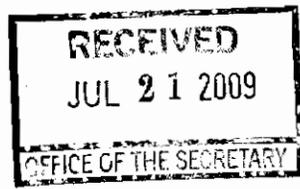


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JUL 21 REC'D

July 21, 2009

Office of Investment Company Regulation

Elizabeth Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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JUL 21 2009

Office of Investment Company Regulation

Re: Nuveen Tax-Advantaged Total Return Strategy Fund, Nuveen Real Estate Income Fund, Nuveen Diversified Dividend and Income Fund, Nuveen Multi-Strategy Income and Growth Fund, Nuveen Multi-Strategy Income and Growth Fund 2, Nuveen Quality Preferred Income Fund, Nuveen Quality Preferred Income Fund 2, Nuveen Quality Preferred Income Fund 3, Nuveen Senior Income Fund, Nuveen Floating Rate Income Fund and Nuveen Floating Rate Income Opportunity Fund (the "Applicants"), File No. 812-13619 – Request for a Commission Hearing

Dear Ms. Murphy:

We are providing this letter on behalf of our clients, the Applicants, in response to the request for a hearing (the "Request") from Howard L. Kastel, dated June 29, 2009, on the Applicants' application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("1940 Act") for an exemption from the provisions of section 18(a)(1)(a) and 18(a)(1)(b) (the "Application"). The Applicants are taxable leveraged closed-end funds ("CEFs").

Mr. Kastel owns auction rate preferred shares ("ARPS") in Nuveen municipal leveraged CEFs, none of which is an Applicant or otherwise a party to the Application. We believe, for several reasons, that the claims raised by Mr. Kastel do not warrant a hearing and that the Commission should promptly issue the order requested. First, Mr. Kastel is not an "interested person" and has failed to raise a material issue of fact or law that would warrant a hearing on the Application. Second, granting Mr. Kastel's Request would interfere with the orderly conduct of business of the Commission. Third, the Request does not raise any issues of public interest or investor protection relevant to the Application. Finally, the allegations in the Request are incorrect or irrelevant to the subject matter of the Application.

I. Mr. Kastel Is Not an “Interested Person” and Has Raised No Material Issue of Fact or Law That Would Warrant a Hearing.

The Funds’ notice of an application for an order, as issued by the Commission and published in the Federal Register, states that “interested persons” may request a hearing, stating the nature of the writer’s interest, the reason for the request, and the issues contested. Section 40(a) of the 1940 Act provides that “[o]rders of the Commission under this title shall be issued only after appropriate notice and opportunity for hearing.”¹ Rule 0-5(c) under the 1940 Act provides that the Commission will order a hearing when it appears that a hearing is “necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of an interested person or (2) upon its own motion.”² In deciding whether to grant a hearing request, the Commission will determine whether the requestor raised “an issue of fact or law that is *relevant* to the findings required to be made by the Commission...”³ The Commission has stated that “[o]nly where a hearing would develop the issues further and those issues are relevant to the granting of relief under the 1940 Act will the Commission hold a hearing.”⁴ Mr. Kastel is not an “interested person” because he is not a shareholder of any of the Applicants. Even if Mr. Kastel were an “interested person,” he has failed to provide any specific allegations of harm to him or shareholders of the Applicants that would result from the granting of such relief.⁵ Further, as explained below, Mr. Kastel has failed to raise any issue of fact or law relevant to the Application, or to the findings required to be made by the Commission, particularly given that the relief the Applicants are requesting is not appropriate for the funds in which he is an investor. The Commission therefore should exercise its discretion and deny the Request, because affording Mr. Kastel a hearing would not be necessary or appropriate in the public interest or for the protection of investors.

The Commission has issued a number of orders under the 1940 Act denying hearing requests for reasons that are applicable in the instant case. First, the Commission has taken into account whether the requestor has an interest in an Applicant to determine if the requestor is an “interested person.”⁶ To be an “interested person,” a requestor must allege ownership or other direct interest in the Applicant, or allege that he or other shareholders would suffer a specific harm if the relief were granted.⁷ Here, Mr. Kastel does not allege ownership or any direct

¹ 15 U.S.C. § 80a-39(a)(2009).

