

company. Applicant has eight existing Funds: Hercules European Value Fund, Hercules Pacific Basin Value Fund, Hercules Latin American Value Fund, Hercules World Bond Fund, Hercules Global Short-Term Fund, Hercules North American Growth and Income Fund, Hercules Emerging Markets Debt Fund, and Hercules Money Market Fund.

2. Hercules International Management L.L.C. ("Hercules") serves as investment adviser for each Fund. Hercules was organized under Delaware law and is owned equally by Piper Jaffray Companies Inc. ("Piper") and Midland Walwyn Capital Corporation ("MWCC").

3. Hercules has retained the services of several advisory organizations to serve as subadvisers to the individual Funds (each a "Subadviser"). The current Subadvisers are Pictet International Management Ltd., Edinburgh Fund Managers plc, Bankers Trust Company ("Bankers Trust"), Salomon Brothers Asset Management Limited, Salomon Brothers Asset Management Inc, Piper Capital Management Incorporated ("PCM"), Acci, and AGF Investment Advisors, Inc. Each Subadviser, pursuant to an agreement with Hercules, directs the investments of the Fund it subadvises in accordance with applicable law and the Fund's investment objectives, policies, and restrictions. The activities of the Subadvisers are subject to the supervision of Hercules, which has ultimate responsibility to select the Subadvisers.

4. On April 13, 1995, applicant's board of directors approved applicant entering into a new investment advisory and management agreement with PCM, subject to approval by shareholders of the Funds. A new agreement is necessary because Piper and MWCC have determined to dissolve Hercules. On the same date, the board approved PCM entering into new subadvisory agreements with the current Subadvisers, subject to approval by the shareholders of each Fund. The new agreement will be identical to the existing agreements in all material respects except that PCM will be substituted for Hercules as a party to the agreements. The term "Adviser" as used herein refers to Hercules, PCM, or such person that in the future serves as principal investment adviser to the Funds.

5. Applicant requests relief to permit an "Eligible Dealer," as defined below, to engage in principal transactions with a Fund in the ordinary course of business. An Eligible Dealer is a Subadviser of one or more Funds not

engaging in the transaction that conducts advisory and securities dealer operations via the same legal entity that is a second-tier affiliate of the Fund engaging in the transaction solely by reason of being a Subadviser of one or more of the other Funds. An Eligible Dealer is not (a) an affiliated person of the Fund engaging in the transaction, (b) the Adviser, or an affiliated person of the Adviser, or (c) an officer, director, employee, promoter, or principal underwriter of any Fund, or an affiliated person of such officer, director, employee, promoter, or principal underwriter. Bankers Trust, as the only Subadviser that conducts advisory and dealer operations through the same legal entity, is currently the only Subadviser that satisfies the definition of an Eligible Dealer.

Applicant's Legal Analysis

1. Section 17(a), among other things, prohibits an affiliated person, principal underwriter, or promoter of a registered investment company, or any affiliated person of such persons, acting as principal, from (a) selling to or purchasing from such registered company, or any company controlled by such company, any security or other property, or (b) borrowing money or other property from such company. Section 2(a)(3) defines "affiliated person" of another person as including a person controlling, controlled by, or under common control with such other person, and, when such other person is an investment company, the investment adviser thereof.

2. Applicant asserts that the Funds may be affiliated persons of each other because they may be under the common control of (a) the Adviser, which makes decisions and fashion policies that impact all of the Funds, and (b) a single board of directors that oversees such policies. A Subadviser is an affiliated person of the Fund or Funds that it subadvises, and a second-tier affiliate of each other Fund. When such a Subadviser conducts dealer operations via the same entity, the dealer component also would be a second-tier affiliate of the Funds not subadvised by the Subadviser. Accordingly, relief from section 17(a) is required for an Eligible Dealer to engage in principal transactions with a Fund.

3. Applicant submits that the primary purpose of section 17(a) is to prevent persons with the power to control an investment company from using that power to such person's own pecuniary advantage, *i.e.*, to prevent self-dealing. Applicant believes that no element of self-dealing would be involved in the proposed transactions because the

Subadviser recommending the transaction would be dealing with an entity that in economic reality is a competitor of the Subadviser. Each transaction between a Fund and an Eligible Dealer would be the product of arms-length bargaining, and the Subadviser recommending the transaction can neither lose nor gain financially on the basis of whether the transaction is beneficial or detrimental to the Eligible Dealer.

4. Section 17(b) provides that the SEC may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. Applicant believes that the proposed transactions will meet the standards of section 17(b). Because the pecuniary interests of a Subadviser would be solely and directly aligned with those of the Fund it subadvises, it is reasonable to conclude that the consideration to be paid to or received by such Fund in connection with a principal transaction with an Eligible Dealer will be reasonable and fair.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule thereunder, 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. Applicant asserts that the proposed transactions would be consistent with the policies of the Fund involved. Further, applicant submits that the broader the universe of persons with which a Fund may engage in principal transactions, the easier it is to achieve best price and execution on such transactions and the better will be the Fund's overall investment performance.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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