

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28441, 812-13497]

The Zweig Total Return Fund, Inc., et al.; Notice of Application

October 20, 2008

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

Summary of Application: Applicants request an Order to permit certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment company may issue.

Applicants: The Zweig Total Return Fund, Inc. (“ZTR”), The Zweig Fund, Inc. (“ZF”) and Phoenix/Zweig Advisers LLC (the “Adviser”).

Filing Dates: February 14, 2008 and July 30, 2008.

Hearing or Notification of Hearing: An Order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 14, 2008, 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 who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants, c/o George R. Aylward, President, Phoenix/Zweig Advisors LLC, 900 Third Avenue, New York, NY 10022.

For Further Information Contact: Wendy Friedlander, Senior Counsel, at (202) 551-6837, or James M. Curtis, Branch Chief, at (202) 551-6825 (Division of Investment Management, Office of Chief Counsel).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1520, (telephone: (202) 551-5850).

Applicants' Representations:

1. Each of ZTR and ZF is a diversified closed-end management investment company registered under the Act and organized as a Maryland corporation.¹ The common stock issued by ZTR and ZF are listed on the New York Stock Exchange. The investment objective of ZTR is total return consisting of capital appreciation and current income. The investment objective of ZF is capital appreciation primarily through investment in equity securities.
2. The Adviser is a Delaware corporation and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser currently has no investment advisory clients other than ZTR and ZF.

¹ Applicants request that any Order issued granting the relief requested in the application also apply to any closed-end investment company that in the future: (a) is advised by the Adviser (including any successor in interest) or any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; and (b) complies with the terms and conditions of the requested Order. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

3. Applicants represent that ZTR and ZF have each adopted fixed distribution plans to make periodic, level distributions equal to 10% per annum of their common stock's net asset value ("NAV"). ZTR currently makes quarterly distributions and ZF currently makes monthly distributions on their respective common stock. Applicants represent that currently the capital gains distributions are funded by capital loss carryovers available to each of ZTR and ZF but state that such carryovers may not be available in the future.

4. Applicants represent that on December 12, 2007, the Boards of Directors of ZTR and ZF (each, a "Board"), including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act (the "Independent Directors"), of ZTR and ZF each approved and adopted their respective distribution policy and plan ("Plan"). Applicants represent that the purpose of each Plan is to continue to make regular distributions that are not dependant on the timing or amount of investment income earned or capital gains realized by ZTR or ZF. Applicants further represent that the Board of ZTR and ZF each:

- (a) determined that it is in the best interests of the respective fund and its stockholders to adopt the Plan;
- (b) requested and evaluated, and the Adviser furnished, such information as may be reasonably necessary to make an informed determination of whether each Plan should be adopted and implemented;
- (c) determined that adoption and implementation of the Plan are consistent with the respective fund's investment objective(s) and policies and in the best interests of the respective fund and its stockholders, after considering information provided pursuant to representation 4(b) above, including, without limitation, with respect to each Plan: (i) the purpose(s) of the Plan as stated in this application; (ii) any potential or actual conflict of

interest that the Adviser, any affiliated person of the Adviser, or any other affiliated person of the respective fund may have relating to the adoption or implementation of the Plan; (iii) whether the rate of distribution under the Plan will exceed the respective fund's expected total return (in relation to the NAV); and (iv) any reasonably foreseeable material effect of the Plan on the respective fund's long-term total return (in relation to market price and the NAV of its common stock); and

(d) approved the respective fund's adoption of compliance policies and procedures in accordance with rule 38a-1 under the Act to be effective upon the issuance of the requested Order ("Compliance Policies and Procedures") that:

(i) are reasonably designed to ensure that all notices required to be sent to the respective fund's common stockholders pursuant to section 19(a) of the Act, rule 19a-1 thereunder and condition IV below (each, a "Notice") include the disclosure required by rule 19a-1 and by condition II.A below, and that all other communications by the fund or its agents, described in condition III.A below, about the distributions under its Plan include the disclosure required by condition III.A below; and

(ii) require the respective fund to keep records that demonstrate its compliance with all of the conditions of the Order and that are necessary for the fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notices.

