

R96-20

DEPARTMENT OF DEFENSE

RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Research, Development, Test, and Evaluation, Defense-Wide

Of the funds made available under this heading in Public Law 104-61, \$67,200,000 are rescinded.

**Rescission Proposal No. R96-20**

**PROPOSED RESCISSION OF BUDGET AUTHORITY**

**Report Pursuant to Section 1012 of P.L. 95-344**

<b>AGENCY:</b> Department of Defense	New budget authority..... \$ <u>9,244,775,000</u> (P.L. 104-61)
<b>BUREAU:</b> Research, Development, Test, and Evaluation	Other budgetary resources.. \$ <u>216,265,000</u>
<b>Appropriations title and symbol:</b>  Research, development, test, and evaluation Defense-wide <u>976/70400</u>	Total budgetary resources... \$ <u>9,461,040,000</u>
<b>OMB identification code:</b>  97-0400-0-1-051	Amount proposed for rescission..... \$ <u>67,200,000</u>
<b>Grant program:</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Legal authority (in addition to sec. 1012):</b>  <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
<b>Type of account or fund:</b>  <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1997</u> (expiration date) <input type="checkbox"/> No-Year	<b>Type of budget authority:</b>  <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**JUSTIFICATION:** This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, and lease and operation of facilities and equipment. Funds proposed for rescission are for Anti-Satellite (ASAT), Natural Language Text, Software Manager's Network, Rapid Acquisition of Manufactured Parts, Integrated Weapons System Data Base, Small Satellites, and Point Source X-ray Lithography. No funding for these projects is planned after FY 1996, or work to achieve similar ends is funded elsewhere.

**ESTIMATED PROGRAM EFFECT:** The DoD's ability to accomplish its mission successfully would not be affected by this rescission proposal.

**OUTLAY EFFECT:** (in thousands of dollars):

FY 1996 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001
9,055,535	9,026,303	-29,232	-26,880	-8,064	-1,008	-1,008	-269

**SECURITIES AND EXCHANGE  
COMMISSION**

[Investment Company Act Release No. 21900; International Series Release No. 970; 812-9868]

**Emerging Markets Growth Fund, Inc.,  
et al.; Notice of Application**

April 17, 1996.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Emerging Markets Growth Fund, Inc. (the "Fund"), New Asia East Investment Fund Ltd. (the "New Asia Fund"), Capital International Emerging Markets Fund ("CIEMF"), Capital International, Inc. (the "Manager") and The Capital Group Companies, Inc. (the "Capital Group").

**RELEVANT ACT SECTIONS:** Order of exemption requested pursuant to section 6(c) of the Act from section 12(d)(1) of the Act, pursuant to sections 6(c) and 17(b) of the Act from section 17(a) of the Act, and pursuant to rule 17d-1 under the Act permitting certain joint transactions in accordance with section 17(d) of the Act and rule 17d-1 thereunder.

**SUMMARY OF APPLICATION:** The requested order would permit the Fund to invest up to 1% of its assets in the New Asia Fund, an affiliated closed-end Singapore investment company that invests in securities of companies in East and Southeast Asia.

**FILING DATES:** The application was filed on November 30, 1995 and amended on February 14, 1996 and on March 25, 1996.

**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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 13, 1996 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Capital International, Inc., 11100 Santa Monica Boulevard,

Los Angeles, California 90025, Attn.: Roberta A. Conroy, Esq.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Buescher, Staff Attorney, at (202) 942-0573, or Alison E. Baur, Branch Chief, at (202) 942-0564 (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 from the SEC's Public Reference Branch.

**Applicants' Representations**

1. The Fund, a Maryland corporation, registered under the Act as a closed-end diversified management investment company on June 2, 1986. The Fund's investment objective is to seek long-term capital growth through investment in equity securities of issuers in developing countries.<sup>1</sup> The Fund invests primarily in securities that are listed on a securities exchange or are actively traded in an over-the-counter market in developing countries. Under a fundamental investment policy, the Fund may not acquire any security if the acquisition would result in the Fund owning more than 10% of the outstanding voting securities of any one issuer.

2. Of the Fund's fifteen directors, eleven are not "interested persons" of the Fund ("Independent Directors"). Seven of the Independent Directors represent institutional shareholders of the Fund and three Independent Directors represent former shareholders of the Fund. All but one of the Independent Directors are full-time investment professionals who act in that capacity for their respective employers.

