

a. Each agency shall develop or have written procedures for the approval of significant guidance documents. Those procedures shall ensure that the issuance of significant guidance documents is approved by appropriate senior agency officials.

b. Agency employees should not depart from significant guidance documents without appropriate justification and supervisory concurrence.

2. *Standard Elements:* Each significant guidance document shall:

a. Include the term "guidance" or its functional equivalent;

b. Identify the agency(ies) or office(s) issuing the document;

c. Identify the activity to which and the persons to whom the significant guidance document applies;

d. Include the date of issuance;

e. Note if it is a revision to a previously issued guidance document and, if so, identify the document that it replaces;

f. Provide the title of the document, and any document identification number, if one exists;

g. Include the citation to the statutory provision or regulation (in Code of Federal Regulations format) which it applies to or interprets; and

h. Not include mandatory language such as "shall," "must," "required" or "requirement," unless the agency is using these words to describe a statutory or regulatory requirement, or the language is addressed to agency staff and will not foreclose agency consideration of positions advanced by affected private parties.

III. Public Access and Feedback for Significant Guidance Documents

1. Internet Access:

a. Each agency shall maintain on its Web site—or as a link on an agency's Web site to the electronic list posted on a component or subagency's Web site—a current list of its significant guidance documents in effect. The list shall include the name of each significant guidance document, any document identification number, and issuance and revision dates. The agency shall provide a link from the current list to each significant guidance document that is in effect. New significant guidance documents and their Web site links shall be added promptly to this list, no later than 30 days from the date of issuance.

b. The list shall identify significant guidance documents that have been added, revised or withdrawn in the past year.

2. Public Feedback:

a. Each agency shall establish and clearly advertise on its Web site a means

for the public to submit comments electronically on significant guidance documents, and to submit a request electronically for issuance, reconsideration, modification, or rescission of significant guidance documents. Public comments under these procedures are for the benefit of the agency, and no formal response to comments by the agency is required by this Bulletin.

b. Each agency shall designate an office (or offices) to receive and address complaints by the public that the agency is not following the procedures in this Bulletin or is improperly treating a significant guidance document as a binding requirement. The agency shall provide, on its Web site, the name and contact information for the office(s).

IV. Notice and Public Comment for Economically Significant Guidance Documents

1. *In General:* Except as provided in Section IV(2), when an agency prepares a draft of an economically significant guidance document, the agency shall:

a. Publish a notice in the **Federal Register** announcing that the draft document is available;

b. Post the draft document on the Internet and make it publicly available in hard copy (or notify the public how they can review the guidance document if it is not in a format that permits such electronic posting with reasonable efforts);

c. Invite public comment on the draft document; and

d. Prepare and post on the agency's Web site a response-to-comments document.

2. *Exemptions:* An agency head, in consultation with the OIRA Administrator, may identify a particular economically significant guidance document or category of such documents for which the procedures of this Section are not feasible or appropriate.

V. Emergencies

In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with this Bulletin. For those significant guidance documents that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule its proceedings so as to permit sufficient time to comply with this Bulletin.

VI. Judicial Review

This Bulletin is intended to improve the internal management of the Executive Branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.

VII. Effective Date

The requirements of this Bulletin shall take effect 180 days after its publication in the **Federal Register** except that agencies will have 210 days to comply with requirements for significant guidance documents promulgated on or before the date of publication of this Bulletin.

Dated: January 18, 2007.

Steven D. Aitken,

Acting Administrator, Office of Information and Regulatory Affairs.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27668; 812-13201]

Hercules Technology Growth Capital, Inc.; Notice of Application

January 19, 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 approving a proposal to issue options to purchase HTGC's common stock ("Common Stock") to directors who are not officers or employees of HTGC ("Eligible Directors") pursuant to HTGC's 2006 Non-employee Director Plan (the "Plan").

FILING DATES: The application was filed on June 21, 2005 and amended on December 12, 2006.

