

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-28426; 812-13392]

H&Q Healthcare Investors, et al.; Notice of Application

September 30, 2008

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of application for an order under rule 17d-1 under the Investment Company Act of 1940 (“Act”) to permit certain joint transactions.

Applicants: H&Q Healthcare Investors (“HQH”); H&Q Life Sciences Investors (“HQL”); Hambrecht & Quist Capital Management LLC on behalf of itself and its successors (“HQCM”); Promere Fund LP (“Promere Fund”); Promere Performance LLC (“Promere General Partner”); Promere Capital Management LLC on behalf of itself and its successors (“Promere Manager”); Ardance Fund LP (“Ardance Fund”); Ardance Performance LLC (“Ardance General Partner”); and Ardance Capital Management LLC on behalf of itself and its successors (“Ardance Manager”).<sup>1</sup>

Summary of Application: Applicants request an order to permit certain registered investment companies to coinvest with certain affiliated entities.<sup>2</sup>

Filing Dates: The application was filed on May 30, 2007, and amended on July 25, 2008 and September 30, 2008.

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

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<sup>1</sup> The term “successor,” as applied to HQCM, Promere Manager, and Ardance Manager, means an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

<sup>2</sup> All existing entities that currently intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the application.

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 October 27, 2008 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: c/o Hambrecht & Quist Capital Management LLC, 2 Liberty Square, Ninth Floor, Boston, MA 02109, Attention: Daniel R. Omstead, Ph.D.

For Further Information Contact: Jean E. Minarick, Senior Counsel, at (202) 551-6811, or Janet M. Grossnickle, 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 Room, 100 F Street, NE, Washington, DC 20549-1520 (tel. 202-551-5850).

Applicants' Representations:

1. HQCM, a limited liability company organized under the laws of Delaware, is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). Promere Manager, a limited liability company organized under the laws of Delaware, is an investment adviser exempt from registration under the Advisers Act. Ardance Manager, a limited liability company organized under the laws of Delaware, is an investment adviser exempt from registration under the Advisers Act.

2. HQH, a Massachusetts business trust, is registered under the Act as a diversified closed-end management investment company. HQH's investment objective is long-term capital appreciation through investment in companies in the health care industry. HQCM serves as HQH's investment adviser and manages its day-to-day operations.

3. HQL, a Massachusetts business trust, is registered under the Act as a diversified closed-end management investment company. HQL's investment objective is long-term capital appreciation through investment in companies involved in scientific advances in life sciences (including biotechnology, pharmaceutical, diagnostics, managed health care and medical equipment, hospitals, health care information technology and services, devices and supplies), agriculture and environmental management fields. HQCM acts as HQL's investment adviser and manages the day-to-day operations of HQL. From time to time, HQCM or an entity controlling, controlled by or under common control with HQCM (collectively, with HQCM, the "Adviser") may serve as investment adviser or sub-adviser to other registered closed-end management investment companies (together with HQH and HQL, the "Registered Funds") that will engage in investment activities similar to those engaged in by HQH and HQL.

4. Promere Manager will make investment decisions for Promere Fund, a Delaware limited partnership, that intends to qualify for an exclusion from the definition of an investment company under section 3(c)(7) of the Act. Promere General Partner, a Delaware limited liability company, that is under common control with Promere Manager, is the general partner of Promere Fund and will manage the business and affairs of Promere Fund. Promere Fund will seek long-term capital appreciation by investing primarily in privately held companies in the health care and life sciences industries.

5. Ardance Manager will make investment decisions for Ardance Fund, a Delaware limited partnership, that intends to qualify for the exclusion from the definition of an investment company under section 3(c)(1) of the Act. Ardance General Partner, a Delaware limited liability company, that is under common control with Ardance Manager, is the general partner of Ardance Fund and will manage the business and affairs of Ardance Fund. Ardance Fund will seek absolute returns on an annual basis while managing risk in both rising and falling markets. Ardance Fund's strategy for achieving this objective is to invest primarily in a portfolio of long and short equity positions focused on publicly traded companies in the health care industry. Although Ardance Fund will invest primarily in publicly traded securities and derivatives (*e.g.*, for hedging and speculative purposes), it is possible that Ardance Fund may coinvest with HQT, HQL and/or Promere Fund in private placement securities. From time to time, the Adviser, Promere Manager or Ardance Manager may manage other accounts that are not registered investment companies in reliance on sections 3(c)(1) or 3(c)(7) of the Act (such accounts, together with Promere Fund and Ardance Fund, the "Unregistered Funds").

