SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23464; 812–11212]

France Growth Fund, Inc.; Notice of Application

September 23, 1998.

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 section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF THE APPLICATION: Applicant, The France Growth Fund, Inc., a registered closed-end management investment company, requests an order to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy with respect to its common stock calling for quarterly distributions of a fixed percentage of the applicant's net asset value (''NAV'').

FILING DATE: The application was filed on July 2, 1998 and amended on September 3, 1998.

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 the applicant 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 19, 1998, and should be accompanied by proof of service on the 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicant, c/o Ernest V. Klein, Esq., Hale and Dorr LLP, 60 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 942–0714, or George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (telephone (202) 942–8090).

Applicant's Representations

1. Applicant is registered under the Act as a closed-end management investment company and is organized as a Maryland corporation. Applicant's investment objective is long-term capital appreciation through investments primarily in French equity securities. Applicant's shares are listed and traded on the New York Stock Exchange. Applicant's investment adviser is Indocam International Investment services (''Adviser''), an investment adviser registered under the Investment Advisers Act of 1940.

2. On June 9, 1998, applicant's board of directors (''Board'') adopted a distribution plan with respect to applicant's common stock that calls for distributions, on a quarterly basis, of at least 3% of applicant's NAV determined as of the end of the prior calendar year, for a total distribution of at least 12% annually (the ''Distribution Plan''). Applicant states that the Distribution Plan will provide a steady cash flow to its shareholders and, during periods when its per share NAV is increasing, a means for shareholders to receive, on a periodic basis, some of the appreciation in the value of their shares. Applicant also believes that the Distribution Plan will help reduce the discount from NAV at which applicant's shares trade. Applicant's Board has provided for the Distribution Plan to remain in effect for a minimum of three years, to allow the Board to evaluate the Distribution Plan's effect on applicant's discount.

3. Applicant requests relief to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect the Distribution Plan.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions that Applicant may make with respect to any one year, would prevent the normal operation of its Distribution Plan whenever applicant's realized net long-term gains in any year exceed the total of the fixed quarterly distributions that under rule 19b–1 may include such capital gains. As a result, applicant states that it must fund these quarterly distributions with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to cover quarterly distributions). Applicant further asserts that the long-term capital gains in excess of the fixed quarterly distributions permitted by rule 19b–1 then must either be added as an ''extra'' to one of the permitted capital gains distributions, thus exceeding the total minimum amount called for by the Distribution Plan, or be retained by the applicant, with the applicant paying taxes on the amount retained. Applicant believes that the application of rule 19b–1 to its Distribution Plan may create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include such gains.

3. Applicant believes that the concerns underlying section 19(b) and rule 19b–1 are not present in applicant's situation. One of the concerns leading to the adoption of the rule was that shareholders might not be able to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicant states that it will fully describe the Distribution Plan, including that quarterly distributions called for by the Distribution Plan will include returns of capital to the extent that applicant's net investment income and net realized capital gains are insufficient to meet the fixed dividends, in each of applicant's periodic reports to shareholders. Shareholders will receive the first such periodic report prior to the implementation of the Distribution Plan. In accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution (net investment income, net realized capital gain or turn of capital) will accompany each distribution (or the confirmation of the reinvestment thereof under applicant's dividends reinvestment plan). In addition, a statement showing the amount and source of each

distribution during the year will be included with the applicant's annual tax information reporting distributions for that year and sent to each shareholders who receive distributions during the year, including shareholders who have sold shares during the year.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividends'') where the distribution would result in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end management investment companies, such as applicant, which do not continuously distribute their shares. Applicant further asserts that if it makes a rights offering to its shareholders, the rights offering will be timed so that share issueable upon exercise of the rights will be issued only in the six week period immediately following the record date for the declaration of a dividend. Thus, the abuse of selling the dividend could not occur as a matter of timing. Applicant further states that any offering by applicant of transferable rights will comply with all Commission and staff guidelines concerning such offering. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any such offering by applicant of transferable rights will also comply with any applicable NASD rules regarding the fairness of compensation.

5. Section 6(c) 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 the Act, or from any rule thereunder, 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. For the reasons stated above, applicant believes that the requested relief satisfies this standard.

Applicant's Condition

Applicant agrees that any Commission order granting the requested relief will terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by applicant of its shares other than:

(i) A rights offering with respect to applicant's common stock in which (a) shares are issued only within the six-week period immediately following the record date of a quarterly dividend, (b) the prospectors for the rights offering makes it clear that the shareholders exercising the rights will not be entitled to receive such dividend, and (c) the applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of applicant; unless applicant has received from the staff of the Commission assurance that the order will remain in effect.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 98–26020 Filed 9–20–98; 8:45 am]

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SECURITIIES AND EXCHANGE COMMISSION

[Release No. 34–40456; File No. SR–MSRB–97–15, Amdt. No. 1]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rules G–11, on Sales of New Issue Municipal Securities During the Underwriting Period, G–12, on Uniform Practice, and G–8, on Books and Records

September 22, 1998.

On August 18, 1998, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') Amendment No. 1 to its File No. SR–MSRB–97–15 (hereafter referred to as ''Amendment No. 1''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] Amendment No. 1 is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith Amendment No. 1 to its previously proposed amendment to Rule G–11(g)(i), on sales of new issue municipal securities during the underwriting period. Amendment No. 1 retains the requirement of the previously proposed amendment to Rule G–11(g)(i) to complete the allocation of securities within 24 hours of the sending of the commitment wire. Amendment No. 1 further provides that, if the bond purchase agreement is not yet signed or if the award is not yet made at the time allocations are made, such allocations are subject to the signing of the bond purchase agreement or the award of bonds and the purchaser must be informed of this fact.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for Amendment No. 1 and discussed any comments it received on Amendment No. 1. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 23, 1997, the Board filed with the Commission proposed amendments to Rules G–11, G–12 and G–8 to strengthen further the integrity of the syndicate practices process. One of the amendments to Rule G–11(g) would require the managing underwriter to complete the allocation of securities within 24 hours of the sending of the commitment wire. The Board adopted this amendment to ensure a timely allocation process in the industry.

Notice of the proposed rule change appeared in the **Federal Register** on April 21, 1998.[3] The Commission received three comment letters in response to the notice. One of the commenters was the City of New York.[4] The City of New York states that it is a mistake to assume that the bond purchase agreement will be signed prior to the completion of the allocation. It notes that it is the City's practice to sign a bond purchase agreement on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 39873 (April 14, 1998), 63 FR 19775.

[4] The Board responded to issues raised in comment letters to the Commission from The Bond Market Association and Salomon Smith Barney by letter dated June 10, 1998, to Mignon McLemore, Attorney, from Ronald W. Smith, Senior Legal Associate.