5. Applicants represent that at the December 12, 2007 meeting, the Boards of each of ZTR and ZF, including a majority of its Independent Directors, also adopted policies and procedures under rule 38a-1 under the Act that are reasonably designed to ensure that all Notices comply

with Condition II below, and that all other written communications by the funds or their agents regarding distributions under the Plans include the disclosure required by Condition III below. Applicants state that the Boards of ZTR and ZF also adopted policies and procedures at that meeting that require the respective fund to keep records that demonstrate each respective fund's compliance with all of the conditions of the requested Order and that are necessary for each respective fund to form the basis for, or demonstrate the calculation of, the amounts disclosed in its Notices.

6. Applicants represent that the Boards of ZTR and ZF have recorded the basis for their approval of the Plans, including their consideration of the factors listed in representation 4(c) above, in its meeting minutes, which will be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place, or such longer period as may otherwise be required by law.

Applicants' Legal Analysis:

1. Section 19(b) provides that registered investment companies may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b-1 permits a registered investment company with respect to any one taxable year, to make one capital gain dividend, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986 (the "Code"), plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional long-term capital gains distribution to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent

that 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.

3. Applicants assert that section 19(b) and rule 19b-1 may prevent the operation of a Plan and effectively force fixed regular periodic distributions to be funded with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient), even though net realized long-term capital gains otherwise would be available. Applicants state that the long-term capital gains in excess of the fixed regular periodic distributions permitted by the rule then must either be (1) added as an “extra” on one of the permitted capital gains distributions, thus exceeding the total annual amount called for by the Plan, or (2) retained by the affected fund, with such fund paying taxes on the amount retained. Applicants believe that their stockholders should benefit from the continued investment of assets that might otherwise be distributed as a return of capital in order to fund the regular periodic distributions under the Plan.

4. Applicants believe that the stockholders in each of the funds include income-sensitive investors who desire steady distributions. Applicants believe that funds with Plans may attract new investors and support the market price of the fund’s common stock. In addition, Applicants believe that, without a Plan, there may be an increase in the amount of any discount from NAV at which a fund’s common stock may trade.

5. Applicants state that one of the concerns leading to the enactment of section 19(b) and adoption of rule 19b-1 was that stockholders might be unable to distinguish between frequent distributions of capital gain and dividends from investment income. Applicants state that, pursuant to its respective Plan, each fund will provide stockholders with adequate disclosure to clearly inform stockholders of the nature of each distribution they receive.

6. Applicants assert that one of the goals of rule 19b-1 was to reduce the possible inappropriate pressure on portfolio managers to realize capital gains on a frequent basis and/or at times when investment objective considerations would militate against doing so. However, when applied to Plans like those of the ZTR and ZF, applicants assert that rule 19b-1 actually may create an inappropriate influence on portfolio management decisions by imposing pressure to limit the realization of long-term capital gains to an annual total that is a fraction of a fund's net investment income. Applicants assert that rule 19b-1 also may create pressure to ensure that realized capital gains are short-term rather than long-term because the distribution of short-term capital gains is not subject to the limitations of the rule. Applicants seek an Order to minimize these anomalous effects by enabling the funds to realize long-term capital gains as investment considerations warrant and without fear of violating rule 19b-1.

7. Applicants assert that another concern that led to the enactment of section 19(b) of the Act and the adoption of rule 19b-1 was that frequent capital gain distributions could facilitate improper fund sales practices, including, in particular, the practice of urging an investor to purchase shares of a fund on the basis of an upcoming capital gains dividend ("selling the dividend"), where the dividend results in an immediate corresponding reduction in net asset value and is in effect a taxable return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as ZTR and ZF, which do not continuously distribute shares.

Applicants state that, in order to counteract any potential "selling of the dividend" issue in connection with a public offering of the funds' common stock, any such public offering will be made in accordance with Condition VI below. Applicants state that, in the case of a rights

offering, the offering will be made in accordance with Condition VI.A below. Applicants argue that, under those circumstances, the abuse of selling the dividend would not occur.

8. Applicants argue that there is no public policy reason why investors, with full disclosure of the nature of distributions, including disclosure that such distributions may be, or include, returns of capital, should not have the opportunity to invest in a closed-end fund with a Plan independent of the fund's net investment income and net capital gain, with the fund returning capital only to the extent that net investment income and net capital gain for the year plus previously undistributed related earnings and profit from prior years are insufficient to meet the annual fixed distribution requirement.

