ADV-NR'' (OMB Control No. 3235–0240); ''Form ADV-W and Rule 203–2'' (OMB Control No. 3235–0313); ''Rule 203–3 and Form ADV-H'' (OMB Control No. 3235–0538); ''Rule 204–2'' (OMB Control No. 3235–0278); ''Rule 204–3'' (OMB Control No. 3235–0047); ''Rule 204A–1'' (OMB Control No. 3235–0596); ''Rule 206(4)–2'' (OMB Control No. 3235–0241); ''Rule 206(4)–3'' (OMB Control No. 3235–0242); ''Rule 206(4)–4'' (OMB Control No. 3235–0345); ''Rule 206(4)–6'' (OMB Control No. 3235–0571); and ''Rule 206(4)–7'' (OMB Control No. 3235–0585).

Dated: February 22, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–3725 Filed 2–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26763; 812–13037]

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

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

ACTION: Notice of application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(3)(A) and (D) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

DATES: February 22, 2005.

Summary of Application: The order would permit Emerging Markets Growth Fund, Inc. (the ''Fund'') to invest in an affiliated investment vehicle, Capital International Private Equity Fund IV, L.P. (the ''Partnership'').

Applicants: The Fund, the Partnership, Capital International Investments IV, L.P. (the ''General Partner''), Capital International Investments IV, LLC (''CII LLC''), Capital International, Inc. (the ''Manager''), Capital Group International, Inc. (''CGII''), and CGPE IV, L.P. (''CGPE'').

Filing Dates: The application was filed on November 10, 2003 and amended on January 21, 2005. Applicants have 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 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 Commission by 5:30 p.m. on March 22, 2005, 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 Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth, NW., Washington, DC 20549–0609. Applicants, c/o Capital International, Inc., 11100 Santa Monica Boulevard, Los Angeles, CA 90025.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870 or Todd F. Kuehl, Branch Chief, 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 is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund, a Maryland corporation, is an open-end management investment company registered under the Act. The Fund's shares are registered under the Securities Act of 1933. The Fund's investment objective is to seek long-term capital growth by investing in equity securities of issuers in developing countries. The Fund may invest up to 10% of its assets in developing country securities that are not readily marketable. The Fund currently invests in nine private equity funds that invest in various regions globally and that are sponsored and advised by entities unaffiliated with the Manager.[1]

2. The Fund operates as an open-end interval fund under an exemptive order received from the Commission.[2] Since January 1, 1999, the Fund has limited new investors in the Fund to those who are ''qualified purchasers,'' within the meaning of section 2(a)(51) of the Act.

3. The Partnership is organized as a limited partnership under the laws of Delaware. The Partnership relies on the exception from the definition of investment company in section 3(c)(7) of the Act. The investment objective of the Partnership is to seek long-term capital appreciation through privately negotiated and equity-related investments (''Equity Investments'') primarily in emerging market companies.[3] The General Partner of the Partnership is a Delaware limited partnership, wholly-owned by CGII and the Manager.[4] CGII is a wholly-owned subsidiary of The Capital Group Companies, Inc. (''Capital Group''). The General Partner will make a capital commitment to the Partnership equal to at least the lesser of 5% of the aggregate commitments of the Partnership or U.S. $50 million.[5]

4. The Fund proposes to invest in the Partnership an amount not exceeding the lesser of $75 million (less than 1% of the Fund's total net assets as of June 30, 2004) or 10% of all the Partnership's interests (''Proposed Investment''). Applicants state that investing through the Partnership in Equity Investments would enable the Fund to achieve greater diversification by participating in many more investments than would be the case if the Fund invested directly in Equity Investments. In addition, applicants state that, given the Fund's current fee and expense structure, and the resource-intensive nature of the investment process for Equity Investments, it is not cost-effective for the Fund to invest directly in Equity Investments on a diversified basis. The Fund's board of directors (the ''Board''), including a majority of the directors who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Directors''), has authorized the Proposed Investment. Of the Fund's thirteen member Board, nine are Independent Directors.[6] Of the nine Independent Directors, none is or will be a direct investor in CGPE, and eight

[1] None of the Fund's current commitments to any single private equity fund exceeds 1% of the Fund's net assets.