3. The Fund's suitability standards require each institutional investor in the Fund that is a "company," as defined in the Act, to have total assets in excess of \$5 million. An investor who is a natural person must be an "accredited investor" as defined in Regulation D under the Securities Act of 1933 ("Securities Act"). The minimum initial investment in the Fund is \$100,000, and \$25,000 for subsequent investments.

4. The Fund proposes to invest up to 1% of its assets in the New Asia Fund. The New Asia Fund is a closed-end investment company incorporated in Singapore. The New Asia Fund's

<sup>1</sup> The Commission also granted exemptive relief to permit the Fund to invest in the New Europe East Investment Fund, an affiliated closed-end Luxembourg investment company that invests in equity securities in Eastern Europe and the former Soviet republics. See Investment Company Act Release Nos. 20236 (Apr. 20, 1994) (notice) and 20305 (May 17, 1994) (order).

investment objective is to seek long-term capital appreciation through investment in companies doing the majority of their business in the countries of East and Southeast Asia that are member countries of the Asian Development Bank.

5. The New Asia Fund is privately offering two classes of securities in several tranches: (i) Voting preferred shares ("A Shares") and (ii) non-voting preferred shares ("B Shares") (collectively, the "Shares"). The par value per Share and subscription price per Share are \$0.01 and \$10.00, respectively. All subscriptions must be for A Shares, unless legal, tax or contractual restrictions limit a subscriber's ownership of voting securities. In that case, an investor must subscribe for the maximum number of A Shares it is able to hold and thereafter subscribe for B Shares.

6. The New Asia Fund offers and sells Shares only to a limited number of investors. The Shares are not listed on any stock exchange and they may not be offered or sold in the United States or to any United States person, unless the person is an "accredited investor" as defined in Regulation D under Securities Act. The Shares are not redeemable, and the New Asia Fund presently does not intend to repurchase the Shares.

7. Applicants represent that the New Asia Fund is currently not subject to registration under section 7(d) of the Act. Section 7(d) prohibits an investment company organized outside the United States from using the mails or any means or instrumentality of interstate commerce to offer, sell, or deliver after sale, in connection with a public offering, any security of which the company is the issuer.

8. The Fund proposes to invest \$43 million, approximately 1% of its assets, to acquire the New Asia Fund's securities. To comply with its fundamental investment policy, the Fund would invest in a combination of A Shares and B Shares so that it would hold between 3% and 10% of the total voting power, but approximately 30.71% of the economic power, of the New Asia Fund ("Proposed Investment").

9. CIEMF, an investment company organized and operated outside the United States, has invested \$5 million to acquire approximately 3.57% of the New Asia Fund's securities and approximately 3% of its voting stock. CIEMF anticipates acquiring both A and B Shares.

10. The Capital Group, the indirect parent company of the Manager, has invested approximately \$3 million to

acquire the New Asia Fund's A Shares, which will represent approximately 2.14% of the New Asia Fund's securities and 2.76% of its voting securities.

11. The Manager, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), advises the Fund, the New Asia Fund and CIEMF. Under an investment advisory and service agreement currently in force between the Fund and the Manager, the Fund pays the Manager a fee. To avoid the possibility that the Manager would receive duplicate fees from the Fund and the New Asia Fund, the Manager will waive its management fee, including administrative fees, with respect to the Fund's net assets represented by the Proposed Investment. Specifically, the Fund's aggregate net assets will be adjusted downward by the amount invested in the New Asia Fund prior to determining the Manager's fee. While the Fund does not have an expense cap arrangement with the Manager, the Fund is subject to mandatory expense cap limitations imposed by state regulatory authorities. Any applicable expense cap limitation or fee waiver will not limit the Manager's fee waiver with respect to the Fund's investment in the New Asia Fund.

12. As investment adviser to the New Asia Fund, the Manager will receive an advisory fee at the rate of 2% per annum of net asset value, as determined on the last business day of each quarter. However, until the Manager invests 90% of the proceeds raised by all tranches of the offering, the advisory fee for the uninvested portion shall be .90% per annum. The New Asia Fund will not pay an advisory fee on the value of securities held in any investment vehicle that pays management and advisory fees to an affiliate of the Capital Group.

