

13. Each Short Term Investment held in a Joint Account generally will be held to maturity, except if: (i) AEFC believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Participants in the investment because of a credit downgrade or otherwise; or (iii) the counterparty to a repurchase agreement defaults. AEFC may, however, sell any Short Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the Short Term Investment if the cost of such transaction will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case will an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investment in the Joint Account.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23916; 812-11542]

Nuveen Unit Trusts and John Nuveen & Co., Inc.; Notice of Application

July 21, 1999.

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

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants Nuveen Unit Trusts ("Trust") and John Nuveen & Co., Inc. (the "Sponsor") request an order (a) under section 12(d)(1)(J) of the Act that would permit each series of the Trust and any future trusts sponsored by the Sponsor ("Series") to offer its shares to the public with a sales load that exceeds the 1.5% limit of section 12(d)(1)(F)(ii) and

(b) under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to permit the Trust to invest in affiliated registered investment companies within the limits of section 12(d)(1)(F) of the Act.

APPLICANTS: Nuveen Unit Trusts and John Nuveen & Co., Inc.

FILING DATES: The application was filed on December 4, 1998, and amended on June 16, 1999.

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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 16, 1999 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street NW, Washington, DC 20549-0609. Applicants, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942-0526, 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 5th Street NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicants' Representations

1. The Trust is a unit investment trust ("UIT") registered under the Act. The Sponsor, a broker-dealer registered under the Securities Exchange Act of 1934 and member of the National Association of Securities Dealers, Inc. ("NASD"), is the sponsor for each Series. Each Series will be created under state law pursuant to a trust agreement that will contain information specific to that Series, and will incorporate by reference a master trust agreement between the Sponsor and a financial institution that satisfies the criteria in section 26(a) of the Act (the "Trustee"). The trust agreement and the master trust agreement are referred to collectively as the "Trust Agreement."

2. Each Series will contain a portfolio of shares of registered investment companies or series thereof (the "Funds"). Applicants anticipate that certain of the Funds selected may be advised and/or distributed by the Sponsor or one of its affiliates ("Affiliated Funds"). However, applicants anticipate that most of the Funds selected will be unaffiliated with the Sponsor ("Unaffiliated Funds"). Applicants state that the Trust's investments in Affiliated Funds and Unaffiliated Funds will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load restriction in section 12(d)(1)(F)(ii). Applicants believe that the proposed structure of the Series will provide investors with a cost-effective means of investing in a diversified pool of securities of registered investment companies that has been professionally selected by the Sponsor.

3. Each of the Funds will be registered as a closed-end investment company, an open-end investment company, or a UIT. In addition, certain of the Funds may be either an open-end investment company or a UIT that has received exemptive relief under the Act to sell its shares at negotiated prices on an exchange ("Exchange Funds"). The shares of the Funds will be deposited in each Series at net asset value,¹ or, if the Fund shares are listed on a national securities exchange or traded on the Nasdaq National Market System ("Nasdaq-NMS"), at their market value.² Market value will be determined by an evaluator, and will be based on the closing sale prices (or, if unavailable, the closing ask prices) for the securities traded on an exchange or on the Nasdaq-NMS.

4. Simultaneously with the deposit of Fund shares into a Series, the Trustee will deliver to the Sponsor registered certificates for units ("Units") that represent the entire ownership of the Series. During the initial public offering, these Units will be offered at prices based on the aggregate underlying value of the Fund shares, plus a sales charge. The sales charge (either a front end or a deferred sales load, or a combination thereof)³ shall not, when aggregated

¹ Funds eligible for inclusion in a Series will either be no-load Funds or Funds which, although they offer shares with a front-end sales charge to the public, agree to waive any otherwise applicable front-end sales load with respect to all shares sold or deposited in any Series.

² Applicants state that a Series will purchase and sell shares of Exchange Funds through market transactions on a securities exchange or on the Nasdaq-NMS.

³ The Trust has received exemptive relief to assess a sales load on a deferred basis. See *John*

with any sales charge or service fees paid by the Series with respect to shares of the Funds, exceed the limits set forth in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules").

5. No Series will invest in a Fund with a rule 12b-1 plan, unless the Fund limits the plan fees to a maximum annual rate of .25% of the Fund's average daily net assets. If the Trustee receives service fees under a rule 12b-1 plan from the Funds to compensate it for providing servicing and sub-accounting functions with respect to Fund shares held by a Series, the Trustee will reduce its regular fee to the Series directly by the fees it receives from the Funds and rebate any excess fees it receives to the Series. Any fees so rebated will be utilized by the Series to absorb other bona fide Series expenses. To the extent that these fees exceed the total Series expenses, the excess will be distributed along with other income earned by the Series.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, the section provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote in connection with the company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Series will invest in the Funds in reliance on section 12(d)(1)(F).

3. Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of

section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) of the Act from section 12(d)(1)(F) to permit a Series to offer and sell Units to the public with a sales load that exceeds 1.5%.

4. Applicants have agreed, as a condition to the relief, that any sales charges, distribution-related fees, and service fees relating to Units, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Trust relating to its acquisition, holding, or disposition of shares of the Funds, will not exceed the limits set forth in Rule 2830 of the NASD Conduct Rules. Applicants believe that it is appropriate to apply the NASD's Rule to the proposed arrangement in place of the sales load limitation in section 12(d)(1)(F) because the proposed limit would cap the aggregate sales charges of the Units and the underlying Funds, and because the proposed limit is consistent with the limit recently adopted in section 12(d)(1)(G) of the Act. Applicants assert that the NASD's specific sales charge rules more accurately reflect today's regulatory environment with respect to the methods by which investment companies finance sales expenses. Applicants contend that section 12(d)(1)(F), on the other hand, was adopted more than a quarter of a century ago and does not reflect the changes in the pricing practices of the industry.