[2] *Emerging Markets Growth Fund, Inc., et al.,* Investment Company Release Nos. 23433 (Sept. 11, 1998) (notice) and 23481 (Oct. 6, 1998) (order).

[3] The Partnership may also invest up to 20% of its aggregate capital commitments in companies that have their primary business activities in developed markets outside the United States.

[4] The general partner of the General Partner is CII LLC and the limited partners consist of certain employees (the ''Private Equity Investment Officers'') of the Manager or one of its affiliated companies.

[5] CGPE, a fund established by an affiliate of the General Partner for the benefit of its employees, will co-invest with the Partnership on a pro rata basis in accordance with their respective capital commitments. CGPE's general partner is CII LLC and its limited partners are the ''Associates''.

[6] The Fund must satisfy the fund governance standards as defined in Rule 0–1(a)(7) under the Act by January 15, 2006 as a condition to the order. The Fund is currently considering approaches to increase the percentage of independent directors to meet the requirements of Rule 0–1(a)(7) and is in the process of defining the role of independent chairman and identifying potential candidates to serve as chairman of the Board.

are neither directors nor officers of any investor in the Partnership.

5. The Partnership has an advisory board comprised exclusively of representatives of current limited partners (together with future limited partners, ''Limited Partners'') that have a capital commitment of at least $40 million to the Partnership and other Limited Partners that are selected by the General Partner (''Advisory Committee''). A representative of the Fund, who is an Independent Director of the Fund and is not otherwise affiliated with the Partnership or any of the Limited Partners, will become a member of the Advisory Committee if the requested relief is granted. The Advisory Committee is responsible for, among other things: (a) Providing advice and counsel to the Partnership and the General Partner in connection with potential conflicts of interest and other matters relating to the Partnership as may be requested by the General Partner or as provided in the partnership agreement, as modified by side letters (''Partnership Agreement''); and (b) approving certain valuation determinations of the Partnership's assets or interests.

6. The Manager, a wholly-owned subsidiary of CGII, serves as investment adviser to the Fund and the Partnership and is registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Manager will waive its management fee, including administrative fees, with respect to the Fund's net assets represented by the investment in the Partnership. Specifically, the Fund's aggregate net assets will be adjusted downward by the amount invested in the Partnership prior to determining the Manager's fee.

7. The Manager is responsible for all overhead expenses and other direct and indirect routine administrative expenses incurred by the Manager in connection with identifying investments for the Partnership and all direct and indirect routine administrative expenses of the Partnership incurred in connection with managing the Partnership following the initial closing, which occurred on October 7, 2003. For its services, the Manager receives a management fee throughout the term of the Partnership. In addition, the Manager, as the managing member of the general partner of the General Partner, will be entitled to receive certain fees that may be characterized as a ''performance fee.'' The Partnership is responsible for all expenses except routine administrative expenses incurred in connection with the operation of the Partnership.

8. Each Limited Partner must execute a subscription agreement (''Subscription Agreement'') to invest in the Partnership. The term of the Partnership is ten years from the final closing, which occurred on June 25, 2004, but the General Partner may extend the term for a one-year period at its discretion and for up to two additional years with the consent of the Advisory Committee. Limited Partners generally may not withdraw from the Partnership nor transfer any of their interests, rights, or obligations under the Partnership, except with the express written consent of the General Partner.[7]