6. Applicants seek an order under rule 17d-1 under the Act to the extent necessary to permit HQT, HQL, and each other Registered Fund that is advised by an Adviser and the Unregistered Funds to coinvest in private placement transactions in which the Adviser, Promere Manager and/or Ardance Manager negotiate terms in addition to price ("private placement securities"), make follow-on investments in the issuers of private placement securities ("Follow-On Investments"), and exercise warrants, conversion privileges, and other rights associated with such private placement securities (collectively, the "Co-investment Transactions"). The total available capital ("Total Available Capital") of each Registered Fund and Unregistered Fund is the amount of total assets of each such fund available for investment in private placement

securities, subject to applicable regulatory restrictions and the fund's fundamental investment restrictions and policies. The Board of Trustees ("Board") of each Trust has set a limit on the amount of initial investment of each Trust in securities of an issuer in private placement transactions (the "Investment Limit"), as described in the application.

Applicants' Legal Analysis:

1. Section 17(d) of the Act and rule 17d-1 under the Act generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d-1 under the Act provides that in passing upon applications under section 17(d), the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

2. Section 2(a)(3) of the Act, in relevant part, defines an "affiliated person" of another person as (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) 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; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person and (d) any officer, director, partner, copartner, or employee of the other person. As described more fully in the application, each of the Unregistered Funds, Promere General Partner, Ardance General Partner and any Adviser might be deemed to be an affiliated person or a second-tier affiliated person of each

Registered Fund within the meaning of Section 2(a)(3) of the Act, and the Registered Funds might be deemed to be affiliated persons within the meaning of Section 2(a)(3) of the Act. In some circumstances, these affiliations might prohibit each Registered Fund from participating in Co-investment Transactions pursuant to Section 17(d) and Rule 17d-1.

3. Applicants state that the ability to participate in Co-investment Transactions will benefit the Registered Funds and their shareholders by increasing the favorable investment opportunities available to them. Applicants represent that the Registered Funds will be able to (i) have a larger pool of capital available for investment, thereby obtaining access to a greater number and variety of potential investments than any Registered Fund could obtain on its own, and (ii) increase their bargaining power to negotiate more favorable terms.

4. Applicants believe that the terms and conditions contained in the application ensure that the Co-investment Transactions are consistent with the protection of each Registered Fund's investors and with the purposes intended by the policy and provisions of the Act. Specifically, all participants will invest at the same time for the same price and with the same terms, conditions, class, registration rights, and any other rights, so that no participant receives terms more favorable than any other participant. In addition, the decision to participate in a Co-investment Transaction must be approved by a Required Majority (as defined below) of the Board of each participating Registered Fund to ensure that the terms of the Co-investment Transaction are fair and reasonable, do not involve overreaching, and are consistent with the investment objectives and policies of the Registered Fund. Co-investment Transactions will be reviewed by a duly appointed committee of the Board (the "Joint Transaction Committee") that shall consist solely of members of the Board who are not "interested persons" within the

meaning of section 2(a)(19) of the Act (the “Independent Trustees”) and shall have as its members at least a majority of all of the Independent Trustees.

Applicants’ Conditions:

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

1. Each time that an Unregistered Fund or a Registered Fund proposes to acquire private placement securities, the acquisition of which would be consistent with the investment objectives and policies of one or more Registered Funds, the Adviser will offer to each such Registered Fund the opportunity to acquire a pro rata amount (based upon amounts available for investment by each such Registered Fund and each participating Unregistered Fund) of the private placement securities, up to the entire amount being offered to it. If one Registered Fund declines the offer or accepts a portion of the private placement securities offered to it, but one or more other Registered Funds accepts the private placement securities offered, that portion of the private placement securities declined by the Registered Fund may be allocated to the other Registered Funds and Unregistered Funds based on their amounts available for investment. However, if the pro rata allocation to any Registered Fund exceeds its Investment Limit, then the portion of the allocation that exceeds the Investment Limit may be allocated pro rata to each other Registered Fund (up to its Investment Limit) and each participating Unregistered Fund. In each case in which an amount of private placement securities remains available after allocating the private placement securities to the Registered Funds as described above, the remainder may be allocated to the participating Unregistered Funds. For purposes of these conditions, the phrase “amounts available for investment” is the Total Available Capital of the Registered Fund or Unregistered Fund.

