 2006 Non-employee Director Plan (the “Amended and Restated 2006 Plan”). The requested order would supersede a prior order issued to HTGC under section 61(a)(3)(B) of the Act (the “HTGC Options Order”).¹

Filing Dates: The application was filed on May 24, 2007 and amended on September 10, 2007. HTGC has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 9, 2007, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should

¹Hercules Technology Growth Capital, Inc., Investment Company Act Release Nos. 27668 (Jan. 19, 2007) (notice) and 27699 (Feb. 15, 2007) (order).

state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. HTGC, c/o Manuel A. Henriquez, Chairman of the Board, President and Chief Executive Officer, 400 Hamilton Avenue, Suite 310, Palo Alto, California 94301.

For Further Information Contact: Laura J. Riegel, Senior Counsel, at (202) 551-6873, or Nadya B. Roytblat, Assistant Director, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application is available for a fee at the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC 20549-0102 (tel. 202-551-5850).

Applicant's Representations:

1. HTGC, a Maryland corporation, is a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.² HTGC is a specialty finance company that provides debt and equity growth capital to technology-related and life-science companies at all stages of development. HTGC's business and affairs are managed under the direction of its board of directors ("Board"). HTGC does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. HTGC requests an order under section 61(a)(3)(B) of the Act that would approve the proposal under the Amended and Restated 2006 Plan to issue stock options

²Section 2(a)(48) generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

to Non-employee Directors to purchase shares of HTGC's common stock, \$.001 par value per share ("Common Stock"). The requested order would supersede the HTGC Options Order approving the issuance of stock options to Non-employee Directors to purchase Common Stock under HTGC's 2006 Non-employee Director Plan (the "Original 2006 Plan").³

3. HTGC currently has a four member Board, one of whom is considered to be an "interested person" of HTGC within the meaning of section 2(a)(19) of the Act and three of whom are not interested persons ("Non-interested Directors"). HTGC currently has three Non-employee Directors.⁴ The Non-employee Directors are all Non-interested Directors, but it is possible that HTGC may have Non-employee Directors in the future who are interested persons of HTGC.⁵

4. The Board approved the Amended and Restated 2006 Plan on March 7, 2007 and amendments to the Amended and Restated 2006 Plan by unanimous written consent on July 20, 2007.⁶ At the annual meeting of stockholders of HTGC held on June 21, 2007, stockholders approved the Amended and Restated 2006 Plan and the separate 2007 amendment and restatement of HTGC's amended and restated 2004 Equity Incentive Plan (such plan, before both amendments and restatements, the "Original 2004

³ HTGC has not issued any options to Non-employee Directors under the Original 2006 Plan. At a meeting held on May 17, 2007, the Board voted to approve the suspension of the Original 2006 Plan and the grant of any options under the Original 2006 Plan.

⁴ Because HTGC has a staggered Board, each director on the Board is elected to a three year term subject to reelection only every three years.

⁵ Each Non-employee Director receives an annual fee of \$50,000, \$1,500 for each committee meeting attended, and reimbursement of reasonable out-of-pocket expenses incurred in attending Board meetings. Each Non-employee Director who serves as chairperson of a Board committee receives an additional \$15,000 per year.

⁶ The Board determined that its amendments to the Amended and Restated 2006 Plan complied with that section of the Amended and Restated 2006 Plan authorizing plan amendments and did not necessitate a stockholder vote pursuant to the provisions of the Act and the rules promulgated thereunder.

Plan”); as first amended and restated, the “First Amended and Restated 2004 Plan”; and as further amended and restated in 2007, the “Second Amended and Restated 2004 Plan”). Participants under the Second Amended and Restated 2004 Plan are limited to employees of HTGC and do not include Non-employee Directors.

5. A Commission order permits HTGC to issue shares of Common Stock that, at the time of issuance, are subject to certain forfeiture restrictions, and thus are restricted as to their transferability until such forfeiture restrictions have lapsed (the “Restricted Stock”) to Non-employee Directors under the Amended and Restated 2006 Plan and employees of HTGC and employees of its wholly-owned consolidated subsidiaries under the Second Amended and Restated 2004 Plan (“HTGC Restricted Stock Order”).⁷ In light of the HTGC Restricted Stock Order, HTGC believes that it will no longer need to issue options to purchase as many shares of Common Stock as it did under the Original 2006 Plan to adequately compensate Non-employee Directors. As compared to the Original 2006 Plan, the Amended and Restated 2006 Plan would reduce the number of options granted to Non-employee Directors, change the timeframe within which such options are granted, and change the vesting provisions of such options.

6. Under the Amended and Restated 2006 Plan, a maximum of 1,000,000 shares of Common Stock, in the aggregate, may be issued to Non-employee Directors and 40,000 shares of Common Stock may be issued to any Non-employee Director in any calendar year. Each individual initially elected to the Board as a Non-employee Director after the date on which the Commission issues an order on the application (the “Order Date”) will automatically be granted options to purchase 10,000 shares of Common Stock

⁷ Hercules Technology Growth Capital Growth Capital, Inc., Investment Company Act Release Nos. 27815 (May 2, 2007) (notice) and 27838 (May 23, 2007) (order).

