

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23513; International Series Rel. No. 1166; 812-10558]

### Ranson Unit Investment Trusts, et al.; Notice of Application

October 30, 1998.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(3) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** Order requested to permit: (a) Certain series of a unit investment trust ("UIT") to invest up to 10.5% and certain other series of a UIT to invest up to 20.5% of their respective total assets in securities of issuers that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities; and (b) a terminating series of a UIT to sell portfolio securities to a new series of the UIT.

**APPLICANTS:** Ranson Unit Investment Trusts (the "Trust") and certain subsequent series (each, a "Series" or "Trust Series"), and Ranson & Associates, Inc. (the "Sponsor").

**FILING DATES:** The application was filed on March 13, 1997. Applicants have agreed to file an amendment to the application, the substance of which is incorporated in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 23, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 250 N. Rock Road, Suite 150, Wichita, KS 67206-2241.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or Christine Y.

Greenlees, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (toll. 202-942-8090).

### Applicants' Representations

1. Each Series will be a series of the Trust, a UIT registered under the Act. The Sponsor is the Trust's depositor. Each Series will be created under the laws of one of the United States pursuant to a trust agreement, which will contain information specific to that Series, and which will incorporate by reference a master trust agreement between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria in section 26(a) of the Act (the "Trustee").

2. Each Series will hold a portfolio of common stocks which represents a portion of a specific index (each, an "Index"). The investment objective of each Series is to seek a greater total return than that achieved by the stocks comprising the entire related Index over the life of the Series.

3. Certain Series (each, a "Defined Ten Series") will invest approximately 10%, but no more than 10.5%, of their total assets in each of the ten common stocks in the Dow Jones Industrial Average ("DJIA"), the Financial Times Ordinary Share Index ("FT Index"), or the Hang Seng Index, as the case may be, having the highest dividend yields no more than three business days prior to the Defined Ten Series' initial date of deposit. Certain other Series (each, a "Defined Five Series") will invest approximately 20%, but in no event more than 20.5%, of their total assets in each of the five lowest dollar price per share stocks of the ten common stocks in the DJIA, the FT Index, or the Hang Seng Index, as the case may be, having the highest dividend yields not more than three business days prior to the Series' initial date of deposit.<sup>1</sup>

<sup>1</sup> The Sponsor strives to purchase equal values of each of the common stocks in a Series' portfolio. However, it is more efficient to purchase securities in 100 share lots and 50 share lots. As a result, applicants may choose to purchase securities of a Securities Related Issuer (as defined below) which represent more than 10%, but in no event more than 10.5%, of a Defined Ten Series' assets, and more than 20%, but in no event more than 20.5%, of a Defined Five Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

4. Each of the DJIA, the FT Index, and the Hang Seng Index is a recognized indicator of the stock market in its respective country.<sup>2</sup> The publishers of the Indices are not affiliated with any Series or the Sponsor, and do not participate in any way in the creation of any Series or the selection of its stocks. The common stocks included in the Indices may include stocks of issuers that derive more than 15% of their gross revenues from securities related activities, as that term is defined in rule 12d3-1 under the Act, discussed below ("Securities Related Issuers").

5. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Series, and to supervise each Series' portfolio. The Sponsor will have no discretion as to which securities are purchased.

6. The Series' portfolios will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units, payment of expenses, and the termination of a Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, such as when an issuer defaults on the payment of any of its outstanding obligations, or when the price of a security has declined to such an extent or other credit factors exist so that in the opinion of the Sponsor, it would be detrimental to the Series to retain the securities. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

7. Each Series will have a contemplated date (a "Rollover Date") on which holders of units in that Series (a "Rollover Trust Series") may at their option redeem their units in the Rollover Trust Series and receive in return units of a subsequent Series of the same type (a "New Trust Series"). The New Trust Series will be created on or about the Rollover Date. The securities in each Rollover Trust Series will be: (a) Actively traded (*i.e.*, have had an average daily trading volume in

