

SUPPORTING STATEMENT
Rule 19b-1

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 19(b) of the Investment Company Act of 1940 (the “Act”) (15 U.S.C. 80a-19(b)) authorizes the Commission to regulate registered investment company (“fund”) distributions of long-term capital gains made more frequently than once every twelve months. Rule 19b-1 under the Act¹ prohibits funds from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b-1(c) permits unit investment trusts (“UITs”) engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if: (i) the capital gains distribution falls within one of several categories specified in the rule² and (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution (the “notice requirement”).³ Rule 19b-1(e) permits a fund to apply to the Commission for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the

¹ 17 CFR 270.19b-1.

² 17 CFR 270.19b-1(c)(1).

³ The notice requirement in rule 19b-1(c)(2) supplements the notice requirement of section 19(a) [15 U.S.C. 80a-19(a)] and rule 19a-1 [17 CFR 270.19a-1], which requires any distribution in the nature of a dividend payment made by a fund to its investors to be accompanied by a notice disclosing the source of the distribution.

circumstances that justify the distribution.⁴ An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application.

2. Purpose of the Information Collection

Section 19(b) of the Act reflects Congress's concern that investors could confuse regular distributions of capital gains with distributions of investment income.⁵ The purpose of the notice requirement in rule 19b-1(c)(2) is to ensure that investors are aware that a distribution consists of long-term capital gains.

Paragraph (e) of rule 19b-1 allows a fund, in unforeseen circumstances, to request timely authorization to make a distribution that would not otherwise be permitted by the rule.⁶ The Commission uses the information required by paragraph (e) to determine whether a request should be granted under this paragraph.

3. Role of Improved Information Technology

The Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") provides for the automated filing, processing, and dissemination of full disclosure filings. The automation provides for speed, accuracy and public availability of

⁴ Rule 19b-1(e) also requires that the application comply with rule 0-2 [17 CFR 270.02], which sets forth the general requirements for papers and applications filed with the Commission.

⁵ See Report of the Committee on Banking and Currency, S. Rep. No. 184, 91st Cong., 1st Sess. 29 (May 21, 1969); see also SEC, Public Policy Implications of Investment Company Growth, H. Rep. No. 2337, 89th Cong., 2d Sess. 191-96 (Dec. 2, 1966); Rule Proposal for Unit Investment Trusts Start-Up Exemptions and Proposed Revision of Rule Regarding Pricing of Investment Company Shares Generally, Investment Company Act Release No. 10545 (Jan. 8, 1979) [44 FR 3376, 3379 (Jan. 16, 1979)].

⁶ See Adoption of Rule 19b-1 Under the Investment Company Act of 1940 Limiting the Frequency of Distributions of Capital Gains by Registered Investment Companies, Investment Company Act Release No. 6834 (Nov. 23, 1971) [36 FR 232 (Dec. 2, 1971)].

information, generating benefits to investors and financial markets. Applications under rule 19b-1(e) are currently not filed electronically. The Commission, however, may take steps to permit the electronic filing of applications in the future.

4. Efforts to Identify Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and reevaluates those requirements whenever it proposes a rule or form, or a change in either. Rule 19b-1 does not require duplicative reporting.

5. Effect on Small Entities

The information collection requirements of rule 19b-1 apply to all funds that rely on paragraphs (c) or (e) of the rule to distribute long-term capital gains more than once a year. The notice requirement of rule 19b-1(c) is necessary to ensure that a unitholder of a UIT is aware that a distribution is a capital gains distribution. The paperwork burdens that rule 19b-1(e) imposes are essential to facilitate review by Commission staff of requests made pursuant to that paragraph. The Commission believes that compliance with these collection of information requirements is not unduly burdensome for either large or small entities, and that the shareholders of small entities, along with the shareholders of large entities, are entitled to the protections that give rise to the paperwork burdens.

6. Consequences of Less Frequent Collection

Rule 19b-1(c)(2) requires each distribution of capital gains made pursuant to the rule to be accompanied by a notice explaining that the distribution contains capital gains. If the notice were not required to accompany each distribution made in reliance on

paragraph (c)(2) of the rule, unitholders might not be aware of the source of the distribution.

Likewise, the collection of information requirements of rule 19b-1(e) occur only when a fund needs to request permission to distribute long-term capital gains due to unforeseen circumstances.

7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

Not applicable.

8. Consultation Outside the Agency

The Commission requested public comment on the collection of information requirements in rule 19b-1 before it submitted this request for extension and approval to the Office of Management and Budget (“OMB”). The Commission received no comments in response to this request. The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the fund industry through public conferences, meetings and informal exchanges. These forums provide the Commission and the staff useful means to identify and address paperwork burdens that may confront the industry.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality

Not applicable.