Applicants' Conditions:

Applicants agree that, with respect to each fund seeking to rely on the Order, the Order will be subject to the following conditions:

I. Compliance Review and Reporting: The fund's chief compliance officer will: (a) report to the fund Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the fund and the fund adviser have complied with the conditions to the requested Order and (ii) a Material Compliance Matter, as defined in rule 38a-1(e)(2), has occurred with respect to compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the fund no less frequently than annually.

II. Disclosures to Fund Stockholders:

A. Each Notice to the holders of the fund's common stock, in addition to the information required by section 19(a) and rule 19a-1:

1. will provide, in a tabular or graphical format:

(a) the amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) the fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) the average annual total return in relation to the change in NAV for the 5-year period (or, if the fund's history of operations is less than five years, the time period commencing immediately following the fund's first public offering) ending on the last day of the month prior to the most recent distribution declaration date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) the cumulative total return in relation to the change in NAV from the last completed fiscal year to the last day of the month prior to the

most recent distribution declaration date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. will include the following disclosure:

(a) “You should not draw any conclusions about the fund’s investment performance from the amount of this distribution or from the terms of the fund’s Plan;”

(b) “The fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the fund is paid back to you. A return of capital distribution does not necessarily reflect the fund’s investment performance and should not be confused with ‘yield’ or ‘income’;”² and

(c) “The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for [accounting and] tax reporting purposes will depend upon the fund’s investment

² The disclosure in this Condition II.A.2(b) will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The fund will send you a Form 1099-DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes.”

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to stockholders under rule 30e-1 under the Act, the fund will:

1. describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);
2. include the disclosure required by Condition II.A.2(a) above;
3. state, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to fund stockholders; and
4. describe any reasonably foreseeable circumstances that might cause the fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to stockholders under rule 30e-1 and each prospectus filed with the Commission on Form N-2 under the Act, will provide the fund’s total return in relation to changes in NAV in the financial highlights table and in any discussion about the fund’s total return.

III. Disclosure to Stockholders, Prospective Stockholders and Third Parties:

A. The fund will include the information contained in the relevant Notice, including the disclosure required by Condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the fund, or agents that the fund has authorized to make such communication on the fund's behalf, to any fund common stockholder, prospective common stockholder, or third-party information provider;

B. The fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by Condition II.A.2 above, as an exhibit to its next filed Form N-CSR; and

C. The fund will post prominently a statement on its (or the fund adviser's) Web site containing the information in each Notice, including the disclosure required by Condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

IV. Delivery of 19(a) Notices to Beneficial Owners: If a broker, dealer, bank, or other person ("financial intermediary") holds common stock issued by the fund in nominee name, or otherwise, on behalf of a beneficial owner, the fund: (a) will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the fund's shares held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the fund's stock; and (c) upon

the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

V. Additional Board Determinations for Funds Whose Common Stock Trades at a Premium: If:

A. the fund's common stock has traded on the exchange that it primarily trade on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. the fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board, including a majority of the Independent Directors:

(a) will request and evaluate, and the fund's adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) will determine whether continuation, or continuation after amendment, of the Plan is consistent with the fund's investment

objective(s) and policies and in the best interests of the fund and its shareholders, after considering the information in Condition V.B.1(a) above, including, without limitation:

(1) whether the Plan is accomplishing its purpose(s);

(2) the reasonably foreseeable material effects of the Plan on the fund's long-term total return in relation to the market price and NAV of the fund's common stock; and

(3) the fund's current distribution rate, as described in Condition V.B above, compared to the fund's average annual total return over the 2-year period, as described in Condition V.B, or such longer period as the board deems appropriate; and

(c) based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan.

(2) The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

VI. Public Offerings: The fund will not make a public offering of the fund's common stock other than:

A. a rights offering below net asset value to holders of the fund's common stock;

B. an offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the fund; or

C. an offering other than an offering described in Conditions VI.A and VI.B above, unless, with respect to such other offering:

1. the fund's average annual distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date,³ expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date;⁴ and

2. the transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the fund has received an Order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such fund may issue.

VII. Amendments to Rule 19b-1: The requested relief will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment

³ If the fund has been in operation fewer than two years, the measured period will begin immediately following the fund's first public offering.

⁴ If the fund has been in operation fewer than five years, the measured period will begin immediately following the fund's first public offering.

companies to make periodic distributions of long-term capital gains with respect to their outstanding common shares as frequently as twelve times each year.

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

Florence E. Harmon
Acting Secretary