

PUBLIC

ACT ICIA
SECTION 24(f)
RULE 24f-2

PUBLIC
July 10, 1998 AVAILABILITY 7/10/98
Our Ref. No. 98-344-CC
Nuveen Flagship Multistate
Trust I, *et al.*
File No. 811-07747

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter of March 14, 1997 requests assurance that the staff would not recommend enforcement action to the Commission if series of Nuveen Flagship Multistate Trust I, Nuveen Flagship Multistate Trust II, and Nuveen Flagship Multistate Trust IV (the "Nuveen Flagship Funds") that are acquiring the assets and assuming the liabilities of certain series of funds affiliated with The John Nuveen Company (the "Nuveen Funds") and Flagship Resources, Inc. (the "Flagship Funds") use the redemption credits of the Nuveen and Flagship Funds under Rule 24f-2 under the Investment Company Act of 1940 (the "Investment Company Act") for purposes of calculating registration fees owed under the Securities Act of 1933 (the "Securities Act").

You state that, on January 31, 1997, the Nuveen Funds and the Flagship Funds were reorganized into series of the Nuveen Flagship Funds, which are open-end investment companies registered under the Investment Company Act. You represent that, prior to the reorganizations, each of the Nuveen Flagship Funds had nominal assets and liabilities, and no operating history. You state that the primary purpose of the reorganizations was to combine those Nuveen and Flagship Funds that had substantially similar investment objectives and policies. You represent that, in each reorganization, either the Nuveen Fund or the Flagship Fund was deemed the surviving fund for purposes of accounting and the calculation of performance, in accordance with the staff's position in North American Security Trust (pub. avail. Aug. 5, 1994) ("*NAST*").¹

You assert that Rule 24f-2 should be interpreted to permit the Nuveen Flagship Funds to assume the redemption credits of the acquired series of both the Nuveen Funds and the Flagship Funds. Alternatively, you maintain that each series of the Nuveen Flagship Funds should be permitted to assume the redemption credits of that Nuveen or Flagship Fund determined to be the surviving fund of the reorganization, in accordance with the staff's position in *NAST*.

Section 24(f) of the Investment Company Act provides that, upon the effective date of a fund's registration statement, the fund automatically will be deemed to have

¹ In *NAST*, the staff stated that, in determining whether a new fund resulting from a reorganization may use the historical performance of one of several predecessor funds, the attributes of the new fund and the predecessor funds should be compared to determine which predecessor fund most closely resembles the new fund. We have not been asked, and take no position regarding, which Nuveen or Flagship Fund should be considered the surviving fund in each reorganization for purposes of accounting and the calculation of performance.

registered an indefinite amount of securities. The section further provides that a fund will have 90 days after the end of its fiscal year to pay a registration fee based on net sales, *i.e.*, the aggregate price of shares sold during the year, reduced by the aggregate price of shares redeemed or repurchased. If the fund pays its registration fee more than 90 days after the end of the fund's fiscal year, it will be required to pay interest on unpaid amounts.²

Under Rule 24f-2, if a fund ceases operations, the date that the fund ceases operations is deemed to be the end of its fiscal year.³ In the case of a liquidation, merger, or sale of all or substantially all of the assets of a fund, the fund is deemed to have ceased operations on the date that the transaction is consummated. When a fund or a series of a fund merges with another fund or series of a fund, however, Rule 24f-2 provides that the acquired fund is considered not to have ceased operations, and the acquiring fund will assume the redemption credits of the acquired fund, if: (i) the acquiring fund is a "shell fund" that had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger; (ii) the acquiring fund acquired substantially all of the assets and assumed substantially all of the liabilities of the acquired fund; and (iii) the merger is not designed to result in the acquired fund merging with, or substantially all of its assets being acquired by, a fund or series of a fund other than a shell fund.

The staff has stated that, absent novel or unusual issues, it will no longer respond to letters requesting no-action relief for an acquiring fund to use the Rule 24f-2 redemption credits of an acquired fund.⁴ Your letter presents a novel issue with respect to the use of redemption credits, however, because in each reorganization, two different

² Section 24(f) was amended by the National Securities Markets Improvement Act of 1996. Prior to the amendment, the registration of an indefinite amount of securities was not automatic. Instead, Rule 24f-2 required a fund to make an election in order to register an indefinite amount of securities. Rule 24f-2 required that a fund file a notice every year setting forth the number and amount of securities sold in the past fiscal year. If the notice was filed within 60 days of the fund's fiscal year-end, the fund could compute its registration fees based on net sales. If the notice was not filed within the 60-day period, the fee was based on gross sales, *i.e.*, the aggregate price of the shares sold by the fund during the year.