² 17 C.F.R. § 270.05(c)(2009).

³ See, e.g., *College Retirement Equities Fund, et al.*, Release No. IC-19463 (May 6, 1993) (emphasis added) (“CREF”).

⁴ *Id.*

⁵ See *In the Matter of Supertrust Trust for Capital Market Fund, Inc. Shares, et al.*, Release No. IC-11346 (Oct. 19, 1990).

⁶ See, e.g., *In the Matter of Potomac Capital Investment Corp., et al.*, Release No. IC-17238 (Nov. 28, 1989).

⁷ *Id.*; See also *In the Matter of Algemene Bank Nederland, N.V.*, Release No. IC-11536 n.3 (Jan. 6, 1981).

interest in the Applicants, nor does he allege any specific harm to him or any other shareholder if the relief were granted.

Second, the Commission has denied hearing requests where the requestor failed to raise an issue of fact, law or policy that was relevant to the issue presented by the Application that would warrant a hearing.⁸ The issue presented by the Application is whether the granting of an exemption under Section 18 of the 1940 Act is in the best interests of the shareholders of the Applicants, that is, investors in Nuveen taxable (i.e., non-municipal) CEFs. Mr. Kastel's allegations of fraud, schemes and unlawful activities do not raise any issue of fact, law or policy relevant to the issue presented by the Application. While Mr. Kastel alleges that granting the order to the Applicants and failing to provide relief to Nuveen's municipal CEFs prejudices the interests of the holders of these funds in some unspecified manner, his allegation is irrelevant to the issue presented by the Application. As discussed further below, the municipal CEFs that Mr. Kastel holds would not issue the instruments that the Applicants are seeking to issue to create leverage, because it would be economically inefficient to do so. (See Section IV.1. for a discussion of the types of instruments the Applicants and municipal CEFs may issue to create leverage.) Therefore, Mr. Kastel's contention is not relevant to the issue presented by the Application. Further, the Commission has denied hearing requests where the issues claimed were unsubstantiated and "not directly legally germane to the narrow issue raised in the application."⁹ The Commission has also declined to hold a hearing where it determined that the hearing request did not articulate any material issue of fact or law that "has not been considered previously."¹⁰

Finally, the Commission has denied hearing requests where a requestor's unsubstantiated allegations would have caused an unreasonable delay in the issuance of an order.¹¹ Mr. Kastel raises one specific issue, the granting of relief for the funds that he holds, while all other issues he raises are vague allegations of unlawful activity. Given that the requested relief is not a meaningful option for Mr. Kastel's funds, and all other allegations are irrelevant to the Application, granting the Request would cause an unreasonable and unnecessary delay in the Applicants' obtaining relief.

⁸ See, e.g., *In the Matter of Pantepec International, Inc.*, Release No. IC-17908 (Dec. 20, 1990) ("Pantepec").

⁹ See *In the Matter of Investors Diversified Services, Inc.*, Release No. IC-10684 (May 7, 1979) ("Investors Diversified Services"). See also *In the Matter of Merrill Lynch Ready Assets Trust*, Release No. IC-11783 (May 19, 1981) ("Merrill Lynch") (Commission denied a hearing request where the "alleged issues...[were] highly speculative, and there [was] no showing that those issues [were] reasonably related to the policy and purposes of the Act or [had] any bearing on the propriety of granting exemptive relief to the Applicants under the Act").

¹⁰ See *In the Matter of Vanguard Index Funds et al.*, Release No. IC-24789 (Dec. 12, 2000).

¹¹ See *Investors Diversified Services* (allegations that the Commission found to be unsubstantiated could and should not "serve as a basis for delay of the order requested by causing a hearing on this matter." See also *In the Matter of Madison Fund, Inc.*, Release No. IC-10257 (May 25, 1978) ("Madison Fund, Inc.") (Commission denied a hearing request where it found that requestor did not raise any substantive issues or allegations of harm related to the application at issue and that any further delay would cause applicants to abandon their request for relief).

