would be fair considering that, among other things, (a) the Offer arose out of business considerations unrelated to the relationships between the Investment Companies and the Adviser, (b) because of the relatively short time frame involved, there was not reasonably sufficient time to seek shareholder approval of the Interim Advisory Agreements, and (c) the nonpayment of such fees would be unduly harsh result to the Adviser in view of the services provided by the Adviser under the Interim Advisory Agreements. Each Interim Advisory Agreement that was in effect during the Interim Period contained the same terms and conditions as the applicable Former Advisory Agreement. In addition, the amount payable to the Adviser under each Interim Advisory Agreement was unchanged from the fees paid under each Former Advisory Agreement. Fees earned during the Interim Period were placed in an escrow account pending ratification of the Interim Advisory Agreements by the Investment Companies' shareholders and issuance by the SEC of an order granting the relief requested herein. If the fees are not paid to the Adviser, the fees will revert to the Investment Companies.

7. On February 24, 1989, the board of directors approved new advisory agreements. Applicants held shareholders meetings of each Investment Company on April 19, 1989, at which the shareholders approved the Interim Advisory Agreements as well as new advisory agreements. The Adviser has paid or will pay, as applicable, the costs of preparing and filing this application and the allocable costs of the meeting of each Investment Company's shareholders necessitated by the assignment of the Former Advisory Agreement, including the cost of proxy solicitations.

Applicants' Legal Conclusions

1. Section 15(a) prohibits an investment adviser from providing investment advisory services to an investment company except pursuant to a written contract approved by a majority of the voting securities of the investment company. The section further requires that such written contract provide for its automatic termination in the event of an assignment.

2. Under section 2(a)(4) of the Act, an assignment includes any direct or indirect transfer of a contract by the assignor or of a controlling block of the assignor's voting securities. Under Section 2(a)(9), a beneficial owner of more than 25 percent of the voting securities of a company is presumed to control such company. Because BIL acquired more than 25 percent of GTM, the Investment Companies' investment advisory agreements were assigned and, consequently, terminated pursuant to their terms.

3. Rule 15a–4 provides that, among other things, if an investment adviser's investment advisory contract is terminated by assignment, the adviser may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company, and if the investment adviser or a controlling person of the investment adviser does not directly or indirectly receive money or other benefit in connection with the assignment. Because many of GTM's shareholders, including all its board of directors who owned GTM stock, received a benefit in connection with the assignment of the contracts, applicants may not rely on rule 15a–4.

4. Applicants believe that the exemptive relief requested is necessary and 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. Because the change of control of the Adviser caused the termination of the Former Advisory Agreements, the board of directors were required to consider appropriate actions in the best interests of the Investment Companies and their respective shareholders. Appplicants believe that approval of the Interim Advisory Agreements by the board of directors was in accord with the general views of the SEC that an investment adviser has a fiduciary duty to seek to avoid disruption to the operations of an investment company client during any ''interim period'' and that advisory services should continue to be provided. The Adviser and the board of directors concluded that denying the Adviser its fees during the Interim Period would be a harsh result and would not afford shareholders of the Investment Companies any extra protection or long-term benefit. Applicants represent that their respective Interim Advisory Agreements had the same terms, conditions and fees as the respective Former Advisory Agreements.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15500 Filed 6–23–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21144; 812–8756]

Hercules Funds Inc.; Notice of Application

June 19, 1995.

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

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Hercules Funds Inc.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicant seeks an exemption to permit certain securities dealers that are affiliated persons of affiliated persons (''second-tier affiliates'') of each present or future portfolio of applicant (each a ''Fund'') to engage in principal transactions with a Fund solely because of subadvisory relationships with one or more other Funds.

FILING DATES: The application was filed on January 4, 1994, and amended on January 17, 1995, and June 16, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 222 South Ninth Street, Minneapolis, Minnesota 55402–3804.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 942–0581, or C. David Messman, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Minnesota corporation registered under the Act as an open-end management investment

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 fashions policies that impact all of the Funds, and (b) a single board of directors that overseas 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.

[FR Doc. 95–15501 Filed 6–23–95; 8:45 am]

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