



8011-01p
SECURITIES AND EXCHANGE COMMISSION

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Proposed Collection; Comment Request

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Securities and Exchange Commission
Office of FOIA Services
100 F Street, NE
Washington, DC 20549-2736

Extension: Rule 19b-1

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

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 rule¹ and (ii) the distribution is accompanied by a report to the unitholder that clearly describes the distribution as a capital gains distribution (the “notice

¹ 17 CFR 270.19b-1(c)(1).

requirement”).² 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.³ 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.

Commission staff estimates that three funds will file an application under rule 19b-1(e) each year.⁴ The staff understands that if a fund files an application it generally uses 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 \$466 per hour and 0.5 hours by an administrative assistant at a cost of \$81 per hour, and the fund’s board of directors would spend an additional 1 hour at a cost of \$4,465

² 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.

³ 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.

⁴ 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.

per hour, for a total of 5 hours.⁵ 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 \$6,136.50.⁶ Because the staff estimates that, each year, three funds will file an application pursuant to rule 19b-1(e), the total burden for the information collection is 15 hours at a cost of \$18,409.50.⁷

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

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.⁸ 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

⁵ 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 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 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.

⁶ This estimate is based on the following calculations: \$1,631 (3.5 hours × \$466 = \$1,631) plus \$40.5 (0.5 hours × \$81 = \$40.5) plus \$4,465 equals \$6,136.50 (cost of one application).

⁷ This estimate is based on the following calculation: \$6,136.50 (cost of one application) multiplied by 3 applications = \$18,409.50 total cost.

⁸ This understanding is based on conversations with representatives from the fund industry.

rule 19b-1(e) exemptive application is \$4,000.⁹ 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 \$12,000.¹⁰

The Commission staff estimates that there are approximately 2,230 UITs¹¹ 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 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 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

⁹ This estimate is based on the following calculation: 10 hours multiplied by \$400 per hour equals \$4,000.

¹⁰ This estimate is based on the following calculation: \$4,000 multiplied by 3 funds equals \$12,000.

¹¹ See 2019 Investment Company Fact Book, Investment Company Institute, *available at* https://www.ici.org/pdf/2019_factbook.pdf.

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 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.

distribution notice requirement imposes an annual cost on UITs of approximately \$111,500.¹³

The staff therefore estimates that the total cost imposed by rule 19b-1 is \$123,500.¹⁴

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

¹³ This estimate is based on the following calculation: 2,230 UITs multiplied by \$50 equals \$111,500.

¹⁴ \$111,500 (total cost associated with rule 19b-1(c)) + \$12,000 (total cost associated with rule 19b-1(e)) = \$123,500.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O Cynthia Roscoe, 100 F Street, NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: January 31, 2020.

J. Matthew DeLesDernier,
Assistant Secretary.

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