For the reasons stated above, the Commission would be well within its discretion under the 1940 Act, and the rules thereunder, to deny the Request. The Commission's own past history of hearing denials would squarely support a denial in this case. We therefore urge the Commission to exercise its discretion and deny the Request.

II. Granting Mr. Kastel's Request Would Interfere with the Commission's Orderly Conduct of Business.

Granting the Request would not be appropriate under the Commission's Rules of Practice ("Rules of Practice")¹² and would interfere with the Commission's *orderly conduct of business*, as set forth in the Administrative Procedure Act ("APA").¹³ Under the APA, agencies are required to conduct formal "trial-type" proceedings in only a narrow category of adjudications, where the statute in question explicitly requires that the adjudication "be determined on the record after opportunity for an agency hearing."¹⁴ If an adjudication does not fall within this narrow category, Section 555 of the APA governs the procedures for the adjudication.¹⁵ As noted above, Section 40(a) of the 1940 Act provides that orders are issued "only after appropriate notice and opportunity for hearing."¹⁶ Because the 1940 Act does not require a hearing "on the record," Section 555 of the APA governs.

Section 555(b) states, in part, "[s]o far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function."¹⁷ As the language of the APA suggests, an "interested person" has a right to appear before an agency but the participation is qualified by the "orderly conduct of business." As discussed in Section I, Mr. Kastel has failed to allege any interest in the Applicants, any injury or potential injury as a result of the relief, or any issue of fact or law relevant to the Application. Therefore, under the APA, the Commission would be acting properly in its discretion to deny him participation in any hearing on the order. Granting such a request would do nothing to further develop the issues in the Application, therefore interfering with the Commission's orderly conduct of business with respect to such Application.

¹² See 17 C.F.R. § 202.4(a) (2009). ("Prior to passing upon applications and declarations the Commission receives the views of all interested persons at public hearings *whenever appropriate...*") (emphasis added).

¹³ See Administrative Procedure Act, 5 U.S.C. § 555(b) (2009), discussed *infra* (emphasis added).

¹⁴ 5 U.S.C. § 554(a). See also RICHARD J. PIERCE, JR., ADMINISTRATIVE LAW TREATISE 531 (4th ed. 2002 & Supp. 2009) 531. The APA defines "adjudication" as "agency process for formulation of an order" and an "order" as "the whole or a part of a final disposition, whether affirmative, negative, injunctive or declaratory in form, of an agency in a matter other than rule making but including licensing." 5 U.S.C. § 551(6) and (7).

¹⁵ See PIERCE, *supra* note 14 at 531.

¹⁶ 15 U.S.C. § 80a-39(a).

¹⁷ 5 U.S.C. § 555(b).

The Commission's denial of the Request would not only be consistent with its own precedent, but also would be consistent with case law reviewing the issue of an individual's "standing" to challenge an agency's exemptive order in court. To have standing to petition for judicial review of an agency's order, an individual must show that the challenged action has caused him an "injury in fact" (otherwise known as constitutional or "Article III" standing) and that the interest that he seeks to be protected is within the "zone of interests" to be protected or regulated by the statute at issue.¹⁸ *Option Advisory Service, Inc. v. SEC*, 668 F.2d 120 (2d Cir. 1981), dealt with standing to petition for judicial review of orders under Section 43(a) of the 1940 Act, which permits any person "aggrieved" by an order issued by the Commission under the 1940 Act to obtain a review of the order in a U.S. court of appeals.¹⁹ In *Option*, the Second Circuit held that the petitioner lacked standing for judicial review because it had no ownership interest in any of the applicants and it failed to allege facts to establish that the petitioner had been injured by the granting of such exemption.²⁰ The Second Circuit stated that while an investor may have standing because his status as an investor is within the "zone of interests" of the 1940 Act, an investor must still assert an ownership interest or other basis for finding that he has been or would be injured by the challenged action.²¹ As previously stated, Mr. Kastel does not own shares of the Applicants, nor has he asserted a basis for finding that he would be injured by the issuance of the requested order.²²

