

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27748; 812-13238]

Hercules Technology Growth Capital, Inc., et al.; Notice of Application

March 7, 2007

Agency: Securities and Exchange Commission (the "Commission").

Action: Notice of an application for an order under sections 6(c), 57(c), and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 thereunder granting exemptions from sections 18(a), 57(a)(1), 57(a)(2) and 61(a) of the Act and permitting certain transactions otherwise prohibited by section 57(a)(4) of the Act.

Summary of Application: Applicants, Hercules Technology Growth Capital, Inc. ("HTGC"), Hercules Technology II, L.P. ("HTII"), Hercules Technology SBIC Management, LLC ("HTM"), Hercules Funding I, LLC ("HFI") and Hercules Funding Trust I ("HFT"), hereby apply for an order permitting a business development company and its wholly-owned subsidiaries to engage in certain transactions that otherwise would be permitted if the business development company and its subsidiaries were one company, and permitting the business development company to adhere to a modified asset coverage requirement.

Filing Dates: The application was filed on September 28, 2005 and amended on March 5, 2007.

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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by

5:30 p.m. on April 2, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should 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, D.C. 20549-1090. Applicants, c/o Manuel A. Henriquez, Chairman, President and Chief Executive Officer, Hercules Technology Growth Capital, Inc., 525 University Avenue, Suite 700, Palo Alto, CA 94301.

For Further Information Contact: Emerson S. Davis, Sr., Senior Counsel, at (202) 551-6868, 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, D.C. 20549-0102 (tel. 202-551-5850).

Applicants' Representations:

1. HTGC, a Maryland corporation, is a closed-end, non-diversified management investment company that has elected to be regulated as a business development company ("BDC") within the meaning of section 2(a)(48) of the Act.¹ HTGC is a specialty finance company that provides debt and equity capital to

¹ Section 2(a)(48) 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.

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").

2. HTII, a Delaware limited partnership and a wholly-owned subsidiary of HTGC, is a small business investment company ("SBIC") licensed under the Small Business Administration ("SBA") to operate under the Small Business Investment Act of 1958 ("SBIA"). HTII relies on section 3(c)(7) of the Act. HTM, a Delaware limited liability company and a wholly-owned subsidiary of HTGC, is the general partner and investment adviser to HTII. HTGC is the primary limited partner of HTII. Manuel A. Henriquez, an officer of HTGC, and H. Scott Harvey, an officer of HTGC, each have a nominal (0.001%) limited partnership investment in HTII pursuant to the advice of tax counsel in order to ensure that HTII is taxed as a partnership under the Internal Revenue Code of 1986, as amended. HFI, a Delaware limited liability company, and HFT, a Delaware statutory trust, and each wholly-owned subsidiary of HTGC, were created to facilitate debt financing collateralized by certain HTGC's investments. HFT relies on rule 3a-7 under the Act. HFT is a wholly-owned subsidiary of HFI.

3. Applicants may in the future establish additional wholly-owned subsidiaries of HTGC, (together with HTII, HTM, HFI and HFT, "Subsidiaries"), private investment companies that rely on section 3(c)(7) of the Act and some of which may be licensed by the SBA to operate under the SBIA as SBICs (together with HTII, "SBIC Subsidiaries").

Applicant's Legal Analysis:

1. Applicants request an exemption pursuant to sections 6(c),

57(c) and 57(i) of the Act and rule 17d-1 under the Act from the provisions of sections 18(a), 57(a)(1), 57(a)(2) and 61(a) of the Act to permit HTGC and the Subsidiaries to engage in certain transactions that otherwise would be permitted if HTGC and the Subsidiaries were one company and to permit HTGC to adhere a modified asset coverage requirement.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in sections 18(a)(1)(A) and (B).

3. Applicants state that a question exists as to whether HTGC must comply with the asset coverage requirements of Section 18(a) (as modified by Section 61(a)) solely on an individual basis or whether HTGC must also comply with the asset coverage requirements on a consolidated basis because HTGC may be deemed to be an indirect issuer of any class of senior securities issued by HTII or another SBIC Subsidiary. Applicants state that they wish to treat HTII and other SBIC Subsidiaries as if each was a BDC subject to sections 18 and 61 of the Act. Applicants state that companies operating under the SBIA, such as HTII, will be subject to the SBA's substantial regulation of permissible leverage in its capital structure.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act if, and to

the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, to the extent that HTGC is entitled to rely on section 18(k) for an exemption from the asset coverage requirements of sections 18(a) and 61(a), there is no policy reason to deny the benefit of that exemption when HTGC consolidates its assets with those of HTII and other SBIC Subsidiaries for the purpose of compliance with those requirements.

