Applicant's Legal Analysis

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

2. Rule 19b–1, by limiting the number of net long-term capital gain distributions that applicant may make with respect to any one year, has prevented the operation of the Pay-Out Policy because applicant's realized net long-term capital gains in any year may exceed the total of the fixed quarterly distributions that under rule 19b–1 may include such capital gains. In that situation, the rule effectively forces the fixed quarterly distributions, that under the rule may not include such capital gains, to be funded with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient), even though net realized long-term capital gains would otherwise be available therefor. The long-term capital gains in excess of the fixed quarterly distributions permitted by the rule then must either be added as an ''extra'' on one of the permitted capital gains distributions, thus exceeding the total annual amount called for by the Pay-Out Policy, or be retained by applicant (with applicant paying taxes thereon).

3. Applicant believes that granting the required relief would limit applicant's return of capital distributions to that amount necessary to make up any shortfall between applicant's guaranteed distribution and the total of its investment income and capital gains. The likelihood that applicant's shareholders would be subject to additional tax return complexities involved when applicant retains and pays taxes on long-term capital gains would therefore be avoided.

4. One of the concerns leading to the adoption of section 19(b) and rule 19b–1 was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. In accordance with rule 19a–1, a separate statement showing the source of the distribution (net investment income, net realized capital gains, or returns of capital) will accompany each distribution (or the confirmation of the reinvestment thereof under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of distributions received during the year will be included with applicant's IRS Form 1099–DIV reports sent to each shareholder who received distributions during the year (including shareholders who sold shares during the year). This information will also be included in applicant's annual report to shareholders. Through these disclosures and other communications with shareholders, applicant states that its shareholders will understand that applicant's fixed distributions are not tied to its investment income and realized capital gains and will not represent yield or investment return.

5. Another concern that led to the adoption of section 19(b) and rule 19b–1 was that frequent capital gain distributions could facilitate improper fund distribution practices, including the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend (''selling the dividend''), where the dividend results in an immediate corresponding reduction in net asset value and is in effect a return of the investor's capital. Applicant believes that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares. Although, to date, applicant has completed one rights offering of additional shares to shareholders, the rights offering was short in duration and involved a relatively small number of new shares. The rights in the rights offering were non-transferable and offered only to existing shareholders. The rights were offered only by means of the statutory prospectus, without solicitation by brokers and without payment of any commission or other underwriting fee.

6. Applicant states that another concern leading to the adoption of section 19(b) and rule 19b–1, increase in administrative costs, is not present because applicant will continue to make quarterly distributions regardless of what portion thereof is composed of capital gains.

7. Section 6(c) of the Act 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, if and to the extent 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 exemption meets the standards set forth in section 6(c).

Applicant's Condition

Applicant agrees that the order granting the exemption shall 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 non-transferable rights offering to shareholders of applicant, provided that such offering does not include solicitation by brokers or the payment of any commissions or underwriting fee; and (ii) an offering in connection with a merger, consolidation, acquisition, or reorganization.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–12465 Filed 5–16–96; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Rel. No. IC—21952; 812–10064]**

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

May 10, 1996.

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

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Emerging Markets Growth Fund, Inc. (''EMGF''), New World Investment Fund (''NWIF''), IBM Retirement Plan Trust (''Trust I''), and General Motors Employees Global Group pension Trust (''Trust II'').

**RELEVANT ACT SECTIONS:** Order requested under section 17(b) of the Act granting an exemption from section 17(a).

**SUMMARY OF APPLICATION:** Applicants request an order to permit EMGF to acquire all of the assets of NWIF. Because of certain affiliations, the two funds may not rely on rule 17a–8 under the Act.

**FILING DATES:** The application was filed on March 28, 1996 and amended on May 9, 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 June 4, 1996, and should be accompanied by proof of service on the 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 Fifth Street, N.W., Washington, D.C. 20549. Applicants: EMGF and NWIF c/o The Capital Group Companies, Inc. 11100 Santa Monica Boulevard, Los Angeles, California 90025; and Trust I and Trust II c/o Chase Manhattan Bank, N.A., Chase Metro Tech Center, Brooklyn, New York 11245.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Alison E. Baur, 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.