Rule 24f-2 recently was revised to reflect changes made to Section 24(f) by the National Securities Markets Improvement Act of 1996. *See* Investment Company Act Release No. 22815 (Sept. 10, 1997) (adopting amendments to Rule 24f-2).

³ *See* Rule 24f-2(b).

⁴ *See* CIGNA Aggressive Growth Fund, Inc. (pub. avail. Feb. 15, 1985); Lowry Market Timing Fund, Inc. (pub. avail. Feb. 8, 1985).

series were reorganized into a newly created shell series. We believe, therefore, that your letter warrants a staff response.

In 1995, the staff stated that it would not recommend enforcement action to the Commission if newly created shell series of a registered fund used the Rule 24f-2 credits of an acquired series of another registered fund.⁵ The staff's position was based on representations that each acquiring series would be continuing the acquired series' business, and each shareholder of an acquired series, immediately after the reorganization, would own the same *pro rata* interest in the same portfolio of securities as he or she owned immediately before the reorganization.⁶ By contrast, the staff has taken the position that when a fund is reorganized into an existing fund that is not a shell (an "operating fund"), and the acquired fund's shareholders receive interests in a new fund with a portfolio different from that of the acquired fund, the acquiring fund generally may not use the acquired fund's Rule 24f-2 redemption credits.⁷ Rule 24f-2, as amended last year, largely codifies this staff position by clarifying that an acquiring fund in a merger may not use the acquired fund's Rule 24f-2 redemption credits if the merger was designed to result in the acquired fund merging with a fund that was not a shell fund before the merger.⁸

You assert that, because the reorganizations involved a transfer of assets and liabilities from the Nuveen and Flagship Funds to shell series with nominal assets and liabilities and no operating history, the Nuveen Flagship funds should be able to assume the redemption credits of the acquired series of both the Nuveen Funds and the Flagship Funds. You contend that permitting this transfer of redemption credits would be consistent with Rule 24f-2, even though the primary purpose of the reorganizations was to combine two operating funds into a single fund. Alternatively, you maintain that each

⁵ Victory Funds (pub. avail. Apr. 24, 1995) ("*Victory Funds*").

⁶ Rule 24f-2 was amended in 1995, in part to codify the staff's position in *Victory Funds*. See Investment Company Act Release No. 21332 (Sept. 1, 1995) (adopting amendments to Rule 24f-2).


⁷ See, e.g., Scudder Managed Reserves, Inc. (pub. avail. May 15, 1981). But see Kemper Total Return Fund (pub. avail. Feb. 6, 1995) ("*Kemper*") (staff stated that it would not recommend enforcement action to the Commission if acquiring funds that were not shells used acquired funds' redemption credits where the purpose of the reorganizations was to consolidate clone funds with different distribution options into a single fund with multiple distribution options, and the reorganizing funds had the same investment objectives and policies, the same portfolio managers, and substantially the same portfolio securities).

⁸ Rule 24f-2(b)(3). The 1997 amendments to Rule 24f-2 were not designed to supersede the staff's position in *Kemper*, *supra* note 7, which continues to represent the staff's views.

series of the Nuveen Flagship Funds should be permitted to assume the redemption credits of that Nuveen or Flagship Fund determined to be the surviving fund of the reorganization, in accordance with the staff's position in *NAST*.