III. The Request Does Not Raise Any Issues of Public Interest or Investor Protection Relevant to the Application.

The Request does not contest any of the facts or issues raised in the Application, nor does it state why granting the requested relief to the Applicants to enable them to refinance their ARPS through the issuance of debt is somehow *not appropriate* in the public interest, or inconsistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The policy reasons for granting the requested relief, as stated in the Application, remain valid. These are the same policy reasons underlying the two other exemptive orders the SEC has issued to leveraged taxable CEFs: the exemptive relief enhances the funds' ability to redeem ARPS while they either pay down or seek a more permanent form of

¹⁸ See, e.g., *Ass'n of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150 (1970).

¹⁹ 15 U.S.C. § 80a-42(a).

²⁰ 668 F.2d at 121. See also *Indep. Investor Protective League v. SEC*, 495 F.2d 311 (2d Cir. 1974) (to have standing under the 1940 Act, one must be an investor or claim "direct injury").

²¹ See *id.*

²² See also *Hennesey v. SEC*, 285 F.2d 511 (3d Cir. 1961). *Hennesey* reinforces the proposition that only aggrieved parties may properly participate in agency proceedings. In *Hennesey*, applicants conceded that the investor bringing suit was an "aggrieved party" because she owned shares in the applicants; however, the investor did not participate in certain administrative proceedings prior to challenging the order in court. Applicants argued that she had failed to exhaust her administrative remedies. The Third Circuit held that the investor had preserved her right to judicial review because she could rely on objections raised by other aggrieved parties at agency proceedings related to the order.

replacement leverage, and helps the CEFs avoid the potential harm to common shareholders that could result if the CEFs were forced to deleverage their portfolios in a difficult market or if lower investment returns reduced the market price of common shares.²³ The exemptive relief would allow the affected CEFs to continue to provide their common shareholders with the enhanced returns that optimal amounts and forms of leverage may provide. These policy reasons continue to lead to the conclusion that the Commission should grant the Applicants the relief they have requested.

IV. The Specific Allegations in the Request are either Incorrect or Unfounded, and not Germane to the Narrow Subject Matter of the Application.

1. The crux of Mr. Kastel's objections to the Application is contained in paragraph 8 of his Request, in which he states that granting the Application with respect to the Applicants²⁴ (which are leveraged Nuveen *non-municipal* CEFs) and not to the leveraged Nuveen *municipal* CEFs owned by Mr. Kastel "seriously prejudices the holders of all funds."

The requested relief in no way would prejudice or harm the interests of the ARPS holders of the leveraged Nuveen municipal CEFs, or detract from the ongoing efforts to refinance those funds' ARPS and in so doing redeem those shares at par. For economic reasons, the municipal CEFs generally do not use taxable debt over the long-term as a form of leverage – as the Applicants do – and therefore the requested relief is only appropriate for the Applicants. Leverage makes economic sense over time for the municipal CEFs if they can borrow or leverage at rates that provide a positive difference between the funds' tax-exempt portfolio investments and the expected long-term cost of leverage. Generally, this entails issuing an instrument that would pay a return to its investors (e.g., preferred shareholders) that is exempt from federal (and/or from federal and state) income taxes in the form of exempt-interest dividends such as ARPS, or such as various forms of "replacement preferred stock" being developed by Nuveen and the Nuveen Funds, such as Variable Rate Demand Preferred and MuniFund Term Preferred.

Mr. Kastel fails to explain how any ARPS holders would be prejudiced or harmed by the granting of the relief sought in the Application. Indeed, this relief would significantly facilitate the Applicants' ability to refinance their remaining ARPS with debt having favorable terms. The refinancing also would reduce the risk of harm to common shareholders, because the temporarily reduced asset coverage requirement would substantially reduce the risk during the relief period that a fund would need to sell portfolio assets on a "forced sale" basis at unattractive prices. This relief would only

²³ Calamos Convertible Opportunities And Income Fund *et al.*, Investment Company Act Release Nos. 28615 (Feb. 10, 2009) (order) and 28603 (Jan. 14, 2009) (notice); Eaton Vance Floating-Rate Income Trust, *et al.*; Investment Company Act Release Nos. 28464 (Oct. 23, 2008) (order) and 28431 (Oct. 23, 2008) (notice).