Applicants' Representations

1. EMGF is a closed-end management investment company organized as a Maryland corporation and registered under the Act. NWIF is a closed-end management investment company organized as a Massachusetts business trust and registered under the Act. Capital International, Inc. (the ''Adviser'') serves as investment adviser to EMGF and NWIF. The Adviser is an indirect, wholly-owned subsidiary of The Capital Group Companies, Inc.

2. The International Business Machines Corporation established Trust I to provide monthly income to eligible retired employees. General Motors Corporation (''GM'') created Trust II for the benefit of certain employee benefit plans of GM and its subsidiaries. Trust I and Trust II each owns greater than 5% of the outstanding shares of each of EMGF and NWIF.

3. Applicants propose that NWIF (the ''Acquired Fund'') be combined with and into EMGF (the ''Acquiring Fund'' and together with the Acquiring Fund, the ''Funds'') in a tax-free reorganization (the Reorganization''). In the Reorganization, the Acquiring Fund will acquire all of the assets and liabilities, of the Acquired Fund in exchange for shares of the Acquiring Fund, which then will be distributed *pro rata* to former shareholders of the Acquired Fund. The transfer of the assets of the Acquired Fund to the Acquiring Fund, and in exchange the issuance of the Acquired Fund's shares, will be based on the relative net asset values of each of the Funds as of the close of the New York Exchange on the last business day immediately preceding the effective date of the Reorganization. Each Fund will bear its own expenses in connection with the Reorganization.

4. Shares of the Acquired Fund are offered to the public on a continuous basis to investors meeting the Acquired Fund's investor suitability and minimum purchase requirements. The Acquiring Fund's investor suitability requirement provides that each prospective investor that is a ''company'', as defined in the Act, must have total assets in excess of $5 million. Each prospective investor that is a natural person must be an ''accredited investor'' within the meaning of Regulation D under the Securities Act of 1933. Shares of the Acquired Fund are offered to the public on a continuous basis under the same conditions and subject to the same suitability limitations.

5. At a meeting on January 26, 1996, the board of directors of the Acquiring Fund, including the disinterested directors, approved the Reorganization. Also on January 26, 1996, the board of trustees of the Acquired Fund, including the disinterested trustees, approved the Reorganization. Each board made the findings required under rule 17a–8 and determined that participation in the Reorganization is in the best interests of its registered investment company and that the interests of existing shareholders of its registered investment company will not be diluted as a result of its effecting the Reorganization. Such findings, and the basis upon which such findings were made, are recorded fully in the minute books of each registered investment company. In addition, the board of trustees of the Acquired Fund considered (a) the potential benefits of the Reorganization to the shareholders of the Acquired Fund, (b) the investment objectives, policies, restrictions, and investment holdings of the Funds, (c) the terms and conditions of the Reorganization that might affect the price of the outstanding shares of the Acquired Fund, and (b) the direct or indirect costs to be incurred by the Acquired Fund or shareholders thereof.

6. In considering the compatibility of the two Funds, the boards noted that the investment objectives of the Funds are similar, in that both Funds seek capital appreciation and income. The principal difference in objectives is that the Acquired Fund concentrates its investments in Latin American countries, and is permitted to invest a greater percentage of its assets in debt securities, while the Acquiring Fund invests in a broader range of emerging market countries, with a greater percent of its assets in equity securities. Nevertheless, the Acquiring Fund's investment policies permit it to invest in substantially all of the securities in which the Acquired Fund may invest.

7. The expected advantages of the Reorganization include: the benefit to shareholders of the Acquired Fund of the Acquiring Fund's lower expense ratio; the elimination of certain duplicative expenses of separate funds, such as separate audit and legal fees; a larger asset base; and enhanced liquidity and portfolio diversification. In addition, shareholders of the Acquiring Fund should benefit from the Reorganization in that it will permit the Acquiring Fund to acquire portfolios securities in the amount of the assets of the Acquired Fund without incurring the expenses that would normally be associated with purchasing such securities in the open market. The Adviser estimates the potential cost savings to the Acquiring Fund to be $344,000.