9. All Limited Partners that enter into the Partnership Agreement after the first closing date will make a capital contribution to the Partnership within five business days of the date of their admission so that the percentage of their capital commitment that is contributed to the Partnership is equal to the percentage of the other Limited Partners' and General Partner's (together, the ''Partners'') capital commitments (a ''Catch-up Contribution''). Any Limited Partner, other than the Fund, that is admitted to the Partnership after the fifteenth business day following the first closing date will be required to pay to all previously admitted Partners (in accordance with their respective percentage interests) an additional amount equal to a 1% monthly rate on the Catch-up Contribution from the date capital contributions were made by the previously admitted Partners to the date of its admission (the ''Additional Amount''). The Additional Amount which the Fund will be required to pay on its admission will be an additional amount on its Catch-up Contribution at a rate equal to the then prime rate plus 2% per year (or a pro rata portion thereof) from the date capital contributions were made by the previously admitted Partners to the date of the Fund's admission. In addition, all new Limited Partners (including the Fund) will be required to pay to the Manager their share of current management fees as well as management fees from the first closing date, or from such later date as the Manager may designate to the extent it waives its management fee for a certain period. With respect to management fees allocable to the period prior to its admission, each new Limited Partner will pay an additional amount on the allocable amount of management fees at the rate of the then prime rate plus 2% per year (or a pro rata portion thereof) from the date the management fees were made by the previously admitted Partners to the date of its admission. Any such retroactive management fee allocated to the Fund will be credited against the management fees it pays to the Manager.

10. Applicants request relief to permit: (a) The Proposed Investment; (b) the General Partner to invest as a general partner in the Partnership under the terms and conditions of the Partnership Agreement; (c) any investor in the Fund who in the future may become an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Fund by virtue of the investor's ownership of 5% or more of the Fund's outstanding securities (''Future Affiliates'') and any affiliated person of a Future Affiliate (also, ''Future Affiliates''), to invest as a Limited Partner in the Partnership under the terms and conditions of the Partnership Agreement and the Subscription Agreement; (d) the Manager, as investment adviser to the Fund and the Partnership, to effect the transactions described above in (a); (e) CII LLC and the certain employees of the Manager or one of its affiliated companies (''Private Equity Investment Officers'') to exercise ownership rights in the General Partner and to invest in the Partnership indirectly through their ownership of the General Partner; (f) the Manager and CGII to exercise ownership rights in CII LLC and to invest in the Partnership indirectly through their ownership in CII LLC; (g) CII LLC and the Associates to invest and exercise ownership rights in CGPE; (h) each of the applicants, current and future Limited Partners, and the Future Affiliates to exercise its rights and fulfill its obligations under the Partnership Agreement and Subscription Agreement; and (i) any officer, director, or employee of the Fund or of any affiliated person of the Fund to participate as a member of the Advisory Committee of the Partnership and to exercise their rights and fulfill their obligations with respect to the Advisory Committee in accordance with the terms and conditions of the Partnership Agreement.

11. Applicants also request relief to allow the Limited Partners and any Future Affiliates not to be considered affiliated persons, or affiliated persons of affiliated persons, of the Fund, either because: (a) the Limited Partners (including Future Affiliates) are ''partners'' or ''copartners'' of the Fund in the Partnership; or (b) they own (or

[7] Notwithstanding the foregoing, for regulatory compliance reasons, Limited Partners that are subject to fiduciary obligations under the Employee Retirement Security Act of 1974, as amended (''ERISA'') (the ''ERISA Limited Partners''), may withdraw from the Partnership in the event it becomes reasonably likely that the assets of the Partnership are deemed to be ''plan assets'' under ERISA rules and regulations.

are deemed to own) 5% or more of the Partnership's outstanding voting securities.

Applicants' Legal Analysis

A. Section 2(a)(3)

1. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person holding 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are held by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; (d) any officer, director, partner, copartner, or employee of the other person; and (e) any investment adviser to an investment company or member of an advisory board to an investment company (collectively, the ''first-tier affiliates'').