(the “Initial Grants”). The options issued under the Initial Grants will vest as to one-half of the 10,000 shares of Common Stock on each of the first two anniversaries of the date of grant. Each Non-employee Director automatically will be granted options to purchase 15,000 shares of Common Stock on the date of such Non-employee Director’s reelection to the Board (the “Periodic Grants”). The options issued under the Periodic Grants will vest as to one-third of the 15,000 shares of Common Stock on each of the three anniversaries of the date of grant. Non-employee Directors who hold office on the Order Date will be granted options for a number of shares of Common Stock equal to the product of (x) the number of years remaining in their then-current term divided by three and (y) 15,000. These options will vest as to 5,000 shares of Common Stock on each anniversary of the date of grant over the remainder of such Non-employee Director’s term in office.

7. Under the terms of the Amended and Restated 2006 Plan, the exercise price of an option will not be less than the current market value of, or if no such market value exists, the current net asset value per share of, Common Stock on the date of the issuance of the option.⁸ Options granted under the Amended and Restated 2006 Plan will expire ten years from the date of grant and may not be transferred except for disposition by gift, will or intestacy.

8. As of July 31, 2007, HTGC had issued 6,668 shares of Restricted Stock to Non-employee Directors under the Amended and Restated 2006 Plan, had outstanding options to purchase 2,782,513 shares of Common Stock and had outstanding warrants to purchase 382,629 shares of Common Stock. As of that date, all outstanding options to

⁸ Under the Amended and Restated 2006 Plan, “current market value” is the closing price of the Common Stock on the NASDAQ Global Market (or if different, on the exchange where the Common Stock is traded) on the date the option is granted.

purchase Common Stock consisted entirely of options issued to directors, officers, and employees of HTGC under the Original 2004 Plan and the First Amended and Restated 2004 Plan.⁹ As of July 31, 2007, of the outstanding warrants to purchase 382,629 shares of Common Stock, warrants issued to officers and employees of HTGC under the Original 2004 Plan to purchase 10,693 shares of Common Stock were outstanding. The other warrants outstanding as of that date were issued to directors, officers, and employees of HTGC under a warrant agreement dated June 22, 2004 by and between HTGC and American Stock Transfer & Trust Company, as warrant agent (the “Warrant Agreement”). HTGC has no outstanding warrants and options to purchase its voting securities, other than the warrants and options issued under the Original 2004 Plan, the Warrant Agreement, and the First Amended and Restated 2004 Plan.

9. As of July 31, 2007, HTGC had outstanding 32,414,178 shares of Common Stock.¹⁰ As of that date, the amount of voting securities issued as Restricted Stock under the Amended and Restated 2006 Plan and that would result from the exercise of all outstanding warrants and options would be 3,171,180 shares of Common Stock, or approximately 9.78% of HTGC’s outstanding voting securities. As of July 31, 2007, the amount of voting securities issued as Restricted Stock under the Amended and Restated 2006 Plan and that would result from the exercise of all outstanding warrants and options issued to directors, officers, and employees of HTGC under the Original 2004 Plan and the First Amended and Restated 2004 Plan would be 2,799,874 shares of Common Stock, or approximately 8.66% of HTGC’s outstanding voting securities.

⁹ As of July 31, 2007, HTGC had outstanding options issued to directors, officers, and employees of HTGC under the Original 2004 Plan and the First Amended and Restated 2004 Plan to purchase 1,221,013 shares of Common Stock and 1,561,500 shares of Common Stock, respectively.

Applicant's Legal Analysis:

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) the options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that

¹⁰ The outstanding 32,414,178 shares of Common Stock, as of July 31, 2007, include the 6,668 shares of Restricted Stock issued under the Amended and Restated 2006 Plan. The Common Stock, of which the Restricted Stock is a particular type, constitutes the only voting security of HTGC currently outstanding.

would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. HTGC represents that the proposal to issue options to Non-employee Directors under the Amended and Restated 2006 Plan meets all of the requirements of section 61(a)(3) of the Act. HTGC states that the Board, including the Non-employee Directors, actively oversees HTGC's affairs and HTGC relies on the judgment and experience of the Board. HTGC states that the Non-employee Directors provide advice on financial and operational issues, credit and underwriting policies, asset valuation, strategic direction, as well as serve on various committees. HTGC states that the professional experiences and expertise of the Non-employee Directors make them valuable resources for management. HTGC states that the options that will be granted to the Non-employee Directors under the Amended and Restated 2006 Plan will provide significant incentives to the Non-employee Directors to remain on the Board and to devote their best efforts to the success of HTGC's business and the enhancement of stockholder value. HTGC states that the options granted under the Amended and Restated 2006 Plan will provide a means for the Non-employee Directors to increase their ownership interests in HTGC, thereby ensuring close identification of their interests with those of HTGC and its stockholders. HTGC asserts that by providing incentives in the form of options under the Amended and Restated 2006 Plan, HTGC would be better able to retain and attract qualified persons to serve as Non-employee Directors.

4. HTGC submits that the proposal to issue options to Non-employee Directors to purchase Common Stock under the Amended and Restated 2006 Plan is fair and reasonable and does not involve overreaching of HTGC or its stockholders. HTGC states that the amount of voting securities issued as Restricted Stock under the Amended

and Restated 2006 Plan and that would result from the exercise of all outstanding options and warrants issued to directors, officers and employees of HTGC under the Original 2004 Plan and the First Amended and Restated 2004 Plan would be 2,799,874 shares of Common Stock, or approximately 8.66% of HTGC's outstanding voting securities as of July 31, 2007, which is below the percentage limitations in the Act. In light of the above, HTGC asserts that the granting of options pursuant to the Amended and Restated 2006 Plan will not have a substantial dilutive effect on the net asset value of Common Stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon
Deputy Secretary