

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26876; 812-13111]

### The Korea Fund; Notice of Application

May 23, 2005.

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

**APPLICANT:** The Korea Fund, Inc. (the "Fund").

**ACTIONS:** Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Applicant seeks an order that would permit in-kind repurchases of shares of the Fund held by certain affiliated shareholders of the Fund.

**FILING DATES:** The application was filed on July 21, 2004, and amended on May 20, 2005.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission'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 June 17, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549-0609. Applicant, Bruce Rosenblum, Esq., c/o Deutsche Investment Management Americas, Inc., 345 Park Avenue, New York, NY 10154.

**FOR FURTHER INFORMATION CONTACT:** Julia Kim Gilmer, Senior Counsel, at (202) 551-6871, or Janet M. Grossnickle, 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 may be obtained for a fee at the Commission's Public Reference Desk, 450 Fifth Street, NW., Washington, DC, 20549-0102 (tel. 202-551-5850).

### Applicant's Representations

1. The Fund, a Maryland corporation, is registered under the Act as a closed-end management investment company. The Fund's investment objective is to provide long-term capital appreciation through investment primarily in equity securities of Korean companies. Applicant states that under normal circumstances it invests at least 80% of its net assets in securities listed on the Korea Stock Exchange.<sup>1</sup> Shares of the Fund are listed and trade on the New York Stock Exchange and the Osaka Stock Exchange. Deutsche Investment Management Americas Inc. (the "Investment Manager") is registered under the Investment Advisers Act of 1940 and serves as the investment manager to the Fund.

2. The Fund proposes to repurchase up to 50% of its outstanding shares at 98% of net asset value ("NAV") on an in-kind basis with a pro rata distribution of the Fund's portfolio securities (with exceptions generally for odd lots, fractional shares, and cash items) (the "Initial Repurchase Offer"). The Fund also proposes to conduct six subsequent semi-annual repurchase offers, also on an in-kind basis, each for 10% of the Fund's then outstanding shares at 98% of NAV ("Subsequent Repurchase Offers" together with the Initial Repurchase Offer, the "In-Kind Repurchase Offers").<sup>2</sup> The In-Kind Repurchase Offers will be made pursuant to section 23(c)(2) of the Act and conducted in accordance with rule 13e-4 under the Securities Exchange Act of 1934.

3. Applicant states that the In-Kind Repurchase Offers are designed to accommodate the needs of shareholders who wish to participate in the In-Kind Repurchase Offers and long-term shareholders who would prefer to remain invested in a closed-end investment vehicle. Under the In-Kind Repurchase Offers, only participating shareholders will pay taxes on the gain on appreciated securities distributed in the In-Kind Repurchase Offers. Non-participating shareholders would avoid the imposition of a significant tax liability, which would occur if the Fund sold the appreciated securities to make payments in cash. Applicant further states that the In-Kind Repurchase

<sup>1</sup> Applicant states that as of April 13, 2005, approximately 97% of its assets were invested in equity stocks of Korean issuers, 92% of which were listed on the Korea Stock Exchange.

<sup>2</sup> Each Subsequent Repurchase Offer would be conducted only if the Fund's shares trade on the New York Stock Exchange at an average weekly discount from NAV greater than 5% during a 13-week measuring period ending the last day of the preceding half-year.

Offers' in-kind payments will minimize market disruption, while allowing the Fund to avoid a cascade of distributions, required to preserve its tax status, that would reduce the size of the Fund drastically. Applicant requests relief to permit any shareholder of the Fund who is an "affiliated person" of the Fund solely by reason of owning, controlling, or holding with the power to vote, 5% or more of the Fund's shares ("Affiliated Shareholder") to participate in the proposed In-Kind Repurchase Offers.

### Applicant's Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, from knowingly purchasing or selling any security or other property from or to the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person. Applicant states that to the extent that the In-Kind Repurchase Offers would constitute the purchase or sale of securities by an Affiliated Shareholder, the transactions would be prohibited by section 17(a). Accordingly, applicant requests an exemption from section 17(a) of the Act to the extent necessary to permit the participation of Affiliated Shareholders in the In-Kind Repurchase Offers.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of section 17(a) if the terms of the 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, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act. 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 rule thereunder, 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.