As a result of the reorganizations, a shareholder of a Nuveen Flagship Fund would not own the same *pro rata* interest in the same portfolio of securities as he or she owned before the reorganization. Rather, the shareholder would own an interest in a larger pool of securities that included securities contributed by both a Nuveen Fund and a Flagship Fund. Thus, although the funds used shell series to accomplish the reorganizations, the ultimate purpose of the reorganizations was to combine the assets and liabilities of operating series of the Nuveen and Flagship Funds. In this situation, we believe that it would not be consistent with Rule 24f-2 for the Nuveen Flagship Funds to use the redemption credits of both the Nuveen Funds and the Flagship Funds. We therefore are unable to assure you that we would not recommend enforcement action to the Commission under Section 24(f) of the Investment Company Act and Rule 24f-2 thereunder if the Nuveen Flagship Funds use the Rule 24f-2 redemption credits of both the Nuveen Funds and the Flagship Funds, as described in your letter. We would not, however, recommend enforcement action to the Commission under Section 24(f) and Rule 24f-2 if each Nuveen Flagship Fund relies on Rule 24f-2(b) to use the redemption credits of the Nuveen or Flagship Fund determined, in accordance with the staff's position in *NAST, supra*, to be the "survivor" of each reorganization.

Our position is based on the facts and representations in your letter, and different facts or circumstances may require a different conclusion.


Sarah A. Wagman
Special Counsel

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40 Act/Rule 24f-2

March 14, 1997

VIA EXPRESS COURIER

Mr. Jack W. Murphy
Associate Director
Office of Chief Counsel
Division of Investment Management
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

RE: Nuveen Flagship Multistate Trust I (File No. 811-07747)
Nuveen Flagship Multistate Trust II (File No. 811-07755)
Nuveen Flagship Multistate Trust IV (File No. 811-07751)

Dear Mr. Murphy:

The above-referenced Nuveen Flagship Funds are open-end management investment companies registered as such under the Investment Company Act of 1940, as amended (the "1940 Act"). The Nuveen Flagship Funds (also referred to as the "successor funds") were organized for the purpose of combining certain series of various investment companies affiliated with The John Nuveen Company (the "Nuveen Funds") and Flagship Resources, Inc. (the "Flagship Funds") in connection with the acquisition of Flagship Resources, Inc. by The John Nuveen Company. On behalf of the Nuveen Flagship Funds, we respectfully request that the staff of the Division of Investment Management assure that it will not recommend enforcement action to the Securities and Exchange Commission (the "Commission") if the Nuveen Flagship Funds use the Rule 24f-2 redemption credits of the respective Nuveen and Flagship Funds (also referred to as the "predecessor funds") as described below in computing their registration fees.

I. THE REORGANIZATIONS

On January 31, 1997, the Nuveen Funds and the Flagship Funds were reorganized into certain series of the Nuveen Flagship Funds pursuant to which: (a) the predecessor fund transferred all

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its assets to the successor fund in exchange for shares of the successor fund and the successor fund assumed all the liabilities of the predecessor fund; and (b) the successor fund distributed its shares to the shareholders of the predecessor fund. The primary purpose of each reorganization was to combine, into one mutual fund, funds with substantially similar investment objectives and policies. Prior to the reorganizations, each of the Nuveen Flagship Funds had nominal assets and liabilities (i.e., seed money) and had no operating history. For a description of the various reorganizations, please see Appendix A.

I. CALCULATION OF RULE 24F-2 FEES

"Fairness Notion" -- Rules Allow Funds to Net Redemptions

Section 6(b) of the Securities Act of 1933, as amended (the "1933 Act") specifies the fees that must be paid in connection with registering securities with the Commission under the 1933 Act. Section 24 of the 1940 Act modifies those provisions for certain investment companies.¹ Rule 24f-2 under the 1940 Act permits mutual funds to register an indefinite number of securities and if a Rule 24f-2 Notice is filed within 60 days after the fund's fiscal year end, to deduct the value of the shares redeemed from the value of the shares sold in calculating the amount of fees due. Such reductions in registration fees are often referred to as "redemption credits."

The ability to net redemptions under Rule 24f-2 is based upon the notion of fairness. Because mutual funds continuously offer their shares to the public and stand ready to redeem them upon request, it is common for a mutual fund to issue and redeem shares in any given year in an amount greatly in excess of any net new sales. A registration fee calculation method that does not allow netting "may result in inordinately high registration costs for open-end management companies and their shareholders and may unfairly burden the registration process."²

¹ On October 11, 1996 Section 24 was amended to provide additional flexibility in registering investment company securities. The effective date of those amendments are the earlier of (a) October 11, 1997 or (b) the effective date of final rules or regulations issued under Section 24.

