



ADVISORS ASSET MANAGEMENT

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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
(the "Proposing Release"); File No. S7-07-20

Dear Ms. Countryman:

The undersigned Advisors Asset Management, Inc. ("AAM") is pleased to be afforded the opportunity to offer comments to the 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 a unit investment trust (a "UIT"), the trustee of the UIT would conduct the fair value determinations. In the Proposing Release¹, the staff requests comments, among other things, as to whether a party other than the trustee should perform the various valuation functions, whether the trustee should be permitted to assign these determinations to another person, 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 have its trustee, principal underwriter, depositor or an evaluator designated in the UIT's trust indenture to perform the valuation functions of paragraph (a) in the Proposed Rule. If the Commission declines to make the changes to paragraph (d) that we describe above, we also request that the final rule grandfather in the valuation responsibilities laid out in trust indentures for UITs created before the final rule's effective date. Finally, we request that the final rule make it clear that the requirements of paragraph (b) of the Proposed Rule are not applicable to UITs.

I. Background on AAM, UITs and Current UIT Valuation Practices

AAM is both an investment adviser registered with the Commission under the Investment Advisers Act of 1940 and a broker-dealer registered with the Commission under the Securities Exchange Act of 1934. AAM has acted as depositor, evaluator and/or supervisor for over 4,000 UITs since 2004. 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 requires funds to value their

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

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.” The section does not address how UITs should value their assets when market quotations are not readily available since UITs do not have a board of directors. Section 4(2) of the Act provides that a UIT “is organized under a trust indenture, contract of custodianship or agency, or similar instruments.” That document is the governing document that sets forth the duties of the various parties connected with the organization and operation of the UIT. Each UIT’s trust indenture sets forth an evaluator who will be responsible for valuing the UIT’s assets and the manner in which the assets will be valued. There is no requirement that a UIT’s evaluator be an affiliate of the UIT’s depositor or trustee.

The parties to the trust indenture for typical AAM UITs include a depositor, evaluator, supervisor and trustee. Because AAM is dually registered as an investment adviser and broker-dealer, AAM is typically named as depositor, evaluator and supervisor for AAM UITs. The Bank of New York Mellon is typically the trustee for AAM UITs. Under the terms of an AAM UIT’s trust indenture, the evaluator is responsible for determining the value of assets in a UIT’s portfolio. The trust indenture for a typical AAM UIT reads in relevant part:

“Section 5.01. Evaluation of Securities. (a) The Evaluator shall determine separately, and shall promptly furnish to the Trustee and the Depositor upon request, the value of each issue of Securities (including Contract Securities) (“Evaluation”) as of the Evaluation Time (i) on each Business Day during the period which the Units are being offered for sale to the public and (ii) on any other day on which a Trust Evaluation is to be made pursuant to Section 6.01 or which is requested by the Depositor or the Trustee.”²

Although a UIT’s trustee may be responsible for the valuation of securities in some UIT complexes, a separate evaluator specified in the trust indenture has served this function for most UITs for decades. AAM UIT trust indentures also provide for a process of succession and appointment if the evaluator resigns or is removed. In addition to setting forth the entity responsible for the valuation of a UITs’ assets, the trust indenture also provides details on the valuation process that a UIT’s evaluator must follow. The trust indenture for a typical AAM UIT requires that “the Evaluation for each Security shall be made in the following manner: (i) with respect to Securities for which market quotations are readily available, such Evaluation shall be made on the basis of the current market value of such Securities; and (ii) with respect to other Securities’ such Evaluation shall be made on the basis of the fair value of such Securities as determined in good faith by the Evaluator.” Accordingly, the longstanding practice of AAM UITs is to require a specified evaluator designated in the trust indenture to conduct all portfolio security valuations, including any fair value determinations.

² “Evaluation Time” is typically defined in an AAM UIT trust indenture as the close of regular trading on the New York Stock Exchange. Section 6.01 of AAM UIT trust indentures addresses the right of unitholders to redeem units and the reference above requires valuation on any day on which any unit is tendered for redemption.

II. Treatment of UITs under Proposed Rule 2a-5 and Our Comments

Under the Proposed Rule, if a fund is a unit investment trust, the fund's trustee must carry out the requirements of paragraph (a) of the Proposed Rule. As described above, this is inconsistent with the trust indentures and practices of AAM UITs. We also believe it is inconsistent with the trust indentures and current industry practice of the majority of UIT complexes and the approach taken in other rules in addressing UITs. In request for comment number 24 of the Proposed Rule, the staff asks whether it should "permit or require anyone other than the trustee of a UIT to perform the functions described in paragraph (a), such as a person appointed by the trustee...[including] allow[ing] the trustee to assign these determinations to the UIT's sponsor, principal underwriter, or depositor." We believe the rule should permit a UIT's fair value determinations be carried out by its trustee, principal underwriter, depositor or an evaluator designated in the UIT's trust indenture, contract of custodianship or agency, or similar instrument.

Section 2(a)(41) of the Act does not address the approach an investment company without a board of directors should follow to value its portfolio holdings that do not have readily available market quotations. As industry practice developed over many years, the majority of UIT trust indentures provided for the depositor, an affiliate thereof or an independent evaluator to serve as the UIT's evaluator and be responsible for the valuation of the UIT portfolio holdings.

In the Proposing Release, the staff cited Form N-7, Appendix B, Guide 2 (March 17, 1987) which proposed that the board's fair value role under Section 2(a)(41) be performed by the UIT's trustee "or the trustee's appointed person". In this regard, Form N-7 was only re-proposed and never adopted and therefore the proposal would not have reflected any additional comments received. Nevertheless, proposed guidelines provided the flexibility that the trustee could appoint another party to perform that function. We believe the Proposed Rule should be revised to permit a UIT to utilize an evaluator specified in the trust indenