

commenters, the burden is on the licensee to demonstrate that termination of ground-water corrective actions would pose no significant threat to human health and the environment. Licensees may propose alternate concentration limits that meet the requirements of 10 CFR part 40, appendix A, criterion 5B(6).

Consideration of the remoteness of a site, potential future water uses, and future value may be included in a licensee's basis for determining that alternate concentration limits are protective of human health and the environment, and that limits are as low as reasonably achievable. These and other factors for consideration by the Commission are specifically mentioned in 10 CFR, part 40, appendix A, criterion 5B(6), which is appropriately cited in the standard review plan.

5. Comments Related to NRC Responsibilities Under the National Environmental Policy Act

Issue: The NRC is reviewing information that is outside its areas of regulatory authority.

Comment: Several commenters noted that the NRC is asking for information that appears to be beyond its regulatory authority. This includes information on nonradiological hazardous constituents and review of restoration plans for borrow areas.

Response: As a federal agency, the NRC is subject to the National Environmental Policy Act (NEPA). This requires the NRC to consider impacts to the human environment as a part of its decision making process. The regulations governing the NRC implementation of NEPA are described in 10 CFR part 51. Guidance to the NRC staff on conducting environmental reviews is also provided in NUREG-1748 "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs." With regard to NEPA, the NRC must consider the environmental impacts of both radiological and nonradiological aspects of a proposed action, particularly with regard to assessment of direct, indirect, and cumulative impacts of the proposed action. The exact nature of the information to be provided by a licensee and the level of NRC staff review will be determined on a site-specific basis. The standard review plan is intended as general guidance to the staff on the type of information that is commonly acceptable for evaluating the environmental impact of a proposed licensing action. Under the risk-informed, performance-based licensing philosophy used by the NRC, the

licensee is free to present alternative approaches for NRC consideration.

With regard to restoration plans for borrow areas, the intent of the section of the standard review plan identified by the commenter is to have staff review restoration plans for borrow areas as part of characterizing the stratigraphy and materials at a given site, and fulfilling NRC requirements under NEPA. The NRC also needs to consider the cumulative impacts of both radiological and nonradiological hazardous constituents to meet its obligations under NEPA. General guidance to the NRC staff for the evaluation of cumulative impacts is provided in Section 4.2.5 of NUREG-1748 "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs."

Dated at Rockville, Maryland this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-26154; 812-12836]

Nuveen Real Estate Income Fund, et al.; Notice of Application

August 20, 2003.

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

ACTION: Notice of 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: Applicants request an order to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains, as often as monthly, on their outstanding common stock and as often as distributions are specified in the terms of any series of preferred stock.

Applicants: Nuveen Real Estate Income Fund ("NREIF"), Nuveen Real Estate Income Fund 2 ("NREIF2"), Nuveen Real Estate Growth & Income Fund ("NREGIF"), Nuveen Preferred and Convertible Income Fund ("NPCIF"), Nuveen Preferred and Convertible Income Fund 2 ("NPCIF2"), Nuveen Diversified Dividend and Income Fund ("NDDIF") (together, the

"Current Funds"), Nuveen Institutional Advisory Corp. ("NIAC"), and each registered closed-end management investment company currently advised or to be advised in the future by NIAC (including any successor in interest)¹, or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with NIAC (together with NIAC, the "Investment Advisers") that decides in the future to rely on the requested relief (the "Future Funds" and together with the Current Funds, the "Funds").²

Filing Dates: The application was filed on June 16, 2002 and amended on August 15, 2003.

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 September 10, 2003 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, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, Gifford R. Zimmerman, Nuveen Investments, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942-0614, or Mary Kay Frech, 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 Fifth Street NW., Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. Each of the Current Funds is organized as a Massachusetts business

¹ A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

² All existing Funds currently intending to rely on the requested order are named as applicants, and any Fund that may rely on the order in the future will comply with the terms and conditions of the application.

trust and is registered under the Act as a closed-end management investment company. The primary investment objective of NREIF and NREIF2 is to seek high current income through investment in real estate investment trust ("REIT") securities. The primary investment objective of NREGIF is total return, and NREGIF has a policy of concentrating its investments in REIT securities. The primary investment objective of both NPCIF and NPCIF2 is high current income through investment in preferred and convertible securities. The primary investment objective of NDDIF is high current income and total return, through investment in income producing and dividend-paying securities. Common shares of NREIF are currently listed and traded on the American Stock Exchange ("AMEX") and common shares of NPCIF and NPCIF2 are currently listed and traded on the New York Stock Exchange ("NYSE"). It is anticipated that the common shares of NREIF2, NREGIF and NDDIF will also be listed and traded on the AMEX or NYSE. The preferred shares of NREIF (known as taxable auctioned preferred shares or "TAPS") and NPCIF and NPCIF2 (known as "FundPreferred shares") are not listed on an exchange, but may be purchased and sold by investors at an auction (normally held weekly) with or through a broker-dealer that has entered into an agreement with the auction agent and the respective Current Fund. Applicants state that it is also contemplated that the preferred shares of NREIF2, NREGIF and NDDIF will not be listed on an exchange either, but will trade periodically at auction in the same manner as the TAPS and FundPreferred shares.

2. NIAC, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser to the Current Funds. Security Capital Research and Management Incorporated ("Security Capital"), an investment adviser registered under the Advisers Act, is or will be the subadviser to NREIF, NREIF2 and NREGIF. Spectrum Asset Management, Inc. and Frolex, Revy Investment Co., Inc., investment advisers registered under the Advisers Act, will serve as subadvisers to NPCIF and NPCIF2. Security Capital, NWQ Investment Management Company, LLC, Wellington Management Company, LLP and Symphony Asset Management, LLC, each an investment adviser registered under the Advisers Act, will serve as subadvisers to a portion of the assets of NDDIF.