5. Sections 57(a)(1) and (2) of the Act generally prohibit, with certain exceptions, sales or purchases or other property between BDCs and certain of their affiliates as described in section 57(b) of the Act. Section 57(b) includes a person, directly or indirectly, either controlling, controlled by or under common control of the BDC. Applicants state that HTGC owns or will directly or indirectly own more than 99.9% of the voting securities of each Subsidiary and each Subsidiary is or will be under the common control of HTGC. Applicants further state that any purchase and sales between (a) HTGC and one or more Subsidiaries, (b) Subsidiaries and downstream controlled affiliates of HTGC and another Subsidiary and (c) HTGC and a controlled portfolio affiliate of a Subsidiary may be prohibited. Applicants submit that the requested relief is to the extent to permit HTGC and its Subsidiaries, all of whom are owned, directly or indirectly, by the shareholders of HTGC, to do that which they would otherwise would be permitted to do if they were one company.

6. Section 57(c) provides that the Commission will exempt a proposed transaction from the terms of the proposed transactions, including the

consideration to be paid or received, if they are reasonable and fair and do not involve overreaching of any person concerned, and the proposed transaction is consistent with the policy of the business development company concerned and the general purposes of the Act. Applicants submit that the requested relief meets this standard.

7. Section 17(d) of the Act and rule 17d-1 under the Act prohibit persons of registered investment company, or an affiliated person of such person, acting as principal, from participating in any joint transaction or arrangement in which the registered company or a company it controls is a participant, unless the Commission has issued an order authorizing the arrangement. Section 57(a)(4) of the Act imposes substantially the same prohibitions on joint transactions involving BDCs and certain affiliates of their affiliates as described in section 57(b). Section 57(i) of the Act provides that rules and regulations under sections 17(a) and (d) and rule 17d-1 will apply to transactions subject to section 57(a)(4) in the absence of rules under the section. The Commission has not adopted rules under section 57(a)(4) with respect to joint transactions and, accordingly, the standard set forth in rule 17d-1 governs applicants' request for relief.

8. Applicants state that a joint transaction in which a Subsidiary and HTGC or another Subsidiary may be prohibited under section 57(a)(4) because HTGC would not be a controlled affiliate of the Subsidiaries. Applicants request relief under section 57(i) and rule 17d-1 to permit joint transactions in which the Subsidiaries to the extent that such transactions would not be prohibited if the Subsidiaries participating in the transactions were deemed to be part of HTGC and not separate companies.

9. In determining whether to grant an order under section 57(i) and rule 17d-1, the Commission may consider whether the participation of the BDC in the joint transaction is consistent with the provisions, policies, and purposes of the Act to the extent to which such participation is on a basis different from or less advantageous than that of other participants in the transaction. Applicants state that the standard is satisfied because the requested relief would be simply to permit HTGC and its Subsidiaries to conduct their business as if they were one company.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Except for a nominal limited partnership interest in a Subsidiary to the extent necessary to accomplish the Subsidiary's taxation goals as described in this Application, HTGC will at all times be the sole limited partner of any Subsidiary and the sole owner of the Subsidiary's general partner, or otherwise own and hold beneficially, all of the outstanding voting securities or other equity interests in the Subsidiary
2. No person shall serve or act as investment adviser to HTII or another Subsidiary unless the HTGC Board and shareholders of HTGC have taken the action with respect thereto also required to be taken by the functional equivalent of the board of directors of HTII or another Subsidiary and shareholders of HTII or another Subsidiary as if HTII or another Subsidiary were a BDC.
3. No person shall serve as managing member of HTM unless such person also shall be a member of the management of HTGC. The managing members of HTM will be elected or appointed by HTGC.

4. HTGC will not issue or sell any senior security and HTGC will not cause or permit HTII or any other SBIC Subsidiary to issue or sell any senior security of which HTGC, HTII or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that immediately after issuance or sale by any HTGC, HTII or any other SBIC Subsidiary of an such senior security, HTGC individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)), except that, in determining whether HTGC on a consolidated basis has the asset coverage required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of HTII or another SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), will be treated as indebtedness not represented by senior securities.

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

Florence E. Harmon
Deputy Secretary