² SEC release number IC-9677 (March 15, 1977) proposing Rule 24e-2. See also SEC release number IC-9989 (November 3, 1977) adopting Rule 24f-2 based upon the same "fairness" concerns that prompted Rule 24e-2.

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Merger and Other Business Combinations

Rule 24f-2(b)(3) provides that a predecessor fund may transfer redemption credits to a successor fund in the case of either (i) a succession under Rule 414 under the 1933 Act or (ii) a transfer of assets to a newly-created series of a series company.³ This provision of the Rule was added by amendment in 1995.⁴ As originally proposed, paragraph (b)(3) was only intended to clarify that reorganizations for the purpose of changing the fund's state of incorporation or form of organization would not result in the company ceasing operations for purposes of Rule 24f-2. Under the amendment as originally proposed, transactions qualifying for the netting provision would have been limited to reorganizations that satisfied the requirements of Rule 414 under the 1933 Act. Commenters⁵ recommended that the Commission expand the application of

³ Specifically, 24f-2(b)(3) provides that: "in the case of a merger of a registrant ("Predecessor Fund") with another registrant ("Successor Fund"), or a sale of all or substantially all of a Predecessor Fund's assets and liabilities to a Successor Fund, the Predecessor Fund shall not be deemed to have ceased operations and the Successor Fund shall assume the obligations, fees, and redemption credits of the Predecessor Fund incurred pursuant to this section . . . if: (i) The registration statement of the Predecessor Fund is deemed the registration statement of the Successor Fund in a transaction described . . . [under Rule 414 under the 1933 Act]; or (ii) The Successor Fund is a series of a series company (as defined in §270.18f-2), and immediately prior to the transaction the Successor Fund had no assets or liabilities, other than nominal assets or liabilities, and no operating history."

Under Rule 414, a registration statement of an issuer that has been succeeded by an issuer having a different state of incorporation is deemed to be a registration statement of the successor issuer if: (1) immediately prior to the succession the successor issuer had no more than nominal assets or liabilities; (2) the succession was effected by a statutory merger or similar succession under which the successor acquired all the assets and all the liabilities of the predecessor; (3) the succession was approved by the security holders of the predecessor at a meeting for which proxies had been solicited pursuant to Section 14(a) of the Securities Exchange Act of 1934 (the "1934 Act"); and (4) the successor has filed an amendment to the registration statement of the predecessor issuer which (a) expressly adopts such registration statement as its own for all purposes of the 1933 and 1934 Acts and (b) sets forth any additional information necessary to reflect any material changes made in connection with the succession or necessary to keep the registration statement from being misleading in any material respect. Although Rule 414 was contemplated for use only in connection with a reorganization that merely changes the State of incorporation of the registrant, the staff has granted "no-action" requests involving other "organizational" changes; some of which did not involve a change in domicile at all (e.g., American Business Shares, Inc. (available July 31, 1975); Advance Investors Corporation (available September 29, 1976); and Scudder Common Stock Fund, Inc. (available October 10, 1984).

⁴ See SEC Release No. IC-20874 (February 1, 1995) proposing the amendments and SEC Release No. IC-21332 (September 1, 1995) adopting the amendments.

⁵ See letter dated March 23, 1995 from Craig S. Tyle, Vice President and Senior Counsel, Investment Company Institute to Jonathan G. Katz, Secretary, Securities and Exchange Commission.

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paragraph (b)(3) to (i): at a minimum, permit the transfer of redemption credits when the assets and liabilities of an existing fund are merged or otherwise transferred into the portfolio of a newly-created series of another fund (which, in essence, is the functional equivalent of a Rule 414 transaction and was the subject of a favorable staff no-action response⁶); and (ii) ideally, permit the transfer of redemption credits in any mutual fund merger or business combination. In response to such comments, the Commission decided to revise paragraph (b)(3) to provide that a fund may transfer redemption credits to a successor fund in the case of a transfer of assets to a newly-created series of a series company, but did not address the broader suggestion that redemption credits be allowed to transfer in any mutual fund merger or business combination. The staff has informed us that the amendments to Rule 24f-2 adding paragraph (b)(3)(ii); therefore, should be read to simply codify The Victory Funds and not be extended to reorganizations that while technically falling within (b)(3)(ii) are not Rule 414-type transactions.

