

July 20, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Valuation Rule 2a-5; Investment Company Act Rel. No. 33845;
File No. S7-07-20

Dear Ms. Countryman:

We represent several sponsors to unit investment trusts (collectively, the “UITs” and each a “UIT”), and appreciate this opportunity to provide comments to the United States Securities and Exchange Commission (the “Commission”) on the Commission’s proposed new Rule 2a-5 (the “Proposed Rule”) under the Investment Company Act of 1940 (the “Act”) that would provide requirements for determining fair value in good faith with respect to a fund for purposes of Section 2(a)(41) of the Act. Under the Proposed Rule, the Commission proposes, among other things, that in the case of UITs, the trustee of the UIT would conduct the fair value determinations under the Proposed Rule. In the release proposing Rule 2a-5 (the “Proposing Release”) ¹, the staff requested comments relating to the Proposed Rule’s application to UITs regarding, among other things, whether an entity other than the trustee should perform the various valuation functions, whether the trustee should be permitted to assign these determinations to another, whether the trustee should have oversight responsibilities, and whether other modifications to the Proposed Rule would be appropriate. As outlined below, we believe that the Proposed Rule should have the flexibility to permit a UIT to utilize the evaluator specified in its trust indenture (or party performing similar functions as set forth in the trust indenture) which may be the trustee, depositor, an affiliate of the depositor or trustee or a third party service provider unaffiliated with the trustee or depositor provided such third party service provider is under the oversight of the trustee, depositor or an affiliate of either to perform the valuation functions of paragraph (a) in the Proposed Rule. Further, we believe the Proposed Rule’s requirements should not apply to existing UITs as detailed below.

¹ See Good Faith Determinations of Fair Value, Investment Company Act Rel. No. 33845 (April 21, 2020) (i.e., the Proposing Release).

U.S. Securities and Exchange Commission
July 20, 2020
Page 2

I. Background of UITs and Current Valuation Practice

Section 4(2) of the Act defines a UIT as an investment company that (1) is organized under a trust indenture or similar instrument, (2) does not have a board of directors, and (3) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. Section 2(a)(41) of the Act further requires funds to value their portfolio investments using the market value of their portfolio securities when market quotations are readily available and when a market quotation is not readily available, by using the fair value of the securities “as determined in good faith by the fund’s board.” As UITs do not have boards of directors, the section does not address the process for UITs to fair value their assets. Rather, it is the trust indenture which is the governing document that sets forth the duties of the various parties connected with the organization and operation of the UIT (generally including, but not limited to, the trustee, depositor, evaluator, and portfolio supervisor). Accordingly, the trust indenture, in relevant part, sets forth the party who will be responsible for valuing the assets and the manner in which the assets will be valued for the UIT.

With respect to the valuation of assets of a UIT’s assets, it is generally the evaluator designated in the trust indenture who is responsible for valuing the assets held in the portfolio and furnishing such valuations, among others, to the trustee. The evaluator may be the trustee, depositor, an affiliate of either or a third party service provider unaffiliated with the trustee or depositor. We note that some trust indentures may not specifically name an evaluator but rather assign such valuation duties to the applicable party, such as the trustee. If the evaluator resigns or is removed as evaluator, the trust indenture also generally provides the manner in which a successor is appointed (e.g., by the trustee and/or depositor). In addition to setting forth the entity responsible for the valuation of the UITs’ assets, the trust indenture also provides the methodology in which the assets shall be valued by the evaluator.²

² For example, the trust indenture may provide, in relevant part, that for securities listed on a national or foreign securities exchange or The Nasdaq Stock Market, such evaluation shall generally be based on the closing sale price on the exchange or system which is the principal market therefore (the “Primary Exchange”) (unless the evaluator deems the price inappropriate as the basis for evaluation); if no closing sale price of the Primary Exchange is published, then the evaluation is based on the last trade price on the Primary Exchange; if no trades occurred on the Primary Exchange for a specific trade date, the evaluation will be based on the closing sale price from, in the opinion of the evaluator, an appropriate secondary exchange, if any. If no trades occur on the Primary Exchange or any appropriate secondary exchange on a specific trade date, the evaluator will determine the evaluation using the best information available to the evaluator which may include the prior day’s evaluated price. If securities are not so listed or, if so listed and the principal market therefor is other than on the Primary Exchange or any appropriate secondary exchange, the evaluation generally will be based on the current ask price on the over-the-counter market (unless the evaluator deems such price inappropriate as a basis for evaluation). If current ask prices are unavailable, the evaluation is generally determined (a) on the basis of current ask prices for comparable securities, (b) by appraising the value of the securities on the ask side of the market or (c) the combination of the above.

II. The Terms of Proposed Rule 2a-5 applicable to UITs.

Under the Proposed Rule, if a fund is a UIT, the fund's trustee must carry out the requirements of paragraph (a) of the rule. We believe the imposition of these duties solely on the trustee may be inconsistent with current industry practice of various UIT complexes and inconsistent with the approach the Commission has taken in assigning responsibilities set forth in certain rules in the context of UITs. More specifically, in the absence of guidance in Section 2(a)(41) for UITs, industry practice has developed pursuant to which UITs have utilized an evaluator designated in the trust indenture or if none is designated, the indenture will assign the duties to an entity, such as a trustee. As noted, UITs have utilized an evaluator (often an affiliate of the depositor but may also be the trustee, depositor or a third party service provider) to perform the valuation responsibilities as appropriate for their complex. In addition, under the terms of the trust indentures, the trustee generally may rely on the evaluations furnished by the evaluator, and the trustee has no responsibility for the accuracy thereof. Similarly, we understand that some UITs may utilize an entity other than the trustee, including, among others, a third party service provider unaffiliated with the trustee or depositor for certain of their UITs as such service provider may have the better expertise and resources to perform the respective valuation functions.