²⁴ Mr. Kastel refers to Nuveen Investments ("Nuveen") as the Applicant, whereas in fact the actual Applicants for the exemptive relief in question are the eleven CEFs. These Applicants are legally separate entities from Nuveen.

advance the interests of the ARPS holders of the Applicants, because the refinancing would result in the redemption at par of those ARPS holders.

2. Mr. Kastel makes several allegations that Nuveen has engaged in fraudulent behavior or other unlawful activities, but alleges no facts or specific actions by Nuveen that could lead to a conclusion that Nuveen had committed fraud or had otherwise violated the law:
 - a. "ARPS were purchased for Objectors' accounts . . . pursuant to a pervasive fraud . . ." (par. 2)
 - b. "Nuveen Investments acted in various roles in connection with the scheme." (par. 2)
 - c. "Nuveen acted in concert with [the respondents Citigroup and UBS, who were the subject of an SEC settlement order described in SEC Press Release 2008-290]." (par. 2)
 - d. "This Application is part of a scheme to cover up Applicants unlawful activities." (par. 3)
 - e. "If the [A]pplication is granted, the SEC will have missed another opportunity to protect ARPS investors from Nuveen's unlawful activities." (par. 4)
 - f. "[Prior partial redemptions of ARPS shares by various Nuveen CEFs] are part of Nuveen's further scheme to lull Investors into believing that timely redemptions will occur" (par. 5)
 - g. [Granting the relief sought in the Application] will continue to lull the various regulatory agencies, including the SEC, into believing that Nuveen has acted in good faith whereas the [A]pplication is part of a Ponzi scheme" (par. 6)

Mr. Kastel never alleges that Applicants were defrauding investors or participating in a scheme to defraud. Indeed, because Applicants are entirely owned by investors, the common shareholders and ARPS holders would be the beneficiaries of the relief requested by the Application, and anything delaying or thwarting such relief would only harm the investors that own common shares or ARPS of any given Applicant.

Nor does Mr. Kastel allege any facts other than in the most conclusory manner that assert that Nuveen defrauded or participated in a scheme to defraud.²⁵ Most importantly, assuming *arguendo* one or more allegations were even partially correct, a hearing on the Application is not the appropriate forum in which to raise such allegations. Hearings on exemptive applications, while rather unusual, typically provide a public forum to examine (1) the facts underpinning the specific exemption sought,²⁶ (2) the sufficiency of

²⁵ See Merrill Lynch, *supra* note 9 (requestor's allegation was "conclusory and not accompanied by any factual statement" other than a vague reference to pending litigation).

²⁶ See *In the Matter of Hillview Investment Trust II, et.al.*, Release No. IC-25055 (June 29, 2001) (facts alleged by the requestor were insufficiently different from the application at issue to warrant a hearing).

any condition or conditions to the exemptive relief,²⁷ and (3) whether the relief, as proposed to be issued in the Notice, would meet the public interest standard articulated in Section 6(c) of the 1940 Act.²⁸ In contrast, the types of allegations made in Mr. Kastel's Request are typically resolved through the forum of a non-public investigation.

The most specific of Mr. Kastel's criticisms ("Prior partial redemptions of ARPS shares by various closed-end funds is part of Nuveen's further scheme to lull investors into believing that timely redemptions will occur") is, in particular, directly at odds with the factual record. Through a number of public communications, including website statements, shareholder reports and Congressional testimony, Nuveen has consistently stated that the refinancing and or redemption of existing ARPS for any CEF is multi-faceted, not susceptible to a specific timetable and subject to market uncertainty and volatility. Through these communications, Nuveen has also described and explained its various efforts to redeem ARPS and create alternative forms of leverage for the Nuveen CEFs. The delays in implementing solutions have been caused not by lack of effort, but rather by intervening events in the economy that have significantly slowed the CEFs' ability to implement refinancing solutions developed by Nuveen to the ARPS illiquidity problem, such as Variable Rate Demand Preferred and MuniFund Term Preferred stock.

