

predecisional information to its licensees or to the public for review and comment.

**Item 11. Order Modification of the Licensee's ISFSI Technical Specifications**

The Petitioner requests that the NRC issue an order to modify the TS for the Prairie Island ISFSI to ensure a demonstrated ability to, in fact, safely maintain, unload, and decommission TN-40 casks.

Although the TS for the Prairie Island ISFSI require that TN-40 casks be unloaded if certain events or conditions defined in the TS are satisfied, the TS do not include specific requirements for the unloading process. Likewise the TS do not detail maintenance or decommissioning procedures or processes. The content of the TS for the Prairie Island ISFSI is typical in this respect since neither 10 CFR 72.44 nor the associated regulatory guidance documents specify that technical specifications should include special requirements for these procedures.<sup>5</sup> Instead, the functional and operating limits, limiting conditions, administrative controls, and other requirements included in the TS for the Prairie Island ISFSI are intended to maintain the cask and stored spent fuel assemblies within the limits established for safe operation during storage within the ISFSI and activities such as loading and unloading of the casks. For example, TS 2.3 limits the allowable lifting heights during movement of the cask from the ISFSI and TS 3/4.2 requires a measurement of the boron concentration of the water in the spent fuel pool before water is introduced to the cask during the unloading process.

As the staff explained in DD-97-18, the absence of specific requirements in the TS to control the unloading process does not diminish the importance that the NRC staff places on this activity. Likewise, specific requirements for performing routine maintenance activities and possible activities during decommissioning, although important, are not prescribed in the TS. The TS do, however, contain requirements for monitoring the integrity of the metallic seals and actions to be taken in the

event that the pressure-monitoring system indicates a potential loss of the inert atmosphere within the cask. The NRC staff believes that other regulatory requirements offer an equivalent level of protection to the Petitioner's request to include specific requirements in the TS to control the maintenance and unloading of TN-40 casks and the eventual decommissioning of the ISFSI. The administrative controls in the TS for the Prairie Island ISFSI require that the associated procedures be prepared, reviewed, and maintained in accordance with the requirements of the Prairie Island Nuclear Generating Plant facility operating licenses and associated TS. In addition, under existing NRC requirements, the licensee must adequately implement procedures to control loading, maintaining, and unloading of dry-storage casks (see 10 CFR 72.122, 10 CFR 72.150, and 10 CFR 72.152). For example, as indicated in the NRC inspection documented in Inspection Report 50-282/95002; 50-306/95002; 72-10/95002(DRP), and the resulting notice of violation to the licensee, NRC's requirements in Criterion V of Appendix B to 10 CFR Part 50 already require the incorporation of appropriate steps and precautions into the original procedure developed to control unloading of a TN-40 cask. Thus, as demonstrated by the example, no changes to the TS or the SAR are needed to ensure that enforceable requirements for operating controls and limits are in place to address the unloading of a cask.

Given that the unloading procedure or a similar procedure can be used during maintenance activities for the repair or replacement of seals or during the decommissioning of the Prairie Island ISFSI, no changes to the TS or the SAR are needed to ensure that enforceable requirements for operating controls and limits are in place to address the unloading of the cask for these specific purposes.

**Item 12. If Necessary, Order the Licensee to Build a Facility for Dry Transfer of Spent Fuel Assemblies**

The Petitioner requests that the NRC review the licensee's processes and procedures for maintenance, unloading, and decommissioning, and if the licensee does not possess a capability to unload casks, order the licensee to build a "hot shop" for air unloading of casks and transfer of the fuel. Given that the staff has performed the level of reviews and inspections it feels are warranted and has found that the licensee could safely unload a TN-40 cask using the spent fuel pool, it is not necessary to order the licensee to build a facility to

support the transfer of fuel assemblies under dry conditions.<sup>6</sup>

**IV. Conclusion**

For the reasons described above, the NRC has determined that no adequate basis exists for granting the Petitioner's request for suspension of Northern States Power Company's license for dry-cask storage of spent nuclear fuel at Prairie Island or for taking the other actions requested by the Petitioner.

A copy of this decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 CFR 2.206(c).

As provided by this regulation, this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.  
Samuel J. Collins,  
Director.

[FR Doc. 98-4324 Filed 2-19-98; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Rel. No. IA-1700/803-130]

**Moreland Management Company;  
Notice of Application**

February 12, 1998.

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

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

*Applicant:* Moreland Management Company.

*Relevant Advisers Act Sections:* Exemption requested under section 202(a)(11)(F) from section 202(a)(11).

*Summary of Application:* Applicant requests an order declaring it to be a person not within the intent of section 202(a)(11), which defines the term "investment adviser."

*Filing Dates:* The application was filed on December 19, 1997 and amended on January 29, 1998.

*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 applicant with a

<sup>5</sup> Recent NRC staff guidance pertaining to the appropriate content of technical specifications is provided in NUREG-1536, "Standard Review Plan for Dry Cask Storage Systems," published in January 1997. Similar guidance is provided by NRC Regulatory Guide 3.61, "Standard Format and Content for a Topical Safety Analysis Report for a Spent Fuel Dry Storage Cask," issued in February 1989, and NRC Regulatory Guide 3.48, "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Dry Storage)," issued in October 1981.