We note that the staff in the Proposing Release, appears to select the trustee to conduct fair value determinations, in part, due to Form N-7, Appendix B, Guide 2 (March 17, 1987) which indicates that the board's fair value role under Section 2(a)(41) is to be performed by the UIT's trustee "or the trustee's appointed person". Form N-7, however, was never adopted. Nevertheless, we note the guidelines as proposed provided the flexibility that the trustee could appoint another. We believe the Proposed Rule should be revised to permit a UIT to utilize the evaluator specified in the trust indenture (or the party performing similar functions as an evaluator if no evaluator is specified in the trust indenture) which may be the trustee, depositor, an affiliate of either or a third party service provider unaffiliated with the trustee or depositor provided such third party service provider is under the oversight of the trustee, depositor or an affiliate of either to perform the valuation functions of paragraph (a) in the Proposed Rule as well as any successor thereto if the original evaluator resigns or is terminated as set forth in the terms of the trust indenture.

We further believe that including the depositor, an affiliate of the depositor or trustee or an unaffiliated third party evaluator to perform the valuation functions would be consistent with the approach the staff has taken in assigning the responsibilities in other rules in the context of UITs. For instance, the SEC assigned a limited review role to the *principal underwriter or depositor* of UITs in the recently adopted liquidity rule 22e-4. Under rule 22e-4, the principal underwriter or the depositor must determine, on or before the initial deposit of portfolio securities into the UIT, that the portion of the illiquid investments that the UIT holds or will hold at the date of deposit that are assets is consistent with the redeemable nature of the securities it issues. In addition, the Proposing Release recognized that Rule 38a-1 requires a fund to adopt compliance policies and procedures and that such rule would apply to a fund's obligations under the proposed Rule 2a-5. Under Rule 38a-1, the fund's principal underwriter or depositor must approve the fund's policies

U.S. Securities and Exchange Commission
July 20, 2020
Page 4

and procedures and chief compliance officer, must receive all annual reports and must approve the removal of the chief compliance officer from his or her responsibilities.

Similar to these rules, we believe that the Proposed Rule should provide the flexibility to permit the valuation functions to be assigned to the most appropriate entity in the particular UIT complex to perform such duties which may be the trustee, depositor, an affiliated person of the either or a third party service provider unaffiliated with the trustee or depositor but subject to oversight by the trustee, depositor or affiliate of either. Although Rule 22e-4 and 38a-1 only reference the principal underwriter or depositor, we recommend adding affiliates thereof because an affiliated person in the UIT complex, such as an affiliated registered investment adviser, may have the expertise and resources and be the more appropriate entity to value the assets. Further, some UIT complexes may utilize the resources and expertise of a third party service provider unaffiliated with the depositor or trustee to perform the valuation functions in which case such service provider shall be subject to the oversight of the trustee, depositor or affiliated person of either. We see no reason to assign valuation functions automatically to the trustee which may not have traditionally performed such role for the respective UITs. Further, we are concerned that trustees may not be willing to take on these new responsibilities, may not have the expertise and may not be willing to dedicate the resources necessary to develop such expertise.

We also recognize that UITs do not raise the same level of concern regarding conflicts of interest with respect to valuation as raised in connection with managed funds. More specifically, UITs are unmanaged and do not have advisers whose advisory fee is based on assets under management which may create an incentive to overvalue the portfolio holdings to obtain a larger fee. Further, we understand that evaluators are generally compensated based on the number of units (and not the value of the trust's net assets). If the evaluator is the depositor or an affiliate of the depositor, such compensation as evaluator is also subject to the at-cost provisions of Rule 26a-1 of the Act. We also note that UITs, given their fixed term, rarely hold Level 3 securities which further limits the UITs' valuation risks. Accordingly, we do not believe that UITs require the same level of oversight as in the case of an investment adviser performing the valuation functions.

In addition to the foregoing, as noted above, the trust indenture sets forth the duties of the various parties which organize and operate the UIT, including with respect to valuation, and the methodology to be followed in valuing the UIT's assets. We believe existing UITs should be excluded from the rule's provisions given a UITs finite term and changes to existing practice would be unnecessarily disruptive and would impose unnecessary costs on unitholders.

Further, as written, the Proposed Rule notes that a fund's trustee must carry out the requirements of paragraph (a) of the rule. The Commission should make clear that the requirements of paragraph (b) of the rule are not applicable to UITs.

Chapman and Cutler LLP

U.S. Securities and Exchange Commission

July 20, 2020

Page 5

We appreciate the opportunity to comment on the Proposed Rule. If we could provide additional information, please call the undersigned at (312) 845-3864.

Very truly yours,

CHAPMAN AND CUTLER LLP

By: /s/ Felice R. Foundos
Felice R. Foundos