

**SUPPORTING STATEMENT**  
**For the Paperwork Reduction Act Information Collection Submission for**  
**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. Accordingly, rule 19b-1 under the Act (17 CFR 270.19b-1) regulates the frequency of fund distributions of capital gains. Rule 19b-1(c) states that the rule does not apply to a unit investment trust (“UIT”) if it is engaged exclusively in the business of investing in certain eligible securities (generally, fixed-income securities), provided that: (i) the capital gains distribution falls within one of five categories specified in the rule<sup>1</sup> 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”).<sup>2</sup> Rule 19b-1(e) permits a fund to apply to the Commission for permission to distribute long-term capital gains that would otherwise be prohibited by the rule 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 circumstances that justify the distribution.<sup>3</sup> An

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<sup>1</sup> 17 CFR 270.19b-1(c)(1).

<sup>2</sup> The notice requirement in rule 19b-1(c)(2) supplements the notice requirement of section 19(a) [15 U.S.C. 80a-19(a)], which requires any distribution in the nature of a dividend payment to be accompanied by a notice disclosing the source of the distribution.

<sup>3</sup> Rule 19b-1(e) also requires that the application comply with rule 0-2 [17 CFR 270.02] under the Act, which sets forth the general requirements for papers and applications filed with the Commission pursuant to the Act and rules thereunder.

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 and Use 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.<sup>4</sup> The purpose of the notice requirement in rule 19b-1(c)(2) is to ensure that investors are aware that a distribution consists of 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.<sup>5</sup> The Commission uses the information required by paragraph (e) to determine whether a request should be granted under this paragraph.

## **3. Consideration Given to Information Technology**

The Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") automates the filing, processing, and dissemination of full disclosure filings. This automation has increased the speed, accuracy and public availability of information, generating benefits to investors and financial markets. Effective January 1, 2009, applications for orders under any section of the Act are required to be filed electronically on EDGAR. The public may access filings on EDGAR through the Commission's

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<sup>4</sup> 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)].

<sup>5</sup> 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)].

website (<http://www.sec.gov>) or at EDGAR terminals located at the Commission's public reference rooms.

#### **4. Duplication**

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication, and re-evaluates 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 exceed the frequency limits on capital gains distributions set forth in the rule. 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 Not Conducting Collection**

Rule 19b-1(c)(2) requires capital gains distributions made pursuant to paragraph (c) to be accompanied by a notice explaining that the distribution consists of capital gains. If the notice were not required to accompany each distribution made in reliance on paragraph (c) of the rule, unitholders might not be aware that the distribution consists of capital gains. Likewise, the collection of information requirements of rule 19b-1(e) occur

only when a fund needs to request permission to distribute capital gains more frequently than permitted by rule 19b-1 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. 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**

Not applicable.

**10. Confidentiality**

Not applicable.

**11. Sensitive Questions**

No PII collected/not applicable.

**12. Burden of Information Collection**

Commission staff estimates that five funds will file an application under rule 19b-1(e) each year.<sup>6</sup> The staff understands that if a fund files an application it generally uses

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<sup>6</sup> This estimate is based on the average number of applications filed with the Commission pursuant to rule 19b-1(e) in the prior three-year period.

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, a fund's investment adviser would spend approximately 4 hours to review an application, including 3.5 hours by an assistant general counsel at a cost of \$433 per hour and 0.5 hours by an administrative assistant at a cost of \$74 per hour, and the fund's board of directors would spend an additional 1 hour at a cost of \$4,465 per hour, for a total of 5 hours.<sup>7</sup> Thus, the staff estimates that the annual hour burden of the collection of information imposed by rule 19b-1(e) would be approximately five hours per fund, at a cost of \$6017.50.<sup>8</sup> Because the staff estimates that, each year, five funds will file an application pursuant to rule 19b-1(e), the total burden for the information collection is 40 hours at a cost of \$30,087.50.<sup>9</sup>

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

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<sup>7</sup> The estimate for assistant general counsels is from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The estimate for administrative assistants is from SIFMA's Office Salaries in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation (as of January 2016) and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead. The staff previously estimated in 2009 that the average cost of board of director time was \$4,000 per hour for the board as a whole, based on information received from funds and their counsel. Adjusting for inflation, the staff estimates that the current average cost of board of director time is approximately \$4,465.

<sup>8</sup> This estimate is based on the following calculations: \$1515.50 (3.5 hours × \$433 = \$1515.50) plus \$37 (0.5 hours × \$74 = \$37) plus \$4465 equals \$6017.50 (cost of one application).

<sup>9</sup> This estimate is based on the following calculation: \$6017.50 (cost of one application) multiplied by 5 applications = \$30,087.50 total cost.

### 13. Cost to Respondents

As noted above, Commission staff understands that funds that file an application under rule 19b-1(e) generally use outside counsel to prepare the application.<sup>10</sup> 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, but the staff has estimated the average cost of outside counsel as \$400 per hour, based on information received from funds, intermediaries, and their counsel. The staff therefore estimates that the average cost of outside counsel preparation of the rule 19b-1(e) exemptive application is \$4,000.<sup>11</sup> Because the staff estimates that, each year, five funds will file an application pursuant to rule 19b-1(e), the total annual cost burden imposed by the exemptive application requirements of rule 19b-1(e) is estimated to be \$20,000.<sup>12</sup>

The Commission staff estimates that there are approximately 2,579 UITs<sup>13</sup> that 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

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<sup>10</sup> This understanding is based on conversations with representatives from the fund industry.

<sup>11</sup> This estimate is based on the following calculation: 10 hours multiplied by \$400 per hour equals \$4,000.

<sup>12</sup> This estimate is based on the following calculation: \$4,000 multiplied by five (funds) equals \$20,000.

<sup>13</sup> See 2016 Investment Company Fact Book, Investment Company Institute, *available at* [https://www.ici.org/pdf/2016\\_factbook.pdf](https://www.ici.org/pdf/2016_factbook.pdf).

distribution.<sup>14</sup> In most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under 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 practice, 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 \$128,950.<sup>15</sup> The staff therefore estimates that the total cost imposed by rule 19b-1 is \$160,950 (\$128,950 plus \$20,000 (total cost associated with rule 19b-1(e)) equals \$148,950).

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.

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<sup>14</sup> 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 and UITs. UITs may distribute capital gains biannually, annually, quarterly, or at other intervals. Additionally, 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.

<sup>15</sup> This estimate is based on the following calculation: 2,579 UITs multiplied by \$50 equals \$128,950.

**14. Cost to the Federal Government**

This rule does not impose any additional costs on the Federal Government.

**15. Change in Burden**

The estimated burden hours associated with rule 19b-1 have increased from the current allocation of 1 hour to 40 hours, an increase of 39 hours. This increase is due to an increase in the estimated number of funds filing applications for exemptive orders pursuant to rule 19b-1(e) (from 0 to 5 per year).

The estimated cost burden of \$168,050 has decreased to \$148,950, a decrease of \$19,100. The decrease in the cost burden is due to a decrease in the estimated number of UITs that may rely on rule 19b-1(c).

**16. Information Collection Planned for Statistical Purposes**

Not applicable.

**17. Approval to Omit OMB Expiration Date**

The Commission is not seeking approval to not display the expiration date for OMB approval.

**18. Exceptions to Certification Statement for Paperwork Reduction Act Submission**

Not applicable.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

Not applicable.