13. The New Asia Fund will also pay the Manager an incentive fee equal to 20% of any amount available for distribution to the New Asia Fund shareholders, to be calculated and accrued immediately prior to any distribution. However, no incentive fee will be charged unless and until the New Asia Fund shareholders have recovered through distributions the entire amount of their original subscriptions for Shares, plus a return at the rate of 9% per annum (compounded) on the original subscription. Applicants represent that the incentive fee arrangement complies with the safe harbor of rule 205-3 under the Advisers Act.

14. Section 18(i) of the Act provides that each share of stock issued by a registered management investment

company shall be voting stock and shall have equal voting rights, except as provided in section 18(a) of the Act. Although the New Asia Fund is not subject to section 18(i), applicants represent that the New Asia Fund's capital structure does not present any of the potential harms that section 18(i) was intended to address. The New Asia Fund tailored the voting rights of the Shares to satisfy the needs of certain prospective investors, all of whom are sophisticated, institutional investors. Applicants represent that such investors will understand a capital structure that was created to suit their needs.

#### Applicants' Legal Analysis

##### *Section 12(d)(1)*

1. Section 12(d)(1)(A)(i) provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock. The New Asia Fund may be considered an investment company for purposes of section 12(d)(1), and therefore, the Proposed Investment may be subject to section 12(d)(1).

2. Section 6(c) provides that the SEC may exempt persons or transactions 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. Applicants request an order under section 6(c) exempting them from section 12(d)(1)(A)(i) to permit the Fund to purchase more than 3% but less than 10% of the outstanding voting securities of the New Asia Fund.

3. Section 12(d)(1) was intended to mitigate or eliminate actual or potential abuses that might arise when one investment company acquires shares or another investment company. These abuses include the acquiring fund imposing undue influence over the management of the acquired fund through the threat of large scale redemptions, the acquisition by the acquiring company of voting control of the acquiring company, the layer of sales charges, expenses, and fees, and the creation of a complex structure that may prevent shareholders from ascertaining the true value of their investments.

4. Applicants believe that the Proposed Investments creates none of the perceived abuses addressed by section 12(d)(1). The Fund would not exercise any influence over the management of the New Asia Fund by the threat of redemptions. Because the

New Asia Fund is a closed-end fund, its Shares are not redeemable and it does not need to have cash on hand to cover redemptions by shareholders. In addition, because the Fund is also a closed-end fund, its liquidity needs are not significant.

5. To minimize the risk that the Fund would exercise voting control over the New Asia Fund to the detriment of the New Asia Fund or its shareholders, the Fund will have its A Shares voted by an independent director designated to act in such capacity.

6. The Proposed Investment would contain no improper layering of sales charges or advisory fees. Shareholders of the Fund and the New Asia Fund do not pay any sales charge, redemption fee or distribution fee. In addition, the Manager will exclude the assets with respect to the Proposed Investment in calculating the Fund's management fees.

7. Applicants believe that the Proposed Investment will not result in a complex structure that could not be understood by the Fund or its shareholders. The New Asia Fund's offering of A and B Shares is designed to accommodate the needs of its sophisticated, institutional shareholders. In addition, the New Asia Fund has created procedures to accurately determine the net assets value of its Shares, which will allow the value of the Fund's investment in the New Asia Fund to be easily and accurately determinable.

##### *Section 17(a)*

8. Section 17(a) makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" to include "any person directly or indirectly controlling, controlled by, or under common control with, such other person." In addition, under section 2(a)(3)(E), an investment adviser to an investment company is an "affiliated person" of such company. The Fund, the New Asia Fund, and CIEMF may be deemed to be under common control because the Manager is the investment adviser to each of them. Therefore, the New Asia Fund may be affiliated with the Fund, and section 17(a) may prohibit the New Asia Fund from selling its Shares to the Fund.

9. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered

investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the New Asia Fund to sell its Shares to the Fund.<sup>2</sup>

10. Applicants believe that the Proposed Investment satisfies the standards of sections 6(c) and 17(b). The Fund will purchase Shares of the New Asia Fund at the same purchase price and on the same basis as all other purchasers of Shares. In addition, the Proposed Investment is consistent with the Fund's investment objectives and policies as set forth in the Fund's registration statement. Applicants also believe that the Proposed Investment is consistent with the general purposes of the Act.

