

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28442; 812-13077]

Boulder Total Return Fund, Inc., et al.; Notice of Application

October 20, 2008

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

Action: Notice of application under section 6(c) of the Investment Company Act of 1940 ("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 closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

Applicants: Boulder Total Return Fund, Inc., Boulder Growth & Income Fund, Inc. and The Denali Fund Inc. (formerly, the Neuberger Berman Real Estate Income Fund) and Stewart West Indies Trading Company, Ltd. (doing business as Stewart Investment Advisers) and Boulder Investment Advisers, LLC (together, the "Advisers").

Filing Dates: April 9, 2004, August 11, 2004, December 1, 2006, January 16, 2007 and August 22, 2008.

Hearing or Notification of Hearing: An order granting the application 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 November 14, 2008, 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, 100 F Street, NE, Washington, DC 20549-1090; Applicants, 2344 Spruce Street, Suite A, Boulder, CO 80302, Attention: Stephen C. Miller, Esq. or Joel L. Terwilliger, Esq.

For Further Information Contact: Wendy Friedlander, Senior Counsel, at (202) 551-6837, or James M. Curtis, Branch Chief, at (202) 551-6825 (Division of Investment Management, Office of Chief Counsel).

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 Room, 100 F Street, NE, Washington, DC 20549-1520 (telephone (202) 551-5850).

Applicants' Representations:

1. Each fund is a registered closed-end management investment company organized as a Maryland corporation, and each has total return as its primary objective.¹ The common shares issued by each fund are listed on the New York Stock Exchange, and the preferred shares are not listed on any exchange. Applicants believe that the shareholders

¹ Applicants request that any order issued granting the relief requested in the application also apply to any future closed-end investment company ("future fund") that: (a) is advised by the Advisers (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Advisers; and (b) complies with the terms and conditions of the requested order. 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.

of the funds are generally conservative, dividend-sensitive investors who desire current income periodically coupled with long-term capital appreciation and may favor a fixed distribution policy.

2. The Advisers are registered under the Investment Advisers Act of 1940 and are responsible for the overall management of the funds. The Advisers are under common control and have the same principal portfolio manager.

3. Applicants represent that at a meeting held on July 28, 2008, the Board of Directors (the "Board") of each fund, including all of the directors who are not "interested persons" of the funds as defined in section 2(a)(19) of the Act (the "Independent Directors") requested, and the Advisers provided, such information as was reasonably necessary to inform the Boards regarding the possibility of adopting a periodic distribution policy involving the payment of capital gain dividends as often as monthly in any taxable year (a "Plan").

4. Applicants represent that at that July 28, 2008 meeting, the Boards determined that, prior to any fund or future fund adopting a Plan that relies on the requested order:

- (i) the Board and the Independent Directors will request, and the Advisers will provide, such information as is reasonably necessary to an informed determination of whether the Board should adopt a Plan;
- (ii) the Board and the Independent Directors will review (A) information regarding the purpose and terms of the Plan, the likely effects of the Plan on the fund's long-term total return (in relation to market price and net asset value per common share) and the relationship between the fund's distribution rate on its common shares under the Plan and its total return (in relation to net asset value per share); (B) whether the rate of

distribution would exceed the fund's expected total return in relation to its net asset value per share; and (C) any foreseeable material effects of the Plan on the fund's long-term total return (in relation to market price and net asset value per share); and

(iii) the Independent Directors will consider what conflicts of interest the Advisers and the affiliated persons of the Advisers and the fund might have with respect to the adoption or implementation of the Plan.

Applicants represent that after considering such information the Board, including the Independent Directors, will approve the Plan with respect to the fund's common shares provided that the Plan is consistent with the fund's investment objectives and in the best interests of the fund's common shareholders.

4. Applicants represent that the purpose of the Plan would be to permit the fund to distribute over the course of each year, through periodic distributions as nearly equal as practicable and any required special distributions, an amount closely approximating the total taxable income of the fund during such year and, if so determined by its Board, all or a portion of the returns of capital paid by portfolio companies to the fund during such year. Applicants represent that, under the Plan, the fund would distribute to its common shareholders a fixed monthly percentage of the market price of the fund's common shares at a particular point in time or a fixed monthly percentage of net asset value per share at a particular time or a fixed monthly amount, any of which may be adjusted from time to time. Applicants represent that under the Plan the minimum annual distribution rate with respect to the fund's common shares would be independent of the fund's performance during any particular period but would be expected to correlate with the fund's performance over time. Except for extraordinary distributions and potential increases or

decreases in the final dividend periods in light of the fund's performance for the entire calendar year and to enable the fund to comply with the distribution requirements of Subchapter M of the Internal Revenue Code of 1986 (the "Code") for the calendar year, each distribution on the common shares would be at the stated rate then in effect.