<sup>6</sup> However, as noted in response to Item 5, the licensee may elect to transfer fuel assemblies under dry conditions if a dry-transfer system is developed and receives appropriate NRC approval.

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 9, 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Moreland Management Company, Suite 550 at Cambridge Court, 28601 Chagrin Boulevard, Cleveland, Ohio 44122-4531.

**FOR FURTHER INFORMATION CONTACT:** Catherine M. Saadeh, Staff Attorney, at (202) 942-0650, Jennifer S. Choi, Special Counsel, at (202) 942-0725 (Division of Investment Management, Task Force on Investment Adviser Regulation).

**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.

#### Applicant's Representations

1. Applicant was organized as an Ohio corporation in 1987 by LJR Trust (the "Trust"), which owns all of applicant's outstanding stock. The Trust exists for the benefit of Mr. Leonard C. Horvitz and his descendants (the "Horvitz Family").

2. Applicant was formed to serve as the "family office" for the Horvitz Family. In addition to the Trust, applicant's other clients consist of (i) The immediate members of Mr. Horvitz's family and (ii) the trusts, foundations, partnerships, and other entities created by them, or by the Trust, to serve as vehicles for investments.

3. Applicant provides asset allocation, record-keeping, investment due diligence, federal and state tax advice, coordination of professional relationships with accountants and attorneys, and other services to the Trust and applicant's other clients. Applicant currently has 14 employees. Applicant is paid for its services by the Trust and applicant's other clients.

#### Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the

advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities \* \* \*." Section 202(a)(11)(F) of the Advisers Act authorizes the SEC to exclude from the definition of "investment adviser" persons that are not within the intent of section 202(a)(11).

2. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Section 203(b) of the Advisers Act provides exemptions from this registration requirement.

3. Applicant asserts that it does not appear to qualify for any of the exemptions provided by section 203(b). Applicant states that it is not prohibited from registering with the SEC under section 203A of the Advisers Act because its principal office and place of business is located in Ohio.<sup>1</sup> Applicant requests that the SEC declare it to be a person not within the intent of section 202(a)(11).

4. Applicant asserts that there is no public interest in requiring it to be registered under the Advisers Act. Applicant states that it is a private organization that was formed to be the "family office" for the Horvitz Family. Applicant represents that all of its clients have a close relationship with the Horvitz Family in that they are all either immediate members of Mr. Horvitz's family or are entities created by and for the Horvitz Family. Applicant states that it has no public clients in the sense of retail investors, and that it has no plans, now or in the future, to solicit clients from the retail public. Applicant asserts that serving as the "family office" for the Horvitz Family will be its exclusive mission.

5. Applicant states that it does not hold itself out to the public as an investment adviser. Applicant states that only its name, which does not itself have any suggestive connotations, is listed in the Cleveland-area telephone book and on the index of residents located in the lobby of its building. Applicant represents that it does not engage in any advertising, attend investment management-related conferences as a vendor, or conduct any marketing activities.

6. Applicant states that its investment advisory activities constitute a very small portion of its overall activities. Applicant represents that of its 14 employees, only three have any involvement in applicant's investment advisory activities. Applicant states that these three employees estimate that

investment advisory activities make up less than 25 percent of their responsibilities. Applicant states that its principal activities are not investment advisory in nature, and that the largest portion of its activities involve providing services that do not involve investment advice of any kind.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39661; International Series Release No. 1117; File No. 600-30]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Temporary Registration as a Clearing Agency

February 13, 1998.

On May 30, 1997, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") an application on Form CA-1<sup>1</sup> for registration as a clearing agency pursuant to Sections 17A and 19 of the Securities Exchange Act of 1934 ("Exchange Act")<sup>2</sup> and Rule 17Ab2-1 thereunder.<sup>3</sup> Notice of EMCC's application was published in the **Federal Register** on July 10, 1997.<sup>4</sup> Eight comment letters were received in response to the notice of filing of the EMCC application.<sup>5</sup> This order grants EMCC registration as a clearing agency for a period not to exceed eighteen months and exempts EMCC from certain provisions of the Exchange Act.

#### Table of Contents

##### I. Description

A. EMCC Organization

B. Eligible Securities

<sup>1</sup> On June 2, 1997, June 17, 1997, August 7, 1997, October 14, 1997, October 21, 1997, and October 28, 1997, EMCC filed amendments to its application. Copies of the application are available for inspection and copying at the Commission's Public Reference Room.

<sup>2</sup> 15 U.S.C. 78q-1 and 78s.

<sup>3</sup> 17 CFR 240.17Ab2-1.

<sup>4</sup> Securities Exchange Act Release No. 38810 (July 1, 1997), 62 FR 37093 ("EMCC Notice").

<sup>5</sup> Letters from Jonathan Kord Lagemann, attorney for Asialuck Limited (July 15, 1997); JP Morgan (July 30, 1997); Emerging Markets Traders Association (August 8, 1997); UBS Limited (August 7, 1997); Euro Brokers Maxcor Inc. (undated); EMCC European Operations Committee (August 8, 1997); Salomon Brothers Inc. (August 8, 1997); and Merrill Lynch, Pierce, Fenner & Smith Incorporated (August 6, 1997).

<sup>1</sup> Ohio does not currently regulate investment advisers.