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 February 13, 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 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 20549-9303. Applicant, c/o Manuel A. Henriquez, Chairman of the Board, President and Chief Executive Officer, Hercules Technology Growth Capital, Inc., 400 Hamilton Avenue, Suite 310, Palo Alto, CA 94301.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 551-6868, or Nadya 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.¹ 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. Applicant's business and affairs are managed under the direction of its board of directors ("Board"). Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Plan for Eligible Directors.² Applicant has a four member Board, three of whom are Eligible Directors. The Plan was approved on May 30, 2006 by the Board and HTGC's shareholders. The Plan will not become effective until

the date the Commission issues an order on the application ("Order Date").

3. As of October 20, 2006, HTGC had outstanding 16,188,402 shares of Common Stock. Applicant has in place an equity compensation plan for executive officers, directors and other key employees ("2004 Plan"). Under the 2004 Plan, options to purchase 1,889,346 shares of the Common Stock are outstanding. Eligible Directors are not eligible to participate in the 2004 Plan. Applicant also has outstanding warrants to purchase 673,223 shares of Common Stock, of which 56,551 were issued under the 2004 Plan to HTGC's officers, directors and employees. Applicant has no other warrants, options or rights to purchase its voting securities outstanding.

4. Under the Plan, options may be granted up to a maximum of 1,000,000 shares of Common Stock. Each Eligible Director will receive an initial grant on the Order Date of options to purchase 20,000 shares of Common Shares and an annual grant on each anniversary of the Eligible Director's election to the Board of an option to purchase 20,000 shares of Common Stock, which will vest over two years, in equal installments, on each anniversary date of the grant. The Plan provides that the exercise price of the options will not be less than the current market value of, or if no market value exists, the current net asset value of, the Common Stock as determined in good faith by the Board on the date of grant.

5. The Plan also provides that it will terminate on the tenth anniversary of its adoption and no additional grants of options may be made under the Plan after that date. The Plan further provides that the options may not be transferred except for disposition by gift, will or laws of descent and distribution.

6. As of October 20, 2006, 16,188,402 shares of Common Stock were outstanding. The total number of shares that would result from the exercise of all outstanding options and warrants issued to HTGC's officers, directors and employees is 1,980,733, or approximately 12.24% of HTGC's outstanding voting securities. The total number of shares that would result from the exercise of all of HTGC's outstanding options, warrants or rights is approximately 15.83% of HTGC's outstanding voting securities.

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(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of section 205(b)(2); 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 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. Applicant represents that the terms of the Plan meet all of the requirements of section 61(a)(3) of the Act. HTGC states that the Board, including the Eligible Directors, actively oversees applicant's affairs and applicant relies on the judgment and experience of the Board. Applicant states that the Eligible Directors provide advice on financial and operational issues, credit and underwriting policies, asset valuation, strategic direction, as well as serve on various committees. Applicant states that the professional experiences and expertise of the Eligible Directors make them valuable resources for management. HTGC states that the options that will be granted to the Eligible Directors under the Plan will provide significant incentives to the

¹ Section 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.

² For their services on the Board and its committees, Eligible Directors currently receive cash compensation in the form of annual fees, fees for service on the committees, and reimbursement of reasonable out-of-pocket expenses incurred in attending Board meetings.

Eligible 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. Applicant states that the options granted under the Plan will provide a means for the Eligible Directors to increase their ownership interests in HTGC, thereby ensuring close identification of their interests with those of HTGC and its stockholders. Applicant asserts that by providing incentives in the form of options under the Plan, HTGC would be better able to retain and attract qualified persons to serve as Eligible Directors.

4. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant asserts that the exercise of the options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of applicant's Common Stock.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55117; File No. SR-Amex-2006-101]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Relating to the Listing and Trading of Shares of Funds of the ProShares Trust

January 17, 2007.

I. Introduction

On October 24, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² On November 22, 2006, Amex filed Amendment No. 1 to the proposed rule change.³ On December 8, 2006, Amex filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change,

as amended, was published for comment in the **Federal Register** on December 27, 2006 for a 15-day comment period.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendments No. 1 and 2, on an accelerated basis.