II. LEGAL CONSIDERATIONS

The form and substance of the Nuveen Flagship Fund reorganizations

Each reorganization was structured as a combination of the predecessor funds into a new series of a successor fund. However, in each case, a particular predecessor fund was deemed the "surviving" fund for accounting, performance and other purposes (referred to as the "accounting survivor"). In determining the identity of the accounting survivor, the factors articulated in North American Security trust (available August 5, 1994) were used.⁷ In substance, therefore, each reorganization was the reorganization of one predecessor fund into the other predecessor fund. Since Rule 414 arguably was not available, pursuant to Rule 145 under the 1933 Act, the shares of the Nuveen Flagship Funds issued to the shareholders of the predecessor funds in connection with the reorganizations were registered on Form N-14.

⁶ The Victory Funds (pub. avail. April 24, 1995). In The Victory Funds, the staff stated that when a shell series assumes the assets and liabilities of an acquired fund, the transaction is similar to a reorganization under Rule 414 because the successor fund is continuing the acquired fund's business and each shareholder of the acquired fund, following the transaction, owns the same pro rata interest in the same portfolio of securities as the shareholder owned before the transaction.

⁷ The Nuveen Flagship Funds are not seeking no-action with respect to their analysis under North American Security Trust.

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Form should govern

Rule 24f-2(b)(3)(ii) specifically provides that a predecessor fund may transfer redemption credits to a series of a successor fund, where such series immediately prior to the reorganization "had no assets or liabilities, other than nominal assets or liabilities, and no operating history." The Nuveen/Flagship reorganizations were just that--to wit, each was a reorganization of two predecessor funds into a newly-created series with nominal assets and liabilities and no operating history. The Rule itself does not limit its application to Rule 414-type transactions or require subjective analysis. Nevertheless, the staff has suggested to us that Section 48(a) of the 1940 Act may prohibit the predecessor funds from transferring the redemption credits pursuant to Rule 24f-2(b)(3)(ii) since such result may be viewed as doing indirectly that which could not have been done directly. In other words, since the substance of the reorganizations was to organize one predecessor fund into the other predecessor fund, the staff has suggested that the form (i.e., the use of a new-shell series) should be disregarded and that Rule 24f-2(b)(3)(ii) should be unavailable.

Anomalously, however, this runs counter to the staff's historically rigid adherence to form over substance in its Rule 24f-2 analysis. When the staff has previously had the opportunity to address the transferability of Rule 24f-2 redemption credits in similar mutual fund combinations, generally a form over substance analysis has been followed; most often to the detriment of the mutual funds and their shareholders.⁸ In the Nuveen/Flagship reorganizations, a structure was used that did follow the specified form for allowing the transfer of redemption credits. For the staff, now, to disregard that form would be unfair and unwarranted.

⁸ For example, in Scudder Managed Reserves, Inc. (available May 15, 1981) the staff denied a no-action request of an existing Scudder mutual fund that sought to succeed to the redemption credits of an acquired Scudder mutual fund. In denying the relief, the staff reasoned that the existing Scudder fund could not succeed to the acquired Scudder fund's registration statement since the existing Scudder fund was a functioning entity and, thus, did not satisfy the requirement of Rule 414 that an acquiring fund can succeed to an acquired fund's registration statement only if it is a corporate shell. Scudder's counsel argued unsuccessfully that a substance over form analysis should be followed (i.e., the Scudder reorganization could have been accomplished within the framework of Rule 414). Rather, the staff followed a form over substance analysis. More recently, in Kemper Total Return Fund (available February 6, 1995) the staff permitted acquiring funds that were not shells to use the acquired funds' redemption credits because the reorganizing funds had the same investment objectives and policies, the same portfolio manager, and substantially the same portfolio securities. The staff, however, called Kemper a "narrow modification" of its prior analysis and explicitly reasserted the staff's position articulated in Scudder.

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The Substance Alternative

Notwithstanding the arguments above, if the staff nevertheless denies this no-action request on a substance over form analysis, then the staff should treat each Nuveen/Flagship reorganization as a reorganization of one of the predecessor funds into the other predecessor fund and allow the accounting survivor to retain its redemption credits in the new series of the successor fund. To determine otherwise would have the draconian effect of ignoring both form and substance. In other words, it would be irrational for the staff to take a structure providing for the combination of "A" and "B" into "C" and treat it substantively as a combination of "A" into "B," yet still disallow the transfer of redemption credits from "A" to "B."