2. (a) With respect to each Co-investment Transaction, for each Registered Fund, the Adviser will make a separate determination whether the acquisition of the private placement security is appropriate and consistent with the investment objectives and policies of the Registered Fund and, if so, the appropriate amount that the Registered Fund should invest.

(b) After making the determination required in (a) above, the Adviser will submit written information concerning the Co-investment Transaction, including the amount proposed to be acquired by the Registered Fund, any other Registered Funds, and each Unregistered Fund to the Joint Transactions Committee. A Registered Fund's Joint Transactions Committee shall consist solely of Independent Trustees and shall have as its members at least a majority of all of the Independent Trustees of such Registered Fund. The Adviser will provide information concerning the Total Available Capital of the Registered Funds and the Unregistered Funds in order to assist the Joint Transactions Committee with its review of the Registered Fund's investments for compliance with the allocation features set forth in condition 1 above.

(c) A Registered Fund may participate in a Co-investment Transaction only if the Required Majority (as defined below) determines that:

- i. the terms of the Co-investment Transaction, including the consideration to be paid, are reasonable and fair to the Registered Fund and its shareholders and do not involve overreaching of the Registered Fund or its shareholders on the part of any person concerned;
- ii. the proposed Co-investment Transaction is consistent with the Registered Fund's investment objectives and policies as recited in its Form N-2 registration statement and its reports to shareholders; and
- iii. the participation by another Registered Fund or the Unregistered Fund(s) in the proposed Co-investment Transaction would not disadvantage the Registered Fund, and

participation by the Registered Fund would not be on a basis different from or less advantageous than that of any other Registered Fund or Unregistered Fund; provided, that if any Unregistered Fund, but not the Registered Funds, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition 2(c)(iii), if

- (A) the Required Majority has the right to ratify the selection of such director or board observer, if any; and
  - (B) the Adviser:
    - (1) provides to the Joint Transactions Committee material information received by any such person who then serves as a director or participates as a board observer or exercises any similar right to participate in the governance of a portfolio company; and
    - (2) agrees to provide periodic reports to the Joint Transactions Committee with respect to the material actions of such director or the material information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and
- iv. the proposed investment by the Registered Fund will not benefit the Adviser, any other Registered Fund, any Unregistered Fund, or any affiliated person thereof, except to the extent permitted under section 17(e) of the Act.

(d) A Required Majority is the number of a Registered Fund's Joint Transactions Committee members equal to at least a majority of all of the Independent Trustees of such Registered Fund. Each member of a Required Majority shall have no direct or indirect financial interest in the proposed Co-investment Transaction.

3. A Registered Fund has the right to decline to participate in any Co-investment Transaction or to invest less than the amount proposed. If the Adviser determines that a Registered Fund should not participate in a Co-investment Transaction offered to it pursuant to condition 1 above, the Adviser will submit its determination to the Joint Transactions Committee for approval by a Required Majority.

4. Each Registered Fund shall participate in a Co-investment Transaction only if the terms, conditions, price, class of securities being purchased, settlement date, registration rights, if any, and other rights are the same for each Registered Fund and any Unregistered Fund participating in the Co-investment Transaction. When more than one Registered Fund proposes to invest in a Co-investment Transaction, the Joint Transactions Committee of each Registered Fund shall review the Co-investment Transaction and a Required Majority will make the determinations in condition 2 above, on or about the same time. The grant to any Unregistered Fund, but not the Registered Fund(s), of the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company shall not cause a failure of this condition, if conditions 2(c)(iii)(A) and (B) are satisfied.

5. Except as described below, no Registered Fund may make a Follow-On Investment or exercise warrants, conversion privileges, or other rights unless such Registered Fund and each other Registered Fund and Unregistered Fund that participated in the original Co-

investment Transaction make such Follow-On Investment or exercise such warrants, conversion rights, or other rights at the same time and in amounts proportionate to their respective holdings of the private placement securities acquired in such Co-investment Transaction. If a Registered Fund participates in a Follow-On Investment or exercises warrants, conversion privileges, or other rights and the amounts to be invested or the warrants, conversion privileges or other rights to be exercised by each Registered Fund and Unregistered Fund are disproportionate to their respective holdings, the Adviser will formulate a recommendation as to the proposed Follow-On Investment or exercise of warrants, conversion privileges or other rights by each Registered Fund and Unregistered Fund and submit the recommendation to each Registered Fund's Joint Transactions Committee, including an explanation of such disproportionate investments or exercise of rights. Prior to any such disproportionate Follow-On Investment or exercise of rights, a Registered Fund must obtain approval by a Required Majority for the transaction as set forth in condition 2 above. Transactions pursuant to this condition 5 will be subject to the other conditions set forth in the application.

