securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) the acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are limited; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1) (F) or (G).

3. Applicants state that the investment by the Mixed Funds in the Core Funds will comply with section 12(d)(1)(G) of the Act, with the exception of the requirement in section 12(d)(1)(G)(i)(II) that the Mixed Funds limit their other investments to Government securities and short-term paper.

4. Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent that the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) from section 12(d)(1)(G)(i)(II) to permit the Mixed Funds to invest in Additional Portfolio Investments as described in the application. Applicants believe that the Mixed Funds' proposed investments in Additional Portfolio Investments do not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

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

1. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts the Mixed Funds from investing in the Additional Portfolio Investments as described in the application.

2. Before approving any investment advisory contract for a Mixed Fund, the directors of the Mixed Fund, including a majority of the directors who are not ''interested persons'' as defined in section 2(a)(19) of the Act, will find that the advisory fee, if any, charged under the contract is based on services provided that are in addition to, rather than duplicative of, services provided under the contracts of any Core Fund in which the Mixed Fund may invest.These findings and their basis will be recorded fully in the minute books of the Mixed Fund.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–17295 Filed 6–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23268; 812–11064]

The Emerging Germany Fund Inc.; Notice of Application

June 24, 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 Application: Applicant, The Emerging Germany 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 its net asset value.

Filing Date: The application was filed on March 13, 1998 and amended on May 28, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 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 July 20, 1998 and should be accompanied by proof of service on 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 may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, Four Embarcadero Center, San Francisco, CA 94111–4189, Attention: Robert J. Goldstein.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, 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 Commission's Public Reference Branch, 450 5th Street NW., Washington, DC 20549 (tel. 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, which applicant seeks to obtain by investing primarily in equity and equity-linked securities of German companies. Applicant's investment adviser is Dresdner RCM Global Investors LLC, an investment adviser registered under the Investment Advisers Act of 1940.

2. On February 12, 1998, applicant's board of directors adopted a distribution policy with respect to applicant's common stock that calls for quarterly distributions of approximately 2.5% of applicant's average weekly net asset value, for an annual total of at least 10% of its average weekly net asset value (the ''Distribution Policy'').

3. Applicant states that the Distribution Policy will provide a steady cash flow to its shareholders, and, during periods when its per share net asset value is increasing, a means for shareholders to receive on a regular basis some of the appreciation in value of their shares. Applicant also believes that the Distribution Policy plays a role in reducing the discount from net asset value at which applicant's shares typically trade.

4. 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 Policy.

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 Policy 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 on capital (to the extent net investment income and realized short-term capital gains are insufficient to cover a quarterly distribution). 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 annual amount called for by the Distribution Policy, or retained by applicant (with applicant paying taxes on the retained amounts). Applicant asserts that the application of rule 19b–1 to its Distribution Policy may cause anomalous results and 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 these concerns is that shareholders might not be able to distinguish frequent distributions of capital gains and dividends from investment income. Applicant states that the Distribution Policy has been disclosed in a special letter to its shareholders, and applicant will disclose the Policy in future quarterly and annual reports to shareholders. Applicant further states that, 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 return of capital) will accompany each distribution (or the conformation of the reinvestment under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each quarterly distribution received during the year will be disclosed to each shareholder of applicant who received distributions during the year (including shareholders who shares during the year). Applicant expects to include disclosure describing the amount and source of distributions under the Distribution Policy on a cumulative basis for the full fiscal year either in (i) the statement showing the amount and source of the quarterly distribution paid in the last quarter of each fiscal year, or (ii) in a separate statement mailed to shareholders shortly after year-end.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper fund distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend'') where the distribution would result in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as applicant, which do not continuously distribute shares.

5. Applicant states that increased administrative costs also are a concern underlying section 19(b) and rule 19b–1. Applicant asserts, however, that it will continue to make quarterly distributions regardless of whether capital gains are included in any particular distribution.

6. Section 6(c) 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 granted 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 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. 98–17385 Filed 6–29–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23269; File No. 812–11092]

Variable Insurance Products Fund, et al.

June 24, 1998.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from Sections 9(a), 13(a), 15(a) and 15(d) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an amended order to permit shares of the Variable Insurance Products Fund, Variable Insurance Products Fund II, and Variable Insurance Products Fund III (together, the ''Funds''), as well as shares of any future funds for which Fidelity Management & Research Company (''FMR'') or any affiliate of FMR serves as the investment manager, advisor, principal underwriter, or sponsor (''Future Funds'') to be issued to and held by qualified pension and retirement plans outside the Separate account context (''Qualified Plans'').

APPLICANTS: Variable Insurance Products Fund (''VIPF''), Variable Insurance Products Fund II (''VIPF II''), and Variable Insurance Products Fund III (''VIPF III'').