challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination for unescorted access to radioactive material or other property based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to radioactive material or other property, the Licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to radioactive material or other property shall not be granted to an individual.

Protection of Information

1. Each Licensee who obtains a criminal history records check for an individual, pursuant to this Order, shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record nor personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to the radioactive material or other property. No individual authorized to have access to the information may redisseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to redisseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to radioactive material or other property. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole, or in part.

Attachment 3—Trustworthiness and Reliability Requirements

In order to ensure the safe handling, use, and control radioactive material or other property, each licensee shall control and limit access to radioactive material or other property to those individuals who have established the need-to-know, and are considered to be trustworthy and reliable. Licensees shall document the basis for concluding that there is reasonable assurance that the individuals that are granted unescorted access to radioactive material or other property are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent activities.

The Licensee shall comply with the requirements of this Attachment:

1. The trustworthiness and reliability of an individual shall be determined based on a background investigation:

(a) The background investigation shall address at least the past three (3) years, and, at a minimum, include verification of employment, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate the information provided by the employee (i.e., seeking references not supplied by the individual).

(b) If an individual's employment has been less than the required three (3) year period, educational references may be used in lieu of employment history.

The licensee's background investigation requirements may be satisfied for an individual that has an active Federal security clearance.

2. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

[FR Doc. E7–8762 Filed 5–4–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27812; 812–13340]

First Trust Exchange-Traded Fund, et al.; Notice of Application

April 30, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: The applicants request an order to permit certain management investment companies and unit investment trusts registered under the Act to acquire shares of certain open-end management investment companies registered under the Act that are outside the same group of investment companies.

APPLICANTS: First Trust Exchange-Traded Fund (''Initial Trust''), First Trust Exchange-Traded Fund II (''Trust II''), and First Trust Exchange-Traded AlphaDEX Fund (''AlphaDEX Trust'') (collectively, the ''Existing Trusts''), First Trust Advisors L.P. (the ''Advisor'') and First Trust Portfolios L.P. (the ''Distributor'').

FILING DATES: The application was filed on November 7, 2006, and amended on April 27, 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 May 29, 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, DC 20549–1090; Applicants, 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Mary Kay Frech, Branch Chief, 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 may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Existing Trusts, Massachusetts business trusts, are each an open-end

management investment company registered under the Act and organized as a series fund.[1] The Initial Trust currently has twelve series. Trust II and the AlphaDEX Trust currently do not have series. The Existing Trusts and their series operate as exchange-traded funds that redeem their shares in large aggregations (''Creation Units'') in reliance on an order previously granted by the Commission (''ETF Order'').[2] The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Advisor or an entity controlling, controlled by or under common control with the Advisor will serve as investment adviser to the Index Funds. The Advisor may enter into sub-advisory agreements with sub-advisors with respect to particular Index Funds (each, a ''Sub-Advisor''). The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Applicants request relief to: (a) Permit management investment companies or series thereof (''Investing Management Companies'') and unit investment trusts or series thereof (''Investing Trusts'' and, together with Investing Management Companies, ''Investing Funds'') registered under the Act, that are not part of the same group of investment companies as an Index Fund within the meaning of section 12(d)(1)(G)(ii) of the Act, to acquire, and such Index Fund to sell, shares of such Index Fund beyond the limits of sections 12(d)(1)(A) and (B) of the Act; (b) permit principal underwriters, and any other brokers or dealers (''Brokers'') to sell shares of any Index Fund to an Investing Fund in excess of the limits prescribed by section 12(d)(1)(B) of the Act; and (c) exempt such transactions from section 17(a) of the Act.[3]

3. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (''Investing Fund Adviser'') and may be advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each an ''Investing Fund Subadviser''). Any Investing Fund Adviser or Investing Fund Subadviser will be registered as an investment adviser under the Advisers Act. Each Investing Trust will be sponsored by a sponsor (''Sponsor'').

4. Applicants state that the Index Funds will offer the Investing Funds simple and efficient vehicles to achieve their asset allocation or diversification objectives. Applicants state that the Index Funds will also provide high quality and low cost professional investment program alternatives to Investing Funds that do not have sufficient assets to operate a comparable fund.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, and any broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit Investing Funds to acquire shares of the Index Funds in excess of the limits in section 12(d)(1)(A) of the Act, and an Index Fund, any principal underwriter for an Index Fund and any Broker to sell shares of an Index Fund to an Investing Fund in excess of the limits of section 12(d)(1)(B) of the Act.