5. Applicants state that, with respect to shares of closed-end Funds and Exchange Funds held by a Series, no front-end sales loads, contingent deferred sales charges or redemption fees will be charged in connection with the purchase or sale of these Funds by a Series. Additionally, applicants state that with respect to closed-end Funds, no rule 12b-1 fees, or other distribution fees will be charged. Applicants state that, although the Series likely will incur brokerage commissions in connection with its market purchases of shares of closed-end Funds and Exchange Funds, these commissions will not differ materially from commissions otherwise incurred in connection with the purchase or sale of comparable portfolio securities.

6. Applicants also agree as a condition to the requested relief that no Series will invest in any underlying Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

Section 17(a) of the Act

7. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants submit that the Series and Affiliated Funds may be deemed to be affiliated persons of one another by virtue of being under common control of the Sponsor. Applicants state that purchases and redemptions of shares of the Affiliated Funds by the Series could be deemed to be principal transactions between affiliated persons under section 17(a).

8. Section 17(b) provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

9. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provision of the Act 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. Applicants request an exemption under sections 6(c) and 17(b) to permit the Series to purchase and redeem shares of the Affiliated Funds.

10. Applicants state that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Affiliated Funds will be sold and redeemed at their net asset values or, if traded on an exchange or on NASDAQ-NMS, at their market value. Applicants also state that the investment by the Series in the Affiliated Funds will be effected in accordance with the

investment restrictions of the Series and will be consistent with the policies as set forth in the registration statement of the Series.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution-related fees, and service fees relating to Units of a Series, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Series relating to its acquisition, holding, or disposition of securities of the underlying Funds, shall not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

3. No Series will acquire securities of any Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

4. No Series will terminate within thirty days of the termination of any other Series that holds shares of one or more common Funds.

5. The prospectus of each Series and any sales literature or advertising that mentions the existence of an in-kind distribution option will disclose that holders of Units who elect to receive Fund shares will incur any applicable rule 12b-1 fees.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23918; 812-11270]

Smith Breeden Trust, et al.; Notice of Application

July 21, 1999.

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

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF THE APPLICATION:

Applicants request an order to permit funds of funds relying on section

12(d)(1)(G) of the Act to invest in securities and other instruments.

APPLICANTS: Smith Breeden Trust ("Trust"), Smith Breeden Series Fund ("Series Fund"), and Smith Breeden Associates, Inc. ("SBA").

FILING DATES: The application was filed on August 25, 1998 and amended on December 22, 1998 and April 16, 1999. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

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 August 16, 1999 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 may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Applicants 100 Europa Drive, Suite 200 Chapel Hill, NC 27514.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942-0583, or Christine Y. Greenlees, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. Each of the Trust and the Series Fund is organized as a Massachusetts business trust and registered under the Act as an open-end management investment company. The Trust currently offers five series, including Smith Breeden U.S. Equity Market Plus Fund ("Equity Fund"), Smith Breeden European Market Fund ("Europe Fund"), and Smith Breeden Asian/Pacific Market Fund ("Asia Pacific Fund") (collectively, the "Index Plus Funds"). The Series Fund currently offers two series, one of which is Smith

Breeden Short Duration U.S. Government Fund ("Short Fund"). SBA, as investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each series of the Trust and of the Series Fund (each a "Fund"). Applicants request that the relief also apply, to any existing or future open-end management investment company or series thereof advised by SBA (together with the Index Plus Funds, the "Upper Tier Funds") that wishes to invest in a registered open-end management investment company or series thereof that is advised by SBA and is part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act) (together with the series of the trust and of the Series Fund, excluding the Index Plus Funds, the "Underlying Funds") as the investing Upper Tier Fund.¹

2. The Equity Fund seeks to provide a total return greater than that of the Standard & Poor's 500 Composite Stock Price Index. To achieve this objective, the Equity Fund proposes to invest in shares of the Short Fund while also investing in futures and options, equity swap contracts, and other investments (collectively, "Index Securities"). Similarly, the Europe Fund and the Asia Pacific Fund each propose to invest in both shares of the Short Fund and Index Securities in order to obtain a total return greater than that of indices reflecting, respectively, the major equity markets of Europe and of the Asia/Pacific region. The Short Fund seeks to provide a high level of current income by investing primarily in mortgage-backed securities issued by the U.S. Government, its agencies, and instrumentalities. Applicants state that, by purchasing shares of the short Fund, each Index Plus Fund will avoid the need to duplicate the strategies and positions of the Short Fund and will lower the transaction cost incurred by the Index Plus Funds. The Index Plus Funds and other Upper Tier Funds also want the flexibility to invest in other securities and financial instruments, including financial futures and options, swaps, and reverse repurchase agreements ("Other Securities").

3. Applicants state that it is SBA's practice to reduce its advisory fees and bear certain expenses to the extent that a Fund's total annual operating expenses (excluding extraordinary expenses) exceed a specified percentage of net assets. Applicants represent that

¹ All existing entities that currently intend to rely on the order are named as applicants. Any Upper Tier Fund that may rely on this order in the future will do so only in accordance with the terms and conditions of the application.