5. Applicants represent that at the July 28, 2008 meeting, each Board adopted policies and procedures under rule 38a-1 that:

(i) are reasonably designed to ensure that, when a Plan is adopted, all notices required to be sent to the fund's shareholders pursuant to section 19(a) of the Act, rule 19a-1 thereunder and condition IV below (each a "Notice") will include the disclosure required by rule 19a-1 and by condition II(A) below, and that all other written communications by the funds or their agents described in condition III(A) below about the distributions under the Plan will include the disclosure required by condition III(A) below; and

(ii) when a Plan is adopted, will require the respective fund to keep records that demonstrate its compliance with all of the conditions of the Order and that are necessary for the fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notices.

Applicants represent that the records of the actions of the Board of Directors of each fund shall summarize the basis for approval of the Plan, including its consideration of the factors described above. Such records will be maintained for a period of at least six years from the date of such meeting, the first two years in an easily accessible place, or for such longer period as may otherwise be required by law.

Applicants' Legal Analysis:

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b-1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code ("distributions"), that a fund may make with respect to any one taxable year to one, plus a supplemental "clean up" distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the 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. Applicants state that one of the concerns underlying section 19(b) and rule 19b-1 is that shareholders might be unable to differentiate between regular distributions of capital gains and distributions of investment income. Applicants state, however, that rule 19a-1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (e.g., estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information also is included in

each fund's annual reports to shareholders and on its IRS Form 1099-DIV, which is sent to each common and preferred shareholder who received distributions during the year.

4. Applicants further state that each fund will make the additional disclosures required by the conditions set forth below, and each of them has adopted compliance policies and procedures in accordance with rule 38a-1 to ensure that all required Notices and disclosures are sent to shareholders. Applicants argue that by providing the information required by section 19(a) and rule 19a-1, and by complying with the procedures adopted under each Plan and the conditions listed below, the funds would ensure that each fund's shareholders are provided sufficient information to understand that their periodic distributions are not tied to the fund's net investment income (which for this purpose is the fund's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with each fund's compliance procedures and condition III set forth below will ensure that prospective shareholders and third parties are provided with the same information. Accordingly, Applicants assert that continuing to subject the funds to section 19(b) and rule 19b-1 would afford shareholders no extra protection.

5. Applicants note that section 19(b) and rule 19b-1 also were intended to prevent certain improper sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend ("selling the dividend"), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the "selling the dividend" concern should not apply to closed-end investment companies, such as the funds, which do not continuously distribute shares.

According to Applicants, if the underlying concern extends to secondary market purchases of shares of closed-end funds that are subject to a large upcoming capital gains dividend, adoption of a Plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common shares of closed-end funds that invest primarily in equity securities often trade in the marketplace at a discount to their net NAV.

Applicants believe that this discount may be reduced for closed-end funds that pay relatively frequent dividends on their common shares at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

7. Applicants assert that the application of rule 19b-1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b-1, the implementation of a Plan imposes pressure on management (i) not to realize any net long-term capital gains until the point in the year that the fund can pay all of its remaining distributions in accordance with rule 19b-1, and (ii) not to realize any long-term capital gains during any particular year in excess of the amount of the aggregate pay-out for the year (since as a practical matter excess gains must be distributed and accordingly would not be available to satisfy pay-out requirements in following years), notwithstanding that purely investment considerations might favor realization of long term gains at different times or in different amounts.

Applicants thus assert that the limitation on the number of capital gain distributions that a fund may make with respect to any one year imposed by rule 19b-1, may prevent the efficient operation of a Plan whenever that fund's realized net long-term capital gains in

any year exceed the total of the periodic distributions that may include such capital gains under the rule.

8. In addition, Applicants assert that rule 19b-1 may cause fixed regular periodic distributions under a Plan to be funded with returns of capital² (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b-1, a fund may be required to make total distributions in excess of the annual amount called for by its Plan, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b-1 by enabling the funds to realize long term-capital gains as often as investment considerations dictate without fear of violating rule 19b-1.

9. Applicants state that Revenue Ruling 89-81 under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, e.g., investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of Revenue Ruling 89-81, whenever a fund has realized a long term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b-1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the

² Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with Revenue Ruling 89-81.

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b-1 do not arise with respect to preferred stock issued by a closed-end fund.

Applicants assert that such distributions are either fixed or are determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer, and Revenue Ruling 89-81 determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the "selling the dividend" concern is not applicable to preferred stock, of which the funds have issued, and which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, dividend rate, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

12. Applicants request an order under section 6(c) granting an exemption from the provisions of section 19(b) and rule 19b-1 to permit each fund to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common shares and as often as specified by or determined in accordance with the terms thereof in respect of its preferred shares.³

³ Applicants state that a future fund that relies on the requested order will satisfy each of the representations in the application except that such representations will be made in respect of actions by the board of directors of such future fund and will be made at a future time.