3. Applicant asserts that the terms of the In-Kind Repurchase Offers meet the requirements of sections 17(b) and 6(c) of the Act. Applicant asserts that neither the Fund nor an Affiliated Shareholder has any choice as to the portfolio securities to be received as proceeds

from the In-Kind Repurchase Offers. Instead, shareholders will receive their pro rata portion of each of the Fund's portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 ("Securities Act"), and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-residents other than through qualified investment vehicles, or whose distributions would otherwise be contrary to applicable local laws, rules or regulations, and (c) certain portfolio assets that involve the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterparty to the transaction. Moreover, applicant states that the portfolio securities to be distributed in the In-Kind Repurchase Offer will be valued according to an objective, verifiable standard, and the In-Kind Repurchase Offers are consistent with the investment policies of the Fund. Applicant also believes that the In-Kind Repurchase Offers are consistent with the general purposes of the Act because the interests of all shareholders are equally protected and no Affiliated Shareholder would receive an advantage or special benefit not available to any other shareholder participating in the In-Kind Repurchase Offers.

#### **Applicant's Conditions**

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. Applicant will distribute to shareholders participating in the In-Kind Repurchase Offers an in-kind *pro rata* distribution of portfolio securities of applicant. The *pro rata* distribution will not include: (a) Securities that, if distributed, would be required to be registered under the Securities Act; (b) securities issued by entities in countries that restrict or prohibit the holdings of securities by non-residents other than through qualified investment vehicles, or whose distribution would otherwise be contrary to applicable local laws, rules or regulations; and (c) certain portfolio assets, such as derivative instruments or repurchase agreements, that involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counterparty to the transaction. Cash will be paid for that portion of applicant's assets represented by cash and cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities

(including accounts payable). In addition, applicant will distribute cash in lieu of fractional shares and accruals on such securities. Applicant may round down the proportionate distribution of each portfolio security to the nearest round lot amount and will distribute the remaining odd lot in cash. Applicant may also distribute a higher *pro rata* percentage of other portfolio securities to represent such items.

2. The securities distributed to shareholders pursuant to the In-Kind Repurchase Offers will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

3. The securities distributed to shareholders pursuant to the In-Kind Repurchase Offers will be valued in the same manner as they would be valued for purposes of computing applicant's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on a public securities market, or, if the securities are not listed on an exchange or a public securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

4. Applicant will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any In-Kind Repurchase Offer occurs, the first two years in an easily accessible place, a written record of such In-Kind Repurchase Offer that includes the identity of each shareholder of record that participated in such In-Kind Repurchase Offer, whether that shareholder was an Affiliated Shareholder, a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## **DEPARTMENT OF STATE**

[Public Notice 5091]

### **30-Day Notice of Proposed Information Collection: Form DS-3057, Medical Clearance Update, OMB 1405-0131**

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

*Title of Information Collection:* Medical Clearance Update.

*OMB Control Number:* 1405-0131.

*Type of Request:* Extension of Currently Approved Collection.

*Originating Office:* Office of Medical Services, M/MED/EX.

*Form Number:* DS-3057.

*Respondents:* Foreign Service Officers, Federal Government Employees and family members.

*Estimated Number of Respondents:* 9,800.

*Estimated Number of Responses:* 9,800.

*Average Hours Per Response:* 30 minutes.

*Total Estimated Burden:* 4,900.

*Frequency:* On occasion.

*Obligation to Respond:* Required to Obtain or Retain a Benefit.

**DATES:** Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 27, 2005.

**ADDRESSES:** Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202-395-4718. You may submit comments by any of the following methods:

E-mail:

*Katherine\_T.\_Astrich@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.

Mail (paper, disk, or CD-ROM submissions): Office of Foreign Missions, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

Fax: 202-395-6974.

#### **FOR FURTHER INFORMATION CONTACT:**

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Susan Willig, Department of State,