II. Description of the Proposal

Amex Rules 1000A *et seq.* provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading.⁶ Index Fund Shares are registered under the Investment Company Act of 1940 ("1940 Act"), as well as under the Act. Under Amex Rule 1000A(b)(2), the Exchange proposes to list and trade Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance.

Pursuant to these rules, the Exchange proposes to list the shares (the "Shares") of eighty-one (81) new funds (the "Funds") of the ProShares Trust (the "Trust"). In its proposal, the Exchange provided detailed descriptions regarding the Underlying Indexes,⁷ as well as the structure and operation of the Funds and the listing and trading of the Shares. Key features of the proposal are noted below.

Product Description

The Funds are based on the following equity securities indexes: (1) S&P Small Cap 600 Index; (2) S&P 500/Citigroup Value Index; (3) S&P 500/Citigroup Growth Index; (4) S&P MidCap 400/Citigroup Value Index; (5) S&P MidCap 400/Citigroup Growth Index; (6) S&P SmallCap 600/Citigroup Value Index; (7) S&P SmallCap 600/Citigroup Growth Index; (8) Dow Jones U.S. Basic Materials Index; (9) Dow Jones U.S. Consumer Services Index; (10) Dow Jones U.S. Consumer Goods Index; (11) Dow Jones U.S. Oil and Gas Index; (12) Dow Jones U.S. Financials Index; (13) Dow Jones U.S. Health Care Index; (14) Dow Jones U.S. Industrials Index; (15)

⁵ See Securities Exchange Act Release No. 54961 (December 18, 2006), 71 FR 77823 ("Notice").

⁶ Index Fund Shares are defined in Amex Rule 1000A(b)(1) as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

⁷ See Notice, *supra* note 5, 71 FR at 77825-77827 (describing the general design and composition of each Underlying Index).

Dow Jones U.S. Real Estate Index; (16) Dow Jones U.S. Semiconductor Index; (17) Dow Jones U.S. Technology Index; (18) Dow Jones U.S. Utilities Index; (19) Russell 2000® Index; (20) Russell Midcap® Index; (21) Russell Midcap® Growth Index; (22) Russell Midcap® Value Index; (23) Russell 1000® Index; (24) Russell 1000® Growth Index; (25) Russell 1000® Value Index; (26) Russell 2000® Growth Index; and (27) Russell 2000® Value Index (each index individually referred to as the "Underlying Index," and all Underlying Indexes collectively referred to as the "Underlying Indexes").

Each of the Funds is designated as an Ultra Fund, Short Fund, or UltraShort Fund, based on its investment objective. Each Ultra Fund or "Bullish Fund" seeks a daily investment result, before fees and expenses, which corresponds to twice (200%) the daily performance of its Underlying Index. Accordingly, the NAV of the Shares of each Ultra Fund, if successful in meeting its objective, should increase, on a percentage basis, approximately twice as much as the corresponding Underlying Index gains when the prices of the securities in such Underlying Index increase on a given day, and should decrease approximately twice as much as the respective Underlying Index loses when such prices decline on a given day. The Bullish Funds generally will hold at least 85% of their assets in the component equity securities of the relevant Underlying Index. The remainder of assets will be devoted to certain financial instruments⁸ and money market instruments⁹ that are intended to create the additional needed exposure to such Underlying Index necessary to pursue its investment objective.

Each Short Fund seeks a daily investment result, before fees and expenses, that corresponds to the inverse or opposite of the daily performance (-100%) of its Underlying Index. Accordingly, the NAV of the Shares of each Short Fund should increase approximately as much, on a percentage basis, as the corresponding

⁸ The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors, as well as swap agreements, forward contracts, repurchase agreements, and reverse repurchase agreements (the "Financial Instruments").

⁹ Money market instruments include U.S. government securities and repurchase agreements (the "Money Market Instruments"). Repurchase agreements held by the Funds will be consistent with Rule 2a-7 of the 1940 Act, *i.e.*, remaining maturities of 397 days or less and rated investment-grade.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 supersedes and replaces the original filing in its entirety.

⁴ Amendment No. 2 supersedes and replaces Amendment No. 1 in its entirety.