3. The board of directors of each Current Fund ("Board"), including a majority of the trustees who are not

"interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), of such Fund, each concluded that the proposed distribution policy of such Fund ("Distribution Policy") with respect to its common stock would be in the best interests of the Fund's common shareholders.³ The Distribution Policy would permit each Fund to make periodic long-term capital gains distributions as often as monthly with respect to its common stock, so long as it maintains in effect a Distribution Policy with regard to its common stock of at least a minimum fixed percentage per year of the net asset value ("NAV") or market price per share of its common stock or at least a minimum fixed dollar amount per year. Although applicants do not currently contemplate implementing a Distribution Policy for the preferred shares of the Current Funds, applicants request relief to permit each Fund to make periodic long term capital gains distributions with regard to any series of its preferred stock as often as distributions are specified in the terms of its preferred stock, so long as it maintains in effect a Distribution Policy with respect to such series of its preferred stock of a specified percentage of liquidation preference of such series of preferred stock, whether such specified percentage is determined at the time the preferred stock is initially issued, pursuant to periodic remarketing or auctions. Applicants believe that the discount at which each Fund's common stock may trade may be reduced if the Funds are permitted to pay capital gains dividends more frequently than permitted under rule 19b-1 under the Act. In addition, applicants state that to the extent that any of the Fund's preferred stock pays dividends less frequently than investors in that type of preferred stock would expect, such Fund is at a competitive disadvantage and, consequently, is likely to be required to pay a higher dividend rate

³The Boards of the Current Funds made the above determination at meetings held on the following respective dates: NREIF—October 3, 2001, NREIF2 and NREGIF—January 9, 2002, NPCIF—February 20, 2003, NPCIF2—May 11–15, 2003, and NDDIF—July 28–30, 2003. Applicants state that if, in the future, the Board of each Current Fund decides to implement a Distribution Policy with respect to its preferred shares, such Board, including a majority of Independent Trustees, will make a similar finding prior to implementing such Distribution Policy in reliance on the order. Applicants state that the Board of each Future Fund intending to rely on the requested order, including a majority of its Independent Trustees, will make a similar finding prior to implementing a Distribution Policy with respect to the common or preferred stock of the respective Fund in reliance on the order.

on its preferred stock than issuers who pay at the desired frequency.

4. Applicants state that the Distribution Policy with respect to common stock of the Funds and any Distribution Policy with respect to preferred stock of the Funds will not be related to one another in any way. Applicants state that the Distribution Policy with respect to each Fund's common stock will be initially established and reviewed at least annually in light of the Fund's performance by the Board of the Fund.

5. Applicants request relief to permit each Fund, so long as it maintains in effect a Distribution Policy, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock and as specified by the terms of any preferred stock outstanding.

Applicants' 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. Applicants assert that rule 19b-1 under the Act, by limiting the number of net long-term capital gains distributions that the Funds may make with respect to any one year, would prevent implementation of the Funds' proposed Distribution Policy. Applicants state that because each Fund expects to realize net long-term capital gains as often as every month, the combination of Revenue Ruling 89-81 and the accounting interpretation relating to rule 19b-1 would cause each Fund to treat a portion of such net long-term capital gains as being distributed each time it has incremental or undistributed long-term capital gains for the current distribution period. Applicants state that Revenue Ruling 89-81 takes the position that if a regulated investment company has two classes of shares, it may not designate distributions made to either class in any

year as consisting of more than such class's proportionate share of particular types of income, such as capital gains. Consequently, applicants state that any payments of long-term capital gains to holders of common stock require proportionate allocations of such long-term capital gains to the preferred stock, which can be extremely difficult to do.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicants state that the proposed Distribution Policies, including the fact that the distributions called for by the policies may include returns of capital to the extent that a Fund's net investment income and net capital gains are insufficient to meet the fixed dividend, will be fully described in the Funds' periodic communications to their shareholders, including the periodic report to shareholders following the institution of any such policy. Applicants state that, in accordance with rule 19a-1 under the Act, a statement showing the source or sources of the distribution would accompany each distribution (or the confirmation of the reinvestment thereof under a Fund's common stock distribution reinvestment plan). Applicants state that, for both the common stock and the preferred stock, the amount and sources of distributions received during the calendar year will be included on each Fund's IRS Form 1099-DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). Applicants state that this information, on an aggregate basis, also will be included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper 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 dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also assert that by paying out periodically any capital gains that have occurred, at least up to the fixed

periodic payout amount, the Funds' Distribution Policies help avoid the buildup of end-of-the-year distributions and accordingly help avoid the scenario in which an investor acquires shares in the open market that are subject to a large upcoming capital gains dividend. Applicants also state that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to a specific periodic dividend and, like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment. In addition, applicants state that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, a Fund's Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by a Fund of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any 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, applicants believe that the requested relief satisfies this standard.

Applicants' Conditions

Applicants agree that the order granting the requested relief with respect to the Funds' common stock shall terminate with respect to a Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of the Fund after the date of the requested order and after the Fund's initial public offering other than:

(i) A rights offering to shareholders of such Fund, provided that (a) shares are issued only within the 15-day period

immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend; (b) the prospectus for such rights offering makes it clear that common shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering; and (c) such Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization; unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48360; File No. SR-NYSE-2003-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Reduce the Original Listing Fee Applicable to Closed-End Funds

August 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice hereby is given that on August 15, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE has represented that the proposal meets the criteria of paragraph (f)(6) of Rule 19b-4 and, therefore, may take effect immediately. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes amending Section 902.02 of its Listed Company Manual to reduce the original listing fee

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.