11. Sensitive Questions

Not applicable.

12. Estimate of Hour Burden

Commission staff estimates that, on average, each year five funds file an application under rule 19b-1(e). The staff understands that funds that file an application generally use outside counsel to prepare the application. The cost burden of using outside counsel is discussed in Item 13 below. The staff estimates that, on average, the fund's investment adviser spends approximately four hours to review an application, including 3.5 hours by an assistant general counsel, at a cost of \$371 per hour, and 0.5 hours by an administrative assistant, at a cost of \$65 per hour.⁷ Thus, the Commission staff estimates that the annual hour burden of the collection of information imposed by rule 19b-1 is approximately four hours per fund, at a cost of \$1331, for a total burden of 20 hours at a cost of \$6655.⁸

The Commission staff estimates that there is no hour burden associated with complying with the collection of information component of rule 19b-1(c).

The estimate of average burden hours is made solely for purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

⁷ These hourly rate estimates are derived from annual salaries reported in: Securities Industry and Financial Markets Association, Management and Professional Earnings in the Securities Industry (2007) and Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry (2007).

⁸ This estimate is based on the following calculations: \$1298.50 (3.5 hours × \$371 = \$1298.5) plus \$32.50 (0.5 hours × \$65 = \$32.50) equals \$1331.00 (cost of one application); \$1331 × 5 applications = \$6655 total cost.

13. Estimate of Total Annual Cost Burden

As noted above, the Commission staff understands that funds that file an application under rule 19b-1(e) generally use outside counsel to prepare the application.⁹ The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b-1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors. Based on conversations with outside counsel and average billing rates of outside counsel the staff estimates that the average cost of outside counsel preparation of the 19b-(e) exemptive application is \$5,000. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 19b-1(e) is \$25,000.¹⁰

The Commission staff estimates that there are approximately 6030 UITs,¹¹ which may rely on rule 19b-1(c) to make capital gains distributions. The staff estimates that, on average, these UITs rely on rule 19b-1(c) once a year to make a capital gains distribution.¹² In most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under

⁹ This understanding is based on conversations with representatives from the fund industry.

¹⁰ This estimate is based on the following calculation: \$5,000 multiplied by 5 (funds) equals \$25,000.

¹¹ The Investment Company Institute, Unit Investment Trust Data, (April, 2008).

¹² The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years. A number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b-1(c), or may not rely on rule 19b-1(c) as they do not meet the rule's requirements. Other UITs may distribute capital gains biannually, annually, quarterly, or at other intervals.

rule 19b-1(c)(2). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. The staff believes that as a matter of good business practices, and for tax preparation reasons, UITs would collect and distribute the capital gains information required to be sent to unitholders under rule 19b-1(c) even in the absence of the rule. The staff estimates that the cost of preparing a notice for a capital gains distribution under rule 19b-1(c)(2) is approximately \$50. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the capital gains distribution notice requirement imposes an annual cost on UITs of approximately \$301,500.¹³ The staff therefore estimates that the total cost imposed by rule 19b-1 is \$326,500 (\$301,500 plus \$25,000 equals \$326,500). This cost estimate is made solely for purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

14. Estimate of Cost to the Federal Government

The Commission receives approximately seven applications under rule 19b-1(e) per year. The Commission staff in the Office of Investment Company Regulation of the Division of Investment Management processes these and other exemptive applications. The annual operating cost of that Division's substantive rulemaking, adviser regulation, and exemptive relief activities related to investment management was approximately \$7.0 million in fiscal year 2006, based on our computation of the value of staff time devoted to these activities and related overhead.

¹³ This estimate is based on the following calculation: 6030 UITs multiplied by \$50 equals \$301,500.

15. Explanation of Changes in Burden

The estimated burden hours associated with rule 19b-1 have decreased from the current allocation of 28 hours to 20 hours. This decrease in the hour burden is due to a decrease in the number of funds filing applications for exemptive orders.

The estimated cost burden of \$348,750 has decreased to \$326,500. The decrease in the cost burden is largely due to a decrease in the estimated total number of respondents to the rule decreasing from 6492 (6485 UITs plus 7 funds filing an application under rule 19b-1(e)) to 6035 (6030 UITs plus 5 funds filing an application under rule 19b-1(e)). The cost burden has also been adjusted to reflect the staffs' updated estimates of hourly salary rates and cost of preparation of applications.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Approval to not Display Expiration Date

Not applicable.

18. Exceptions to Certification Statement

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.