<sup>2</sup> The DJIA, which is owned by Dow Jones & Company, Inc., comprises 30 widely-held common stocks listed on the New York Stock Exchange, which are chosen by the editors of *The Wall Street Journal*. The FT Index comprises 30 widely-held common stocks listed on the London Stock Exchange, which are chosen by the editors of *The Financial Times*. The Hang Seng Index comprises 33 common stocks listed on the Stock Exchange of Hong Kong, Ltd.

the preceding six months of at least 500 shares equal in value to at least U.S. \$25,000) on (i) an exchange (an "Exchange") which is either a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934, or a foreign securities exchange that meets the qualifications set forth in the proposed amendments to rule 12d3-1(d)(6) under the Act<sup>3</sup> and that releases daily closing prices, or (ii) the Nasdaq National Market System (the "Nasdaq-NMS"), and (b) included in a published Index, including but not limited to the DJIA, the FT Index, or the Hang Seng Index (the securities meeting these requirements are referred to in this notice as "Equity Securities").

8. Applicants anticipate that there will be some overlap in the Equity Securities selected for the portfolios of a Rollover Trust Series and the related New Trust Series. Upon termination, absent the requested relief, a Rollover Trust Series would sell all of its Equity Securities on the applicable Exchange or Nasdaq-NMS. Likewise, a New Trust Series would acquire its Equity Securities on the applicable Exchange or Nasdaq-NMS. This procedure would result in the unitholders of both the Rollover Trust Series and the New Trust Series incurring brokerage commissions on the same Equity Securities.

### Applicants' Legal Analysis

#### A. Purchases of Stocks of Securities Related Issuers in Excess of Rule 12d3-1 Limits

1. Section 12(d)(3) of the Act, with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1 under the Act exempts the purchase of securities of a Securities Related Issuer, provided that, among other things, immediately after the acquisition, the acquiring company has invested not more than five percent of the value of

its total assets in securities of the Securities Related Issuer.<sup>4</sup>

2. As noted above, applicants state that some of the stocks comprising the DJIA, the FT Index, and the Hang Seng Index include securities of Securities Related Issuers. Applicants assert that, in order to comply with rule 12d3-1, absent the requested relief, each Defined Ten Series and Defined Five Series may be precluded from most effectively implementing the Series' investment objective.

3. Under section 6(c), the SEC may exempt classes of transactions, if and 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.

4. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit a Defined Ten Series to invest up to approximately 10%, but in no event more than 10.5%, of the value of its total assets in securities of a Securities Related Issuer, and to permit a Defined Five Series to invest up to approximately 20%, but in no event more than 20.5%, of the value of its total assets in securities of a Securities Related Issuer.

5. Applicants state that the proposed transactions satisfy the requirements of sections 6(c). Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses. One potential conflict could occur if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicants state that this concern does not arise in connection with the Defined Five or Defined Ten Series because neither the Series nor the Sponsor has discretion in choosing the securities of a Securities Related Issuer or the amount purchased; rather, the Securities Related Issuer must qualify as either one of the ten highest dividend yielding stocks or one of the five lowest dollar price per share stocks of the ten highest dividend yielding stocks in the DJIA.

6. Applicants also state that the effect of a Defined Five or Defined Ten Series' purchase on the stock of a Securities Related Issuer would be *de minimis*. Applicants assert that the Securities Related Issuers represented in the DJIA, the FT Index and the Hang Seng Index are widely held, have active markets, and potential purchases by any Defined Five or Defined Ten Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these Securities Related Issuers.

7. Another potential conflict of interest could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicants agree, as a condition to the order, that no company held in the portfolio of a Defined Ten or Defined Five Series nor any affiliate of the company will act as a broker for any Series in the purchase or sale of any security for the Series' portfolio.

