

fairly intended by the policy and provisions of the 1940 Act.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-24206 Filed 9-9-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23425; File No. 812-11110]

### Scudder Spain and Portugal Fund, Inc. and Scudder Kemper Investments, Inc.; Notice of Application

September 2, 1998.

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

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

**SUMMARY OF APPLICATION:** Applicants, Scudder Spain and Portugal Fund, Inc. ("Fund") and Scudder Kemper Investments, Inc. ("Adviser"), seek an order that would permit an in-kind redemption of shares of the Fund held by affiliated persons of the Fund.

**FILING DATES:** The application was filed on April 20, 1998, and an amendment to the application was filed on September 2, 1998.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1998, and should be accompanied by proof of service on the 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Robert W. Helm, Esq., Dechert Price & Rhoads, 1775 Eye Street, N.W., Washington, D.C. 20006.

**FOR FURTHER INFORMATION CONTACT:** Brian t. Hourihan, Senior Counsel, at (202) 942-0526, or Mary Kay Frech, 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 is available for a fee from either the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

### Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the Act as a close-end management investment company. The Adviser, a Delaware corporation, is registered under the Investment Adviser's Act of 1940 as an investment adviser and serves as investment adviser to the Fund. The Fund has one class of shares outstanding which is traded on the New York Stock Exchange. At April 20, 1998, three stockholders of the Fund each owned more than 5% of the Fund's outstanding shares.<sup>1</sup>

2. The board of directors of the Fund ("Board") has approved a plan under which the Fund will offer its stockholders the right to demand a one-time in-kind redemption of their shares at net asset value ("NAV"). The redemption right will be offered pursuant to section 23(c)(2) of the Act and will be registered as a tender offer under the Securities Exchange Act of 1934. The redemption right will give each stockholder of the Fund the right to demand that the Fund repurchase all, but not less than all, of his or her shares of the Fund in exchange for portfolio securities of the Fund. The portfolio securities of the Fund to be exchanged for shares of the Fund will be selected in accordance with guidelines established by the Board. No more than 75% of the Fund's outstanding shares will be redeemed. If more than 75% of the Fund's shares are tendered for repurchase, there will be a *pro rata* reduction in the number of shares repurchased from each stockholder who has tendered shares. Each redeeming stockholder will pay the transaction costs associated with the redemption of his or her shares of the Fund.

3. The redemption is designed to permit a significant amount of the Fund's shares to be redeemed in-kind at NAV without changing the closed-end structure of the Fund, and to ensure that only those stockholders of the Fund who desire to redeem their shares recognize at tax liability under the Internal Revenue code of 1986, as amended. Applicants request relief to

<sup>1</sup> Bankgesellschaft Berlin AG 9.6% Deep Discount Advisors, Inc. owned 12.1% and Ron Olin Investment Management Company owned 9.7% of the outstanding shares of the Fund.

permit the Fund to satisfy redemption requests on any stockholder of the Fund who, at the time of the redemption request, is an "affiliated person" of the Fund by reason of owning, controlling, or holding with the power to vote, 5% or more of the Fund's shares ("Affiliated Stockholders").

### Applicants' Legal Analysis

1. Section 17(a)(2) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, from knowingly purchasing any security or other property from the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities or the other person. Applicants also state that to the extent that the proposed in-kind redemption would constitute the purchase of securities by an Affiliate stockholder, the redemption would be prohibited by Section 17(a)(2). Accordingly, applicants request an exemption from section 17(a) of the Act to permit the proposed in-kind redemption by affiliated Stockholders.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of Section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act.

3. Applicants assert that the terms of the proposed in-kind redemption meet the requirements of section 17(b) of the Act. Applicants assert that neither the Fund nor the Affiliated Stockholders has any choice as to the portfolio securities to be received as redemption proceeds. Instead, stockholders will receive their *pro rata* portion of each of the Funds' portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 ("Securities Act"), and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals (other than qualified investment vehicles such as the Fund), as well as certain portfolio assets which involves the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterpart to the transaction. Moreover, applicants state that the portfolio securities to be distributed in

the proposed in-kind redemption will be valued according to an objective, verifiable standard, and the redemption is consistent with the divestment policies of the Fund. Applicants also believe that the proposed in-kind redemption is consistent with the general purposes of the Act because the Affiliated Stockholders would not receive any advantage not available to any other redeeming stockholder.

#### Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The securities distributed to the Affiliated Stockholders and non-affiliated stockholders 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, (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund, and (c) certain portfolio positions (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 deposit, commercial paper and repurchase agreements) and other assets which are not readily distributed (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind Securities distributed to the Affiliated Stockholders and non-affiliated stockholders will be valued in the same manner as they would be valued for the purposes of computing the Fund's NAV, which, in the case of securities traded on 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).

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 the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of each redemption that includes a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Economic Injury Disaster #9980]

##### Commonwealth of Massachusetts (And a Contiguous County in the State of New Hampshire)

Essex County and the contiguous counties of Middlesex and Suffolk in the Commonwealth of Massachusetts, and Rockingham County in the State of New Hampshire constitute an economic injury disaster loan area as a result of a fire that occurred on August 16, 1998 at the Fisherman's Wharf in the City of Gloucester. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 28, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent. The numbers assigned for economic injury for this disaster are 998000 for Massachusetts and 998100 for New Hampshire.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 28, 1998.

**Aida Alvarez,**

*Administrator.*

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#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster #3125]

##### State of Texas

As a result of the President's major disaster declaration on August 26, 1998, I find that Val Verde County in the State of Texas constitutes a disaster area due to damages caused by Tropical Storm Charley beginning on August 22, 1998, and continuing. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on October 24, 1998, and for loans for economic injury until the close of business on May 26, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Crockett, Edwards, Kinney, Sutton, and Terrell in the State of Texas may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with Credit Available Elsewhere .....	6.875
Homeowners without Credit Available Elsewhere .....	3.437
Businesses with Credit Available Elsewhere .....	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere .....	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere .....	7.125
For Economic Injury	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere ...	4.000

The number assigned to this disaster for physical damage is 312506 and for economic injury the number is 998300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 28, 1998.

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

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