uniform method for calculating tax equivalent yield.[52] The Commission requests comment on the proposed method of calculating tax equivalent yield for Fixed Income UITs. In addition, the Commission requests comment whether bonds that distribute interest income that may be subject to the alternative minimum tax under Federal tax law should be considered taxable bonds for purposes of the proposed Estimated Yield Formula. The Commission requests comment whether, if these bonds are not considered taxable bonds, additional disclosure should be required by trusts holding themselves out as distributing tax exempt income but which invest in bonds that distribute interest income that, when distributed to unitholders, may be subject to the alternative minimum tax.

B. Scope of Application of the Proposed Estimated Yield Formula

1. Prospectuses

The Commission is proposing to amend Form S–6 to require Fixed Income UITs to include in the summary financial data, typically provided in the front part of each UIT prospectus, a quotation of its Estimated Yield. The proposed Estimated Yield Formula would define ''Fixed Income UITs'' as trusts investing substantially all their assets in bonds and other debt instruments, preferred stock, or a combination of these types of securities. Comment is requested on the proposed definition of Fixed Income UITs. Comment is specifically requested whether the Estimated Yield Formula should define the term ''substantially,'' and, if so, what that definition should be.

The amendments would not preclude a trust from including a quotation of the UIT's ECR provided that, under the circumstances, the ECR is not misleading and that the differences between ECR and Estimated Yield are clearly described in the prospectus. As proposed, the amendments would require a trust using ECR or some other method of estimating return (*e.g.*, ELTR) to include a brief description of the differences between Estimated Yield and the other method and a statement that the trust's Estimated Yield is calculated following a Commission-prescribed formula designed to estimate the yield an investor holding a unit for the expected life of the trust may receive.[53]

2. Advertisements and Sales Literature

The Commission is proposing to amend rule 482 under the 1933 Act and rule 34b–1 under the 1940 Act to require Fixed Income UITs to include a quotation of Estimated Yield, as prescribed by Form S–6, in their advertisements and sales literature that contain a quotation of yield, or other similar quotation purporting to demonstrate the income earned or distributions made or to be made by a Fixed Income UIT.[54] Advertisements and sales literature of Fixed Income UITs that contain a quotation of yield also would be required to contain a legend disclosing that the Estimated Yield quoted is an estimate of the rate of return an investor holding a unit for the expected life of the trust may receive, actual return to the investor may vary from the estimate, and that an investor's units, when redeemed, may be worth more or less than their original cost.[55] As discussed above, Fixed Income UITs that invest substantially all or a portion of their assets in preferred stock, asset-backed securities, or in adjustable-rate securities would be required to provide additional disclosure in their advertisements and sales literature.[56]

Under the proposed amendments, UITs may continue to advertise performance information other than Estimated Yield or Current Yield, including ECR, if a quotation of Estimated Yield is included at least as prominently as the other performance information. The Commission requests comment whether the performance information permitted in all Fixed Income UIT advertisements should be limited to the yields calculated pursuant to the proposed Estimated Yield Formula.

3. Secondary Market Sales

As discussed above, sponsors generally maintain a secondary market in units of the UITs they sponsored. Sponsors typically repurchase units at the redemption price or net asset value of the trust based on the bid side evaluation of the bonds and resell the units to new investors based on the offer side evaluation of the bonds. The proposed Estimated Yield Formula would require that UITs calculate Estimated Yield based on the maximum offering price per unit, which, in the case of a trust the units of which are trading in a secondary market, would be the price at which the sponsor is willing to resell the units.[57]

In some cases, an investor who purchases a UIT in the secondary market will be charged a sales load. The proposed Estimated Yield Formula would require UITs to include in the public offering price of the units the maximum sales load that may be charged to an investor in the secondary market.[58]

C. Alternative Formula

The Commission requests comment whether, in lieu of the Estimated Yield Formula, the Commission should require a trust to calculate and disclose a yield measured by the trust's internal rate of return (''IRR''). IRR is the discount rate that would make the amount paid by the investor for the investment (including sales load) equivalent in value to the payments expected from the trust.[59] Unlike the Estimated Yield Formula, IRR would take into consideration different cash flows unitholders selecting different distribution options will receive. The Commission's staff has discussed with the ICI the desirability and feasibility of a UIT yield formula based on a trust's IRR.[60] In correspondence with the staff in 1990, the ICI asserted that the amount of computer time required to generate IRR for each distribution option for each trust would be so great as to significantly disrupt UIT sponsors' computer operations and increase UIT expenses.[61] In light of the significant advancements in computer technology over the past several years, the Commission requests comment whether calculation of IRR would be feasible, and, if so, whether IRR could provide an accurate but simpler method for calculating UIT yield than the Estimated Yield Formula.

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yield. *See* Item 22(b) of Form N–1A under the 1940 Act [17 CFR 274.11A].

[52] A UIT that includes a quotation of tax equivalent yield in its prospectuses, advertisements and sales literature would be required to provide a quotation of its Estimated Yield at least as prominently as its tax equivalent yield.

[53] Paragraph (f)(3) of the proposed Estimated Yield Formula.

[54] Proposed rule 482(f) under the 1933 Act [17 CFR 230.482(f)]; proposed rule 34b–1(c)(2) under the 1940 Act [17 CFR 270.34b–1(c)(2)].

[55] Proposed rule 482(a)(8) under the 1933 Act [17 CFR 230.482(a)(8)]; proposed rule 34b–1(c)(1) under the 1940 Act [17 CFR 270.34b–1(c)(1)].

[56] Instructions 15–16 to the proposed Estimated Yield Formula.

[57] Instruction 11 to the proposed Estimated Yield Formula.

[58] *Id.*

[59] *See* F. Fabozzi, *supra* note 42 at 71–72.

[60] Letter from Kathryn B. McGrath, Director, Division of Investment Management, to David Silver, President, Investment Company Institute (Apr. 17, 1990). A copy of this letter is contained in File No. S7–32–95.

[61] Letter from Craig S. Tyle, Associate General Counsel, Investment Company Institute, *supra* note 27.