#### B. Purchases and Sales Between Trust Series

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, in pertinent part, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Each Trust Series will have a common sponsor. Since the Sponsor of a Trust Series may be deemed to control the Trust Series, all of the Trust Series may be deemed to be under common control and, thus, affiliated persons of each other.

2. Rule 17a-7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a-7, other than paragraph (e).

3. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Since a UIT does not have a board of directors, the Trust Series

<sup>3</sup> Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3-1). The proposed amended rule defined a "Qualified Foreign Exchange" to mean a stock exchange in a country other than the United States where: (1) Trading generally occurred at least four days a week; (2) there were limited restrictions on the ability of acquiring companies to trade their holdings on the exchange; (3) the exchange had a trading volume in stocks for the previous year of at least U.S. \$7.5 billion; and (4) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term "Qualified Foreign Exchange."

<sup>4</sup> Under rule 12d3-1, a Securities Related Issuer is a person that derives more than 15% of its gross revenues from activities as a broker, dealer, underwriter, investment adviser registered under the Investment Advisers Act of 1940, or investment adviser to a registered investment company.

would be unable to comply with this requirement.

4. Section 17(b) of the Act provides that the SEC will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. As noted above, section 6(c) of the Act provides that the SEC may exempt classes of transactions if the 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. Applicants request relief under sections 6(c) and 17(b) to permit a Rollover Trust Series to sell Equity Securities to a New Trust Series and to permit the New Trust Series to purchase the Equity Securities.

5. Applicants state that the proposed transactions satisfy the standards of sections 6(c) and 17(b). Applicants represent that purchases and sales between Trust Series will be consistent with the policy of each Trust Series. Applicants further state that permitting the proposed transactions would result in savings on brokerage fees for the Trust Series.

6. Applicants state that the condition that the Equity Securities must be actively traded on an Exchange or the Nasdaq-NMS protects against overreaching. In addition, applicants state that the Sponsor will certify to the Trustee, within five days of each sale of Equity Securities from a Rollover Trust Series to a New Trust Series: (a) that the transaction is consistent with the policy of both the Rollover Trust Series and the New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the closing sales price on the Exchange or on the Nasdaq-NMS for the sale date of the Equity Securities. The Trustee will then countersign the certificate, unless, in the unlikely event that the Trustee disagrees with the closing sales listed on the certificate, the Trustee immediately informs the Sponsor orally of any such disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the

Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of the units of the new Trust Series, and distributions to holders of the Rollover Trust Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing sales prices for the date of the transaction.

#### **Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

##### ***A. Purchases of Stocks of Securities Related Issuers in Excess of Rule 12d3-1 Limits***

No company held in a Defined Ten Series portfolio or a Defined Five Series portfolio, nor any affiliate of the company, will act as broker for any Defined Ten Series or any Defined Five Series in the purchase or sale of any security for the Series' portfolio.

##### ***B. Purchases and Sales Between Trust Series***

1. Each sale of Equity Securities by a Rollover Trust Series to a New Trust Series will be effected at the closing price of the Equity Securities sold on the applicable Exchange or the Nasdaq-NMS on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of the transactions will be fully disclosed to investors in the prospectus of each Rollover Trust Series and New Trust Series.

3. The Trustee of each Rollover Trust Series and New Trust Series will: (a) review the procedures relating to the sale of securities from a Rollover Trust Series and the purchase of those securities for deposit in a New Trust Series, and (b) make such changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a-7.

4. A written copy of these procedures and a written record of each transaction

pursuant to the order will be maintained as provided in rule 17a-7(f).

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-29719 Filed 11-5-98; 8:45 am]

BILLING CODE 8010-01-M

## **SECURITIES AND EXCHANGE COMMISSION**

### **Sunshine Act Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of November 9, 1998.

A closed meeting will be held on Tuesday, November 10, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 10, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: November 2, 1998.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-29864 Filed 11-3-98; 4:57 pm]

BILLING CODE 8010-01-M