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B) of the Act, which include concerns about large scale redemptions of the acquired fund's shares, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that neither the Investing Fund nor an Investing Fund Affiliate would be able to exert undue influence over the Index Funds.[4] To limit the control that an Investing Fund may have over an Index Fund, applicants propose a condition prohibiting the Investing Fund Adviser or Sponsor, any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund Adviser/ Sponsor Group'') from controlling (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Investing Fund Subadviser, any person controlling, controlled by or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by or under common control with the Investing Fund Subadviser (''Subadviser Group''). Applicants propose other conditions to limit the potential for undue influence over the Index Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Index Fund) will cause an Index Fund to purchase a security in an offering of securities during the existence of any underwriting or selling syndicate of

[1] Applicants request that the order also extend to any other existing and future series of the Existing Trusts and any other registered open-end management investment companies and their series that may be created in the future and are part of the same group of investment companies within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Existing Trusts (together with the Existing Trusts, if they have no series, and any series of an Existing Trust, the ''Index Funds'').

[2] *In the matter of First Trust Exchange-Traded Fund, et al.*, Investment Company Act Release Nos. 27051 (August 26, 2005) (notice) and 27068 (September 20, 2005) (order).

[3] All Index Funds that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund may rely on the requested order only to invest in the Index Funds and not in any other registered investment company.

[4] An ''Investing Fund Affiliate'' is an Investing Fund Adviser, Investing Fund Subadviser, Sponsor, promoter, or principal underwriter of an Investing Fund, and any person controlling, controlled by, or under common control with any of those entities. An ''Index Fund Affiliate'' is an investment adviser, investment subadviser, promoter, or principal underwriter of an Index Fund, and any person controlling, controlled by, or under common control with any of those entities.

which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Advisor, Investing Fund Subadviser, Sponsor, or employee of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, Sponsor or employee is an affiliated person. An Underwriting Affiliate does not include a person whose relationship to an Index Fund is covered by section 10(f) of the Act.

5. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Disinterested Trustees''), will find that the advisory fees charged under the advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Index Fund in which the Investing Management Company may invest. In addition, an Investing Fund Adviser, or trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Index Fund under rule 12b–1 under the Act) received by the Investing Fund Adviser or trustee or Sponsor to the Investing Trust or an affiliated person of the Investing Fund Adviser, trustee or Sponsor from the Index Funds in connection with the investment by the Investment Management Company or Investing Trust in the Index Fund. Applicants state that any sales loads or service fees charged with respect to shares of the Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rules'').

6. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Index Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by rule 12d1–1 under the Act or an exemptive order that allows the Index Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. Before an Investing Fund invests in an Index Fund beyond the limits of section 12(d)(1)(A)(i) of the Act, a participation agreement will be entered into between the Index Fund and the Investing Fund (''Participation Agreement''). The Participation Agreement will require the Investing Fund to adhere to the terms and conditions of the requested order. The Participation Agreement will include an acknowledgment from the Investing Fund that it may rely on the requested order only to invest in the Index Funds and not in any other registered investment company. Applicants represent that each Investing Fund will represent in the Participation Agreement that if it exceeds the 5% or 10% limitation in section 12(d)(1)(A)(ii) and (iii) of the Act, it will disclose in its prospectus that it may invest in the Index Funds, and disclose in ''plain English'' in its prospectus the unique characteristics of doing so, including but not limited to, the expense structure and any additional expenses of investing in the Index Funds. Each Investing Fund will also be required to represent in the Participation Agreement that it will comply with the disclosure requirements set forth in Investment Company Act Release No. 27399 (June 20, 2006).

7. Applicants also note that an Index Fund may choose to reject a direct purchase by an Investing Fund. To the extent that an Investing Fund purchases shares of an Index Fund in the secondary market, the Index Fund would still retain its ability to reject purchases of its shares through its decision to enter into the Participation Agreement prior to any investment by an Investing Fund in excess of the limits of section 12(d)(1)(A)(i).

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants seek relief from section 17(a) to permit an Index Fund that is an affiliated person of an Investing Fund because the Investing Fund holds 5% or more of the Index Fund's shares to sell its shares to and redeem its shares from an Investing Fund.[5] Applicants believe that any proposed transactions directly between an Index Fund and an Investing Fund will be consistent with the policies of each Index Fund and Investing Fund. The Participation Agreement will require any Investing Fund that purchases shares from an Index Fund to represent that the purchase of shares from the Index Fund by the Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Funds' registration statement.[6]

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that: (i) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act if 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.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants note that any consideration paid by an Investing Fund for the purchase or redemption of shares directly from an Index Fund will be based on the net asset value of the Index Fund. Applicants state that the

[5] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of shares of an Index Fund or (b) an affiliated person of an Index Fund, or an affiliated person of such person, for the sale by the Index Fund of its shares to an Investing Fund is subject to section 17(e) of the Act. The Participation Agreement also will include this acknowledgment.

[6] To the extent that purchases and sales of shares of an Index Fund occur in the secondary market and not through principal transactions directly between an Investing Fund and an Index Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of shares in Creation Units by an Index Fund to an Investing Fund and redemptions of those shares. The requested relief is also intended to cover the in-kind transactions that would accompany such sales and redemptions, as described in the application for the ETF Order.

proposed transactions will be consistent with the policies of each Index Fund and Investing Fund and with the general purposes of the Act.

Applicants' Conditions

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

1. The members of the Investing Fund Adviser/Sponsor Group will not control (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. The members of the Subadviser Group will not control (individually or in the aggregate) an Index Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Index Fund, the Investing Fund Adviser/Sponsor Group or the Subadviser Group, each in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Index Fund, it will vote its shares of the Index Fund in the same proportion as the vote of all other holders of the Index Fund's shares. This condition does not apply to the Subadviser Group with respect to an Index Fund for which the Investing Fund Subadviser or a person controlling, controlled by, or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in an Index Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Index Fund or Index Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Investing Fund Adviser and any Investing Fund Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from an Index Fund or an Index Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the securities of an Index Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Index Fund, including a majority of the Disinterested Trustees, will determine that any consideration paid by the Index Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Index Fund; (b) is within the range of consideration that the Index Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Index Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Index Fund) will cause an Index Fund to purchase a security in any Affiliated Underwriting.

6. The board of trustees of the Index Fund, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by an Index Fund in an Affiliated Underwriting once an investment by an Investing Fund in Shares of the Index Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Index Fund. The board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Index Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Index Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Index Fund shall maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the Shares of the Index Fund exceeds the limit in section 12(d)(1)(A)(i) setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

8. Prior to investing in an Index Fund in excess of the limits in section 12(d)(1)(A)(i), each Investing Fund and the Index Fund will execute a Participation Agreement stating, without limitation, that their boards of directors/trustees and their investment advisers, or their Sponsors and trustees, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Index Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Index Fund of the investment. At such time, the Investing Fund will also transmit to the Index Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Index Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Index Fund and the Investing Fund will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Prior to approving any advisory contract under section 15 of the Act, the board of directors/trustees of each Investing Management Company, including a majority of the Disinterested Trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Index Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

10. An Investing Fund Adviser, or trustee or Sponsor of an Investing Trust will waive fees otherwise payable to it

by the Investing Management Company or Investing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Index Fund under rule 12–1 under the Act) received from an Index Fund by the Investing Fund Adviser, trustee, or Sponsor to the Investing Trust or an affiliated person of the Investing Fund Adviser, trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, trustee or Sponsor or an affiliated person of the Investing Fund Adviser, trustee or Sponsor by the Index Fund, in connection with the investment by the Investing Management Company or Investing Trust in the Index Fund. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from an Index Fund by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser or its affiliated person by the Index Fund in connection with the investment by the Investing Management Company in the Index Fund made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the NASD Conduct Rules.

12. No Index Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by rule 12d1–1 under the Act or an exemptive order that allows the Index Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8595 Filed 5–4–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27815; 812–13312]

Hercules Technology Growth Capital, Inc.; Notice of Application

May 2, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 23(a), 23(b) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act authorizing certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY OF THE APPLICATION: Applicant, Hercules Technology Growth Capital, Inc. (''HTGC'') requests an order to permit it to issue shares of its restricted common stock as part of the compensation packages for certain of its employees and directors, and certain employees of its wholly-owned consolidated subsidiaries.

FILING DATES: The application was filed on July 7, 2006 and amended on April 4, 2007 and May 1, 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 HTGC with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 22, 2007, and should be accompanied by proof of service on HTGC, 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 20549–1090. HTGC, c/o Manuel A. Henriquez, Chairman of the Board and Chief Executive Officer, HTGC, 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 may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. HTGC, a Maryland corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company (''BDC'') under 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. Shares of HTGC's common stock are traded on The NASDAQ Global Market under the symbol ''HTGC.'' As of December 31, 2006, there were 21,927,034 shares of HTGC's common stock outstanding. As of that date, HTGC had 26 employees, including the employees of its wholly-owned consolidated subsidiaries.

2. HTGC currently has a four member board of directors (''Board'') of whom one is considered to be an ''interested person'' of HTGC within the meaning of section 2(a)(19) of the Act and three are not-interested persons (''Non-interested Directors''). HTGC has three directors who are not officers of employees of HTGC (the ''Non-employee Directors''). Currently, HTGC's 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.

3. In May, 2006, HTGC adopted the 2006 Non-employee Director Plan (the ''2006 Plan'') for the purpose of advancing the interests of HTGC by providing for the grant of awards under the 2006 Plan to eligible directors of HTGC who are Non-employee Directors.[2] HTGC proposes to amend

[1] HTGC was organized on December 18, 2003. On February 22, 2005, HTGC filed with the Commission its registration statement on Form N–2 under the Securities Act of 1933, as amended, in connection with its initial public offering of common stock (the ''IPO'') and elected to be regulated as a BDC on the same date. 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. On June 11, 2005, HTGC completed its IPO.

[2] The Commission has issued an order under Section 61(a)(3)(B) of the Act approving the 2006 Plan and the grant of options to Non-employee Directors under the 2006 Plan. Hercules Technology Growth Capital, Inc., Investment Company Act Release Nos. 27668 (Jan. 19, 2007) (notice) and 27669 (Feb. 15, 2007) (order).