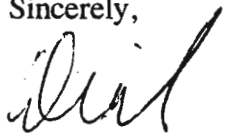
III. CONCLUSION

In light of the foregoing, we respectfully request the staff to confirm to us that in connection with the reorganizations described above (i) each Nuveen Flagship Fund (i.e., the successor fund) would be able to use the redemption credits of each Nuveen and Flagship Fund (i.e., the predecessor funds) for purposes of calculating the registration fees owed under Rule 24f-2 or, alternatively, (ii) each Nuveen Flagship Fund would be able to use the redemption credits of the accounting survivor for purposes of calculating the registration fees owed under Rule 24f-2.

Pursuant to the Commission's procedures applicable to requests for no-action letters,⁹ enclosed are seven additional copies of this no-action request.

If you have any questions with respect to this letter or need any additional information, please call David A. Sturms at 312/609-7589 or Cathy G. O'Kelly at 312/609-7657.

Sincerely,



David A. Sturms

DAS:cj
Enclosures

⁹ SEC release number 33-6269 (December 5, 1980).

APPENDIX A

On January 31, 1997, various Nuveen and Flagship Funds were reorganized into the Nuveen Flagship Funds as follows:

1. Nuveen Arizona Tax-Free Value Fund, a series of the Nuveen Multistate Tax-Free Trust, and Flagship Arizona Double Tax Exempt Fund, a series of the Flagship Tax Exempt Funds Trust, were reorganized into Nuveen Flagship Arizona Municipal Bond Fund, a series of the Nuveen Flagship Multistate Trust I.
2. Nuveen Florida Tax-Free Value Fund, a series of the Nuveen Multistate Tax-Free Trust, and Flagship Florida Double Tax Exempt Fund, a series of the Flagship Tax Exempt Funds Trust, were reorganized into Nuveen Flagship Florida Municipal Bond Fund, a series of the Nuveen Flagship Multistate Trust I.
3. Nuveen Pennsylvania Tax-Free Value Fund, a series of the Nuveen Multistate Tax-Free Trust, and Flagship Pennsylvania Triple Tax Exempt Fund, a series of the Flagship Tax Exempt Funds Trust, were reorganized into Nuveen Flagship Pennsylvania Municipal Bond Fund, a series of the Nuveen Flagship Multistate Trust I.
4. Nuveen Virginia Tax-Free Value Fund, a series of the Nuveen Multistate Tax-Free Trust, and Flagship Virginia Double Tax Exempt Fund, a series of the Flagship Tax Exempt Funds Trust, were reorganized into Nuveen Flagship Virginia Municipal Bond Fund, a series of the Nuveen Flagship Multistate Trust I.
5. Nuveen New Jersey Tax-Free Value Fund, a series of the Nuveen Multistate Tax-Free Trust, and Flagship New Jersey Double Tax Exempt Fund, a series of the Flagship Tax Exempt Funds Trust, were reorganized into Nuveen Flagship New Jersey Municipal Bond Fund, a series of the Nuveen Flagship Multistate Trust II.
6. Nuveen New York Tax-Free Value Fund, a series of the Nuveen Tax-Free Bond Fund, Inc., and Flagship New York Tax Exempt Fund, a series of the Flagship Tax Exempt Funds Trust, were reorganized into Nuveen Flagship New York Municipal Bond Fund, a series of the Nuveen Flagship Multistate Trust II.
7. Nuveen Michigan Tax-Free Value Fund, a series of the Nuveen Multistate Tax-Free Trust, and Flagship Michigan Triple Tax Exempt Fund, a series of the Flagship Tax Exempt Funds Trust, were reorganized into Nuveen Flagship Michigan Municipal Bond Fund, a series of the Nuveen Flagship Multistate Trust IV.
8. Nuveen Ohio Tax-Free Value Fund, a series of the Nuveen Tax-Free Bond Fund, Inc., and Flagship Ohio Double Tax Exempt Fund, a series of the Flagship Tax Exempt Funds Trust, were reorganized into Nuveen Flagship Ohio Municipal Bond Fund, a series of the Nuveen Flagship Multistate Trust IV.