6. Except for transactions covered by condition 5 above, no Unregistered Fund or Registered Fund will sell, exchange, or otherwise dispose of any interest in any private placement securities acquired pursuant to the order, unless each Registered Fund has the opportunity to dispose of its interest at the same time, for the same unit consideration, on the same terms and conditions, as such Unregistered Fund or other Registered Fund and in a proportionate amount (based upon their relative holdings of the private placement securities). With respect to any such transaction, the Adviser will formulate a recommendation as to the proposed participation by a Registered Fund and submit the recommendation to such Registered Fund's Joint Transactions Committee. The Registered Fund will dispose of such private

placement securities to the extent the Joint Transactions Committee, upon the affirmative vote of a Required Majority, determines that the disposition is in the best interest of the Registered Fund, is fair and reasonable, and does not involve overreaching of the Registered Fund or its shareholders by any person concerned.

7. The expenses, if any, associated with acquiring, holding, or disposing of any private placement securities (including, without limitation, the expenses of the distribution of any private placement securities registered for sale under the Securities Act of 1933), to the extent not payable solely by the Adviser, Promere Manager and Ardance Manager, as applicable, under their respective investment management agreements with the Registered Fund or Unregistered Fund, shall be shared by the Registered Funds and the Unregistered Funds in proportion to the relative amounts of such private placement securities held or being acquired or disposed of, as the case may be, by the Registered Funds and the Unregistered Funds.

8. Each quarter the Adviser will provide to each Registered Fund's Joint Transactions Committee information concerning all investments in private placement securities made by all Registered and Unregistered Funds, including all investments in which the Registered Fund declined to participate, so that a Required Majority may determine whether all investments made during the preceding quarter, including those in which the Registered Fund declined to participate, comply with the conditions of the order. In addition, all of the Independent Trustees of each Registered Fund will consider at least annually the continued appropriateness of Co-investment Transactions by the Registered Fund with the Unregistered Funds and other Registered Funds, including whether engaging in Co-investment Transactions pursuant to the order continues to be in the best interests of the Registered Fund and its shareholders and does not involve overreaching on the part of any person concerned.

9. No investment will be made by a Registered Fund in a Co-investment Transaction in reliance on the order if the Adviser knows or reasonably should know that an Unregistered Fund or another Registered Fund or any affiliated person of such Unregistered Fund or another Registered Fund then currently holds a security issued by that issuer, except for a Follow-On Investment made pursuant to condition 5 of this order.

10. Any transaction fee (including break-up or commitment fees but excluding brokerage fees contemplated by section 17(e)(2) of the Act) received in connection with a transaction entered into in reliance on the order will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such transaction. If any transaction fee is to be held by the Adviser, Promere General Partner, Promere Manager, Ardance General Partner or Ardance Manager pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser, Promere General Partner, Promere Manager, Ardance General Partner or Ardance Manager at a bank or banks having the qualifications prescribed in section 26(a) of the Act, and the account will earn a competitive rate of interest that also will be divided pro rata among the participants based on the amounts they invested or committed, as the case may be, in such transaction. None of the Adviser, Promere General Partner, Promere Manager, Ardance General Partner, or Ardance Manager will receive additional compensation or remuneration of any kind as a result of or in connection with a co-investment or compensation for its services in sponsoring, structuring, or providing managerial assistance to an issuer of private placement securities that is not shared pro rata with the coinvesting Registered Funds and Unregistered Funds.

11. Each applicant will maintain and preserve all records required to be preserved under the Act and the rules and regulations under the Act applicable to such applicant. The

Registered Funds will maintain the records required by section 57(f)(3) of the Act as if each of the Registered Funds were a business development company and the Co-investment Transactions were approved under section 57(f).

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

Florence E. Harmon  
Acting Secretary