

the costs of Commission rules and forms.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: April 25, 2017.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-312, OMB Control No. 3235-0354]

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* 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”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information discussed below.

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 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 five funds will file an application under rule 19b-1(e) each year.<sup>4</sup> 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 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>5</sup>

<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.

<sup>4</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.

<sup>5</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

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>6</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>7</sup>

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.<sup>8</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>9</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>10</sup>

The Commission staff estimates that there are approximately 2,579 UITs<sup>11</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 distribution.<sup>12</sup> In

cost of board of director time is approximately \$4,465.

<sup>6</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>7</sup> This estimate is based on the following calculation: \$6017.50 (cost of one application) multiplied by 5 applications = \$30,087.50 total cost.

<sup>8</sup> This understanding is based on conversations with representatives from the fund industry.

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

<sup>10</sup> This estimate is based on the following calculation: \$4,000 multiplied by five (funds) equals \$20,000.

<sup>11</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).

<sup>12</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

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>13</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).

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.

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Dated: April 25, 2017.

**Eduardo A. Aleman,**  
Assistant Secretary.

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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>13</sup> This estimate is based on the following calculation: 2,579 UITs multiplied by \$50 equals \$128,950.

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

Extension:

Rule 203A-2(d), SEC File No. 270-630, OMB Control No. 3235-0689.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

The title of the collection of information is: "Exemption for Certain Multi-State Investment Advisers (Rule 203A-2(d))." Its currently approved OMB control number is 3235-0689. 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.

Pursuant to section 203A of the Investment Advisers Act of 1940 (the "Act") (15 U.S.C. 80b-3a), an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless that adviser has at least \$25 million in assets under management or advises a Commission-registered investment company. Section 203A also prohibits from Commission registration an adviser that: (i) Has assets under management between \$25 million and \$100 million; (ii) is required to be registered as an investment adviser with the state in which it maintains its principal office and place of business; and (iii) if registered, would be subject to examination as an adviser by that state (a "mid-sized adviser"). A mid-sized adviser that otherwise would be prohibited may register with the Commission if it would be required to register with 15 or more states. Similarly, Rule 203A-2(d) under the Act (17 CFR 275.203a-2(d)) provides that the prohibition on registration with the Commission does not apply to an investment adviser that is required to register in 15 or more states. An investment adviser relying on this exemption also must: (i) Include a representation on Schedule D of Form

ADV that the investment adviser has concluded that it must register as an investment adviser with the required number of states; (ii) undertake to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that it would be required by the laws of fewer than 15 states to register as an investment adviser with the state; and (iii) maintain in an easily accessible place a record of the states in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV relying on the rule.

Respondents to this collection of information are investment advisers required to register in 15 or more states absent the exemption that rely on rule 203A-2(d) to register with the Commission. The information collected under rule 203A-2(d) permits the Commission's examination staff to determine an adviser's eligibility for registration with the Commission under this exemptive rule and is also necessary for the Commission staff to use in its examination and oversight program. This collection of information is codified at 17 CFR 275.203a-2(d) and is mandatory to qualify for and maintain Commission registration eligibility under rule 203A-2(d). Responses to the recordkeeping requirements under rule 203A-2(d) in the context of the Commission's examination and oversight program are generally kept confidential.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 142. These advisers will incur an average one-time initial burden of approximately 8 hours, and an average ongoing burden of approximately 8 hours per year, to keep records sufficient to demonstrate that they meet the 15-state threshold. These estimates are based on an estimate that each year an investment adviser will spend approximately 0.5 hours creating a record of its determination whether it must register as an investment adviser with each of the 15 states required to rely on the exemption, and approximately 0.5 hours to maintain these records. Accordingly, we estimate that rule 203A-2(d) results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 1,136 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.