

or approximately 9.78% of HTGC's outstanding voting securities. As of July 31, 2007, the amount of voting securities issued as Restricted Stock under the Amended and Restated 2006 Plan and that would result from the exercise of all outstanding warrants and options issued to directors, officers, and employees of HTGC under the Original 2004 Plan and the First Amended and Restated 2004 Plan would be 2,799,874 shares of Common Stock, or approximately 8.66% 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(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; 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. HTGC represents that the proposal to issue options to Non-employee Directors under the Amended and Restated 2006 Plan meets all of the requirements of section 61(a)(3) of the Act. HTGC states that the Board, including the Non-employee Directors, actively oversees HTGC's affairs and HTGC relies on the judgment and experience of the Board. HTGC states that the Non-employee Directors provide advice on financial and operational issues, credit and underwriting policies, asset valuation, strategic direction, as well as serve on various committees. HTGC states that the professional experiences and expertise of the Non-employee Directors make them valuable resources for management. HTGC states that the options that will be granted to the Non-employee Directors under the Amended and Restated 2006 Plan will provide significant incentives to the Non-employee 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. HTGC states that the options granted under the Amended and Restated 2006 Plan will provide a means for the Non-employee Directors to increase their ownership interests in HTGC, thereby ensuring close identification of their interests with those of HTGC and its stockholders. HTGC asserts that by providing incentives in the form of options under the Amended and Restated 2006 Plan, HTGC would be better able to retain and attract qualified persons to serve as Non-employee Directors.

4. HTGC submits that the proposal to issue options to Non-employee Directors to purchase Common Stock under the Amended and Restated 2006 Plan is fair and reasonable and does not involve overreaching of HTGC or its stockholders. HTGC states that the amount of voting securities issued as Restricted Stock under the Amended and Restated 2006 Plan and that would result from the exercise of all outstanding options and warrants issued to directors, officers and employees of HTGC under the Original 2004 Plan and the First Amended and Restated 2004 Plan would be 2,799,874 shares of Common Stock, or approximately 8.66% of HTGC's outstanding voting securities as of July 31, 2007, which is below the percentage limitations in the Act. In light of the above, HTGC asserts that the granting of options pursuant to the Amended and Restated 2006 Plan will not have a substantial dilutive effect on the net asset value of 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. 34-56375A; File No. SR-NASD-2004-183]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Amendment Nos. 3 and 4 and Order Granting Accelerated Approval of the Proposed Rule, as Amended, Related to Sales Practice Standards and Supervisory Requirements for Transactions in Variable Annuities**

September 14, 2007.

### **Correction**

In FR Document No. E7-18022, beginning on page 52403 for Thursday, September 13, 2007, at the third column of page 52410, first full paragraph, beginning on line 24, revise "120 days" to read "180 days".

**Florence E. Harmon,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56383; File No. SR-ISE-2007-61]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Specific Performance Commitments for Primary Market Makers**

September 11, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 17, 2007, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On September 10, 2007, ISE

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.