#### *Section 17(d) and Rule 17d-1*

11. Section 17(d) prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from effecting any transaction in which such investment company is a joint, or joint and several, participant with such person in contravention of SEC rules and regulations. Rule 17d-1 provides that an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, shall not participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which the registered investment company is a participant unless the SEC has issued an order approving the arrangement. The Proposed Investment may constitute a joint enterprise or other joint arrangement within the meaning of rule 17d-1.

12. Applicants believe that the Proposed Investment satisfies the rule 17d-1 standards. Applicants represent that the Fund's board approved the investment by the Fund after carefully considering all relevant factors. All purchasers of the New Asia Fund Shares will receive equal treatment, and no one participant will be favored over any other in any respect.

#### Applicants' Conditions

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

1. The Manager will waive its management fee (which includes

administrative fees) with respect to the Fund's net assets represented by the Fund's Proposed Investment in the New Asia Fund. To effectuate this waiver, Fund assets represented by the Shares purchased by the Fund under the Proposed Investment will be excluded from the net assets of the Fund in the calculation of the Manager's fee. As such waiver relates to the Manager's fee schedule, any Fund assets invested in the New Asia Fund will be excluded from the Fund's assets before any fee calculation is made; thus, the Fund's aggregate net assets will be adjusted by the amount invested in the New Asia Fund prior to determining the fee based on the Manager's fee schedule (the amount waived pursuant to this procedure shall be defined as the "Reduction Amount" for purposes of condition 4 below).

2. Any fees payable by the Fund to the Manager so excluded in connection with the Proposed Investment, as described herein, will be excluded for all time, and will not be subject to recoupment by the Manager or by any other investment adviser at any other time.

3. The Fund's Proposed Investment in the Shares will be limited to 1% of the Fund's total assets, taken at the time of the Fund's subscription.

4. If the Manager waives any portion of its fees or bears any portion of its expenses in respect of the Fund (an "Expense Waiver"), the adjusted fees for the Fund (gross fees minus Expense Waiver) will be calculated without reference to the Reduction Amount. Adjusted fees then will be reduced by the Reduction Amount. If the Reduction Amount exceeds adjusted fees, the Manager will reimburse the Fund in an amount equal to such excess.

5. The Shares owned by the Fund will be voted by an independent director designated to act in such capacity.

6. Capital Group, CIEMF, and any other Capital Group affiliates that may purchase Shares of the New Asia Fund in the future will vote their Shares in proportion to the vote of all other shareholders of the New Asia Fund.

7. Shares of the New Asia Fund will not be subject to a sales load, redemption fee, or a distribution fee.

8. Investment in Shares will be in accordance with the Fund's investment restrictions and will be consistent with its policies as recited in its registration statement and prospectus.

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

Margaret H. McFarland,  
*Deputy Secretarys.*

[FR Doc. 96-9940 Filed 4-22-96; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21899; 812-9948]

#### **Glickenhau & Co., et al.; Notice of Application**

April 16, 1996.

**AGENCY:** Securities and Exchange Commission ("SEC").

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

**APPLICANTS:** Glickenhau & Co. ("Glickenhau") and Lebenthal & Co., Inc. ("Lebenthal") (collectively, the "Sponsors"); Empire State Municipal Exempt Trust ("Empire Trust") and Glickenhau Value Portfolios ("Equity Trust").

**RELEVANT ACT SECTIONS:** Order requested under sections 11(a) and 11(c).

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain offers of exchange between unit investment trusts.

**FILING DATES:** The application was filed on January 4, 1996 and amended on March 21, 1996.

**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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 13, 1996, 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 SEC's Secretary.

**ADDRESSES:** Secretary: SEC, 450 5th Street NW, Washington, DC 20549. Applicants: Glickenhau, 6 East 43rd Street, New York, New York 10017; Lebenthal, 120 Broadway, New York, New York 10271.

**FOR FURTHER INFORMATION CONTACT:** David W. Grim Staff Attorney (202) 942-0571, or David M. Goldberg, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

<sup>2</sup>Section 17(b) applies to specific proposed transactions and not to an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-299 (1945). Section 6(c) can be used to grant relief from section 17(a) for an ongoing series of future transactions.