2. The Manager, as the investment adviser to the Fund and the Partnership and as the manager of the General Partner, is a first-tier affiliate of each. The General Partner would be a first-tier affiliate of the Fund. The Manager and CGII are members of CII LLC, and the Private Equity Investment Officers and CII LLC are the partners of the General Partner. Applicants state that the General Partner may arguably be controlled by each of these entities, and the Partnership is likely controlled by the General Partner, perhaps making the Manager, CGII, CII LLC and the Private Equity Investment Officers first-tier affiliates of the Partnership and, hence, second-tier affiliates of the Fund. Applicants also state that because the Manager is the managing member of the general partner of CGPE, the Partnership and CGPE are arguably under common control, making CGPE a first-tier affiliate of the Partnership and a second-tier affiliate of the Fund.

3. Applicants state that each Limited Partner who owns 5% or more of the interests in the Partnership, to the extent that the interests are deemed voting securities, may be a first-tier affiliate of the Partnership. Further, applicants state that because the Fund also will own more than 5% of the interests in the Partnership if the requested relief is granted, it also may be a first-tier affiliate of the Partnership. Therefore, each other Limited Partner could be a second-tier affiliate of the Fund. Applicants also state that each Limited Partner would, absent exemptive relief, be a first-tier affiliate of every other Partner in the Partnership, including the Fund, making the affiliated persons of each Limited Partner second-tier affiliates of the Fund. In addition, applicants state that some Associates may be directors, officers, or employees of the Manager or the Fund, arguably making them first- or second-tier affiliates of the Fund.

4. The Fund requests an exemption under section 6(c) from sections 2(a)(3)(A) and (D) so that Limited Partners in the Partnership who are not otherwise first- or second-tier affiliates of the Fund would not, solely by reason of their status as Limited Partners or 5% holders of the Partnership's interests, be deemed to be first- or second-tier affiliates of the Fund. Section 6(c) of the Act permits the Commission to exempt any person or transaction from any provision of the Act, 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 policies of the Act. Applicants state that the requested relief meets the standards of section 6(c) and would relieve certain Limited Partners and their affiliated persons (and the Fund) of the burden of monitoring for compliance with the Act in connection with their independent and legitimate business and investment activities.

B. Section 17(a)

1. Section 17(a) of the Act makes it unlawful for any first- or second-tier affiliate of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. As noted above, applicants state that because the Partnership may be deemed to be a first- or second-tier affiliate of the Fund, section 17(a) may prohibit the Partnership from selling a limited partnership interest in the Partnership to the Fund. In addition, applicants state that because the Limited Partners and the Future Affiliates may be deemed to be first- or second-tier affiliates of the Fund, section 17(a) may prohibit the Limited Partners and the Future Affiliates from acting in accordance with the terms of the Partnership Agreement and the Subscription Agreement.

2. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) if the terms of the proposed transaction, 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 proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request relief under sections 6(c) and 17(b) to permit the Fund to participate in the Partnership, and to permit the Limited Partners and the Future Affiliates to act in accordance with the terms of the Partnership Agreement and the Subscription Agreement.

3. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that each Limited Partner will participate in the Partnership in proportion to each Limited Partner's commitment, and each Limited Partner will share pro rata in the costs, risks, and any profits earned in proportion to its investment, except as noted above. In addition, applicants state that the proposed investment by the Fund in the Partnership is consistent with the Fund's investment objective and policies as recited in the Fund's registration statement. Further, applicants state that the proposed investment is consistent with the general purposes of the Act.

4. Applicants state that investing in the Partnership will enable the Fund to further diversify its portfolio and to obtain exposure to Equity Investments while reducing investment transaction costs. Applicants state that Equity Investments are typically direct investments in closely-held enterprises that have either limited or no securities publicly outstanding and about which there exists little or no publicly available information. Accordingly, the process of investing in Equity Investments requires detailed on-site investigation of the enterprise and complex negotiations regarding the terms of the potential investment.