8. The consummation of the Reorganization is subject to certain conditions, including that the parties shall have received from the SEC the order requested herein, and the receipt of an opinion of tax counsel that the Reorganization will qualify as a tax-free reorganization under the Internal Revenue Code of 1986 and will not result in the recognition of any taxable gain or loss to the Acquiring Fund or the Acquired Fund, or to any shareholders thereof. In addition, applicants agree not to make any material changes to the reorganization agreement that affect the application without the prior approval of the SEC. Applicants also agree not to waive, amend, or modify any provision of the reorganization agreement that is required by state or federal law in order to effect the Reorganization.

9. A registration statement on Form N–14 with respect to the Reorganization will be filed with the SEC. A special meeting of shareholders of the Acquired Fund will be held to consider and act upon the Reorganization.

Applicants' Legal Analysis

1. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, or any company controlled by

such registered company, any security or other property.

2. Section 2(a)(3)(A) of the Act provides that any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of any other person is an affiliated person of that person. Section 2(a)(3)(B) provides that any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by another person is an affiliated person of that person.

3. Rule 17a–8 exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

4. As noted above, the Funds have a common investment adviser. Thus, the Reorganization would be exempt from the provisions of section 17(a) by virtue of rule 17a–8, but for the fact that the Funds may be affiliated for reasons other than those set forth in the rule. As previously stated, Trust I and Trust II each owns more than 5% of the outstanding voting securities of each of the Funds. Because of this greater than 5% holding, Trust I and Trust II each is an affiliated person of each of the Funds under section 2(a)(3)(A) and each of the Funds is an affiliated person of each of Trust I and Trust II under section 2(a)(3)(B). Therefore, the Acquiring Fund is an affiliated person of an affiliated person of the Acquired Fund and vice versa.

5. 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.

6. Applicants submit that the Reorganization meets the standards for relief under section 17(b), in that the terms of the Reorganization, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the Reorganization is consistent with the investment policy of the Funds; and the Reorganization is consistent with the general purposes of the Act. In addition, applicants submit that each board made the determinations under rule 17a–8 that the Reorganization is in the best interests of its registered investment company and that the interests of existing shareholders of its registered investment company will not be diluted as a result of its effecting the Reorganization.

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

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–12386 Filed 5–16–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–21951; No. 812–9978]**

## John Hancock Mutual Life Insurance Company, et al.

May 10, 1996.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of Application for an Order pursuant to the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** John Hancock Mutual Life Insurance Company (''John Hancock Mutual''), John Hancock Variable Life Insurance Company (''John Hancock Variable,'' together with John Hancock Mutual, the ''Companies''), John Hancock Variable Annuity Account JF (the ''Account''), and John Hancock Funds, Inc. (''JHFI'').

**RELEVANT ACT SECTIONS:** Order requested pursuant to Section 6(c) of the Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction of mortality and expense risk and certain optional benefit rider charges from the assets of: (a) the Account in connection with the offer and sale of certain variable annuity contracts (''Existing Contracts''); (b) the Account in connection with the issuance of variable annuity contracts that are materially similar to the Existing Contracts (''Future Contracts,'' together with Existing Contracts, the ''Contracts''); and (c) any other separate account established in the future by the Companies (''Future Account'') in connection with the issuance of Contracts, for which JHFI or certain other broker-dealers may act as distributor and principal underwriter. To the extent the Contracts are issued on a group basis, the term ''Contract,'' when used herein, includes any individual certificates or other participations thereunder.

**FILING DATE:** The application was filed on February 5, 1996.

**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 Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 4, 1996, and must 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 Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, c/o Sandra M. DaDalt, Associate Counsel, John Hancock Mutual Life Insurance Company, John Hancock Place, Post Office Box 111, Boston, Massachusetts 02117.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Kirchoff, Senior Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the public Reference Branch of the Commission.

Applicants' Representations

1. John Hancock Variable, a stock life insurance company incorporated under the laws of the Commonwealth of Massachusetts, is a wholly-owned subsidiary of John Hancock Mutual, a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts.

2. John Hancock Variable is the depositor of the Account, and will serve as depositor for Future Accounts.

3. The Account was established as a separate investment account under the laws of the Commonwealth of Massachusetts on November 13, 1995, pursuant to a resolution of the Board of Directors of John Hancock Variable. The Future Accounts will be separate accounts of either John Hancock Mutual or John Hancock Variable and will be registered with the Commission under the Act.

4. JHFI, an indirect, wholly-owned subsidiary of John Hancock Mutual, is