3. Mr. Kastel states in paragraph 7 of his Request that Nuveen has taken several actions to injure holders of ARPS, including "the election of Members of the Board of Trustees of the Funds who have conflicts of interest to act only in the interest of Nuveen and the Common Shareholders." He asserts that "None of the Board Members are truly independent and cannot determine the best interests of the ARPS shareholders." He alleges no facts to support the claim that no Trustees are independent of Nuveen.

The reality is that eight out of the nine Trustees of the Nuveen Funds, including the Applicants, are not "interested persons" of the funds as that term is defined in Section 2(a)(19) of the 1940 Act ("Independent Trustees"). Each of the Independent Trustees originally and subsequently has been nominated for election as a Trustee by a committee comprised solely of the Independent Trustees at that time. The Board has consistently and strongly urged Nuveen to develop the financial mechanisms and other means to enable all the Nuveen leveraged CEFs to be able to refinance the funds' ARPS in a manner consistent with the interests of the funds' common shareholders.

4. Mr. Kastel states in paragraph 2 of the Request that ARPS were purchased for his accounts in August and September of 2007. He also states that Nuveen marketed, sold and referred to the ARPS as "seven day floating paper." He apparently purchased those

²⁷ See Pantepec, *supra* note 8 (requestor's insistence on additional conditions to the relief were not warranted).

²⁸ See CREF, *supra* note 3 (the proposed transaction set forth in the application was consistent with the provisions of Section 6(c)); *In the Matter of Chicago Milwaukee Corp., et.al.*, Release No. IC-17414 (Apr. 9, 1990) (hearing not warranted because "the statutory standards for relief requested have been satisfied"); *Madison Fund, Inc.*, *supra* note 11 (hearing request denied because the proposed exemption was "consistent with the provisions, policies and purposes of the Act").

ARPS shares pursuant to their weekly auctions through Mesirov Financial, Inc., a registered broker-dealer, and not in the initial public offering of those shares. Accordingly, Nuveen had no contact with Mr. Kastel that it is aware of in connection with his purchase of those ARPS shares.

Even if Mr. Kastel, as a non-shareholder of the Applicants, is found to be an interested person with standing to successfully request a hearing, and even if the Commission were to assume the accuracy of the fact-based allegations contained in his Request, Mr. Kastel has not alleged any valid basis on which the Commission could conceivably deny the relief requested in the Application.

* * *

We understand Mr. Kastel's frustration. He invested a substantial sum in municipal CEF ARPS that had a long history and a widespread reputation as both providing attractive after-tax returns and being highly liquid, but he has now found himself unable to liquidate those investments for almost 17 months. This delay, which few if any could have anticipated when the ARPS auctions first failed, has been caused most directly by the worst credit and financial crisis in several generations. This global credit crisis has significantly altered the financial landscape, and along the way it has indefinitely shut down the ARPS market that functioned efficiently for almost twenty years.

To the extent that the Request will delay or ultimately forestall the Applicants' receipt of the requested relief, it will only damage the efforts to redeem ARPS shares held by certain investors other than Mr. Kastel. At this point, no matter what decision the Commission reaches with respect to the Request, Mr. Kastel has already succeeded in delaying the refinancing of the Applicants' ARPS, to the detriment of the Applicants' ARPS holders. That a process intended to protect investors can be so easily thwarted is unfortunate. To limit the damage already done to the Applicants' ARPS holders, we respectfully request that the Commission deny Mr. Kastel's Request, and promptly grant the requested exemptive relief.

Elizabeth Murphy
July 21, 2009
Page 10

Morgan Lewis
COUNSELORS AT LAW

If you have any questions regarding this response, or our clients' requested order, please call me at (202) 739-5662.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. Harman", written over a large, stylized arrow pointing to the left.

Thomas S. Harman

cc: Gifford R. Zimmerman, Chief Administrative Officer, Nuveen Funds
Elizabeth Osterman, Associate Director, Division of Investment Management
Janet Grossnickle, Assistant Director, Division of Investment Management