

The Exchange has informed the Company that it has no objection to the withdrawal of the Company's Securities from listing on the PCX.

This application relates solely to the withdrawal by the Company of the Securities's listing on the PCX and shall have no effect upon the continued listing of such Securities on the CHX and the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission, the CHX and the NYSE under Section 13 of the Act.

Any interested person may, on or before August 16, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23921; 812-11596]

### Scudder New Europe Fund, Inc.; Notice of Application

July 27, 1999

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

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

**SUMMARY OF APPLICATION:** Scudder New Europe Fund, Inc. (the "Fund") seeks an order to permit in-kind redemptions of shares by certain affiliated shareholders of the Fund.

**FILING DATES:** The application was filed on April 29, 1999. Applicant has agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

**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 23, 1999, and should be accompanied by proof of service on the 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Applicant, c/o Yvette M. Garcia, Esq., Willkie Farr & Gallagher, 787 Seventh Avenue, New York 10019-6099.

**FOR FURTHER INFORMATION CONTACT:** George J. Zornada, 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, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

### Applicant's Representations

1. The Fund, a Maryland corporation, is registered under the Act as a closed-end management investment company. On July 20, 1999, shareholders of the Fund approved a proposal to convert the Fund to an open-end management investment company (the "Conversion"). The Conversion is expected to occur on or about September 1, 1999 ("Conversion Date"). Scudder Kemper Investments, Inc. (the "Manager"), an investment adviser registered under the Investment Advisers Act of 1940, is investment adviser to the Fund.

2. In conjunction with the Conversion, the Fund intends to combine with Kemper Europe Fund ("KEF"), a registered open-end management investment company, and change the Fund's name to Scudder Europe Fund, Inc. (the "Reorganization").<sup>1</sup> The Fund's shareholders prior to the Conversion

<sup>1</sup> The Reorganization is subject to approval by KEF's shareholders. The Conversion is not contingent on the approval of the Reorganization by KEF's shareholders.

will have their shares redesignated as Class M shares of the Fund after the Conversion.

3. Applicant states that one shareholder currently owns 5% or more of the outstanding shares of the Fund, and is expected to own 5% or more of the Fund following the Conversion and the Reorganization. Applicant requests relief to permit the Fund to satisfy redemption requests made by any shareholder of the Fund who, at the time of such redemption request, is an "affiliated person" of the Fund solely by reason of owning, controlling, or holding with the power to vote, five percent or more of the Fund's shares ("Affiliated Shareholders") by distributing portfolio securities in-kind.<sup>2</sup> The board of directors of the Fund ("Board"), including all of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act ("Disinterested Directors"), has determined that it would be in the best interests of the Fund and its shareholders to pay to an Affiliated Shareholder the redemption price for its shares in-kind.<sup>3</sup>

### Applicant's Legal Analysis

1. Section 17(a)(2) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3)(A) of the Act defines an "affiliated person" to include any person owning 5% or more of the outstanding voting securities of the other person. Applicant states that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the Fund is not the issuer) by an Affiliated Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

<sup>2</sup> The relief sought would not extend to shareholders who are "affiliated persons" of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act (e.g. shareholders who are officers, directors or employees of the Fund, or shareholders who have a control relationship with the Fund).

<sup>3</sup> Upon Conversion, the Fund will elect to be governed by the provisions of rule 18f-1 under the Act. Election under rule 18f-1 commits the Fund, during any 90-day period with respect to one shareholder, to redeem its shares in cash up to the lesser of \$250,000 or one percent of the Fund's net asset value. Applicant states that with respect to Class M shareholders of the Fund, all redemption requests in excess of \$500,000 will be redeemed in-kind during any 90-day period within the one-year period following the Conversion. The Fund will impose a 2% redemption fee on redemptions by Class M shareholders during the one-year period following the Conversion.

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, to the extent that 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.

4. Applicant requests an order under sections 6(c) and 17(b) of the Act to permit Affiliated Shareholders to redeem their shares in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicant submits that the terms of the proposed in-kind redemptions by Affiliated Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicant asserts that neither the Manager nor an Affiliated Shareholders will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Manager nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicant further states that the portfolio securities to be distributed in the proposed in-kind redemptions will be valued according to an objective, verifiable standard and the in-kind redemptions are consistent with the investment policies of the Fund. Applicant also states that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Affiliated Shareholders would not receive any advantage not available to other redeeming shareholders.

#### **Applicant's Conditions**

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed to Affiliated Shareholders and non-Affiliated Shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities

that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Securities will be distributed on a *pro rata* basis after excluding: (a) securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries which restrict or prohibit the holdings of securities by non-nationals other than through qualified investment vehicles; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposits, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, cash will be distributed in lieu of portfolio securities not amounting to round lots (e.g., 100 shares) (or which would not amount to round lots if included in the in-kind distribution), or fractional shares and accruals on such securities.

3. The Board, including a majority of the Disinterested Directors, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2 above; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 5 below; and (c) whether the distribution of any In-Kind Securities is consistent with the policies of the Fund as reflected in its prospectus. In addition, the Board shall make and approve such changes as it deems necessary in its procedures for monitoring compliance by the applicant with the terms and conditions of the application.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any redemption in-kind to an Affiliated Shareholder occurred, the first two years in an easily accessible place, a written record of each such redemption setting forth the terms of the distribution and the information or materials upon which the valuation was made.

5. The In-Kind Securities will be valued in the same manner as they

would be valued for the purposes of computing the Fund's net asset value per share, which, in the case of securities traded as a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

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**

[Release No. 34-41651]

### **Order Cancelling Registration of Certain Transfer Agents**

July 26, 1999.

On May 21, 1999, notice was published in the **Federal Register** that the Securities and Exchange Commission ("Commission") intended to issue an order, pursuant to Section 17a(c)(4)(B) of the Securities Exchange Act of 1934 (Exchange Act),<sup>1</sup> cancelling the registrations of the transfer agents whose names appear in the Appendix attached to this Order.<sup>2</sup> For the reasons discussed below, the Commission is cancelling the registration of each of the transfer agents identified in the attached Appendix.

**FOR FURTHER INFORMATION CONTACT:** Jerry W. Carpenter, Assistant Director, or Gregory J. Dumark, Staff Attorney, at 202/942-4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-1001.

#### **Background and Discussion**

Section 17A(c)(4)(B) of the Exchange Act provides that if the Commission finds that any transfer agent registered with the Commission is no longer in existence or has ceased to do business as a transfer agent, the Commission shall by order cancel that transfer agent's registration. On May 12, 1999, the Commission issued a Notice of

<sup>1</sup> 15 U.S.C. 78q-1(c)(4)(B).

<sup>2</sup> Securities Exchange Act Release No. 34-41391 (May 12, 1999), 64 FR 27840 (May 21, 1999).