5. As noted above, all Limited Partners other than the Fund that are admitted after the fifteenth business day following the first closing date will be required to pay an Additional Amount equal to a 1% monthly rate on their Catch-up Contribution. The Fund will be required to pay an Additional Amount on its Catch-up Contribution at a rate equal to the then-prime rate, plus 2% per year. If the prime rate were to exceed 10% prior to the time the Fund is admitted into the Partnership, the Fund would pay an Additional Amount calculated at a higher rate than that rate used to calculate the Additional Amounts for the other Limited Partners. The Fund will be the only investor that will be allowed to enter into the Partnership after the final closing date. Notwithstanding that the Fund may have to pay a higher Additional Amount than that applicable to other Limited Partners, applicants believe that the consideration to be paid by the Fund is reasonable and fair and does not involve

overreaching. In exchange for the ability to gain admission to the Partnership after the final closing date (which occurred on June 25, 2004), to which all other Limited Partners are subject, applicants believe that it is reasonable and fair for the Fund to bear the risk of fluctuations in the prime rate between the final closing date and the date the Fund is admitted into the Partnership.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any first- or second-tier affiliate of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates. As noted above, the Partnership, the General Partner, the Limited Partners, the Future Affiliates, the Manager, CII LLC, the Private Equity Investment Officers, CGPE, the Associates, CGII, and Capital Group may be first- or second-tier affiliates of the Fund. Accordingly, an investment in the Partnership by the Fund may represent a joint arrangement among these entities for the purposes of section 17(d).

2. Rule 17d–1 under the Act permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment company is on a basis different from or less advantageous than that of the other participants.

3. Applicants believe that the proposed investment by the Fund in the Partnership satisfies the standards of rule 17d–1. Applicants state that the Fund will participate in the Partnership on terms that are comparable to the terms applicable to the other Limited Partners. Furthermore, both the profits to be earned and the risks to be incurred will be allocated among each of the Limited Partners pro rata, in direct proportion to each Limited Partner's investment. With regard to the payment by the Fund of an Additional Amount that could be at a rate higher than that for the other Limited Partners, applicants state that the fund would receive a corresponding benefit not offered to other Limited Partners, namely the ability to participate in the Partnership after the final closing date.

Applicants' Conditions

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

1. The Manager will waive its management fee (which includes administrative fees) payable by the Fund with respect to the Fund's net assets represented by the Fund's Proposed Investment in the Partnership. To effectuate this waiver, Fund assets represented by the Partnership interests purchased by the Fund under the Proposed Investment will be excluded from the net assets of the Fund in the calculation of the management fee. As such waiver relates to the Manager's fee schedule, any Fund assets invested in the Partnership 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 Partnership 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 No. 4, below). In addition, the Manager will credit against any future management fees payable to it in conjunction with the management of the Fund's assets, the amount of management fees paid previously by the fund with respect to the assets representing the Fund's Proposed Investment for the period between January 1, 2004 (the date management fees commenced with respect to the Partnership) and the date that the Fund is admitted to the Partnership, plus such Additional Amounts on such assets calculated as set forth in the Application. Such credit shall be applied to the management fee paid by the Fund for management of its assets after exclusion of the Fund's assets represented by such Partnership interests.

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 Partnership will be no more than U.S. $75 million.

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 Fund's Proposed Investment in the Partnership will not be subject to a sales load, redemption fee, distribution fee analogous to those adopted in accordance with Rule 12b–1 under the Act by an investment company registered under the Act, or service fee (analogous to those defined in Rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

6. The Fund's Proposed Investment in the Partnership will be in accordance with the Fund's investment restrictions and will be consistent with its policies as recited in its registration statement.

7. The Fund's Board will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act by the rule's compliance date.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–791 Filed 2–25–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Maximum Dynamics, Inc.; Order of Suspension of Trading

February 24, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Maximum Dynamics, Inc. (''Maximum'') because of questions regarding the accuracy of assertions to investors by Maximum in its most recent periodic filing (Form 10–QSB, filed on December 3, 2004), and a press release dated January 10, 2005, concerning, among other things: (1) The reason why Maximum has experienced delays in fulfilling orders of its Tagnet product offering; and (2) that Maximum has signed an agreement that will enable it to offer its point-of-sale solutions to the prepaid market in Mexico and the United States.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to the above company.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on February 24, 2005 through 11:59 p.m. EST on March 9, 2005.