Applicants' Conditions:

Applicants agree that, with respect to each fund seeking to rely on the order, the order will be subject to the following conditions:

I. Compliance Review and Reporting. The fund's chief compliance officer will: (a) report to the fund Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the fund and the fund's Advisers have complied with the conditions to the requested order, and (ii) a Material Compliance Matter, as defined in rule 38a-1(e)(2), has occurred with respect to compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the fund no less frequently than annually.

II. Disclosures to Fund Shareholders:

A. Each Notice to the holders of the fund's common shares, in addition to the information required by section 19(a) and rule 19a-1:

1. will provide, in a tabular or graphical format:

(a) the amount of the distribution, on a per share basis, together with the amounts of such distribution amount, on a per share basis and as a percentage of such distribution amount, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) the fiscal year-to-date cumulative amount of distributions, on a per share basis, together with the amounts of such cumulative amount, on a per share basis and as a percentage of such cumulative amount of

distributions, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) the average annual total return in relation to the change in NAV for the 5-year period (or, if the fund's history of operations is less than five years, the time period commencing immediately following the fund's first public offering) ending on the last day of the month prior to the most recent distribution declaration date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the most recent distribution declaration date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. will include the following disclosure:

(a) "You should not draw any conclusions about the fund's investment performance from the amount of this distribution or from the terms of the fund's Plan";

(b) "The fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur for example, when some or all of the money that you invested in the fund is paid back to you. A return of capital distribution does not necessarily reflect the fund's investment performance and should not be confused with 'yield' or 'income'"; and

(c) "The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for [accounting and] tax reporting purposes will depend upon the fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The fund will send you a Form 1099 DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes."

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to shareholders under rule 30e-1 under the Act, the fund will:

1. describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);
2. include the disclosure required by condition II.A.2(a) above;

3. state, if applicable, that the Plan provides that the Board may amend, suspend or terminate the Plan at any time without prior notice to fund shareholders; and

4. describe any reasonably foreseeable circumstances that might cause the fund to suspend or terminate the Plan and any reasonably foreseeable consequences of such suspension or termination.

C. Each report provided to shareholders under rule 30e-1 and each prospectus filed with the Commission on Form N-2 under the Act, will provide the fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the fund's total return.

III. Disclosure to Shareholders, Prospective Shareholders and Third Parties:

A. The fund will include the information contained in the relevant Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the fund, or shareholder, prospective shareholder or third-party information provider;

B. The fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N-CSR; and

C. The fund will post prominently a statement on its (or its adviser's) web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such web site for at least 24 months.

IV. Delivery of 19(a) Notices to Beneficial Owners: If a broker, dealer, bank or other person ("financial intermediary") holds common stock issued by the fund in nominee name, or otherwise, on behalf of a beneficial owner, the fund: (a) will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the fund's shares; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

V. Additional Board Determinations for Funds Whose Shares Trade at a Premium: If:

A. the fund's common shares have traded on the exchange that they primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the fund's common shares as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. the fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period is greater than the fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. at the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Directors:

(a) will request and evaluate, and the fund's adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) will determine whether continuation, or continuation after amendment, of the Plan is consistent with the fund's investment objective(s) and policies and in the best interests of the fund and its shareholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) whether the Plan is accomplishing its purpose(s);

(2) the reasonably foreseeable effects of the Plan on the fund's long-term total return in relation to the market price and NAV of the fund's common shares; and

(3) the fund's current distribution rate, as described in condition V.B above, compared with the fund's average annual taxable income or total return over the 2-year period, as described in condition V.B, or such longer period as the board deems appropriate; and

(c) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

VI. Public Offerings: The fund will not make a public offering of the fund's common shares other than:

A. a rights offering below NAV to holders of the fund's common stock;

B. an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin off or reorganization of the fund; or

C. an offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. the fund's average annual distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date,⁴ expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date;⁵ and

2. the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the fund has received an order under section 19(b) to permit it to make periodic distributions of

⁴ If the fund has been in operation fewer than two years, the measured period will begin immediately following the fund's first public offering.

⁵ If the fund has been in operation fewer than five years, the measured period will begin immediately following the fund's first public offering.

long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified by or determined in accordance with the terms of any outstanding preferred stock that such fund may issue.

VII. Amendments to rule 19b-1: The requested order will expire on the effective date of any amendments to rule 19b-1 that provide relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

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

Florence E. Harmon
Acting Secretary