calculated as the greater of (a) \$25 per Unit, or (b) if Units of any Series are exchanged within five months of their acquisition for Units of a Series with a higher sales charge, or if Units subject to a deferred sales charge are exchanged for Units sold with an initial sales charge, an amount that, together with the sales charge already paid on the Units being exchanged, equals the normal sales charge on the acquired Units

7. If Units subject to a deferred sales charge are exchanged for Units of a Series not having such a charge, the deferred sales charge will be collected at the time of the exchange. If Units subject to a deferred sales charge are exchanged for Units without such a charge, installment payments will continue to be deducted from the distributions on the acquired Units until the original balance of the sales charge owed on the initial investment has been collected. In either case, the additional sales charge will be imposed at the time of the exchange.

Applicants' Legal Analysis

1. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

- 2. Section 2(a)(32) defines a "redeemable security" as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent of those assets. Because the imposition of deferred sales charge may cause a redeeming unitholder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from section 2(a)(32) so that Units subject to a deferred sales charge are considered redeemable securities for purposes of the Act.2
- 3. Section 2(a)(35) defines the term "sales load" to be the difference between the sales price and the proceeds to the issuer, less any expenses not properly chargeable to sales or promotional expenses. Because a deferred sales charge is not charged at the time of purchase, an exemption from section 2(a)(35) is necessary.

- 4. Rule 22c-1 requires that the price of a redeemable security issued by an investment company for purposes of sale, redemption, and repurchase be based on the investment company's current net asset value. Because the imposition of a deferred sales charge may cause a redeeming unitholder to receive an amount less than the net asset value of the redeemed Units, applicants seek an exemption from this rule.
- 5. Section 22(d) requires an investment company and its principal underwriter and dealer to sell securities only at a current public offering price described in the investment company's prospectus. Because sales charges traditionally have been a component of the public offering price, section 22(d) historically required that all investors be charged the same load. Rule 22d-1 was adopted to permit the sale of redeemable securities "at prices that reflect scheduled variations in, or elimination of, the sales load," Because rule 22d-1 does not extend to scheduled variations in deferred sales charges applicants seek relief from section 22(d) to let them waive or reduce their deferred sales charge in certain instances.
- 6. Section 26(a)(2) in relevant part prohibits a trustee or custodian of a unit investment trust from collecting from the trust as an expense any payment to a depositor or principal underwriter thereof. Because of this prohibition, applicants need an exemption to let the trustee collect the deferred sales charge installments from distribution deductions or Trust assets.
- 7. Applicants believe that implementation of the deferred sales charge program in the manner described above would be fair and equitable and consistent with all provisions of the Act. Thus, granting the requested order would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.
- 8. Section 11(c) prohibits any offers of exchange of the securities of a registered unit investment trust for the securities of any other investment company, unless the terms of the offer have been approved by the SEC. Applicants assert that the reduced sales charge imposed at the time of exchange is a reasonable and justifiable expense to be allocated for the professional assistance and operational expenses incurred in connection with the exchange.

Applicants' Conditions

Applicants agree that any relief granted will be subject to the following conditions:

- 1. Whenever the exchange option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the exchange option, or to delete a Series that has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of units of the Trust under section 22(e) and the rules and regulations promulgated thereunder, or (ii) a Trust temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies, and restrictions.
- 2. An investor who purchases Units under the exchange option will pay a lower aggregate sales charge than that that would be paid for the Units by a new investor.
- 3. The prospectus of each Trust offering exchanges and any sales literature or advertising that mentions the existence of the exchange option will disclose that the exchange option is subject to modification, termination, or suspension, without notice except in certain limited cases.
- 4. Each Series offering Units subject to a deferred sales charge will include in its prospectus the table required by item 2 of Form N-1A (modified as appropriate to reflect the differences between unit investment trusts and open-end management investment companies) and a schedule setting forth the number and date of each installment payment.

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

Margaret H. McFarland,

Deputy Secretary.

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² Without an exemption, a Trust selling Units subject to a deferred sales charge could not meet the definition of a unit investment trust under section 4(2) of the Act. Section 4(2) defines a unit investment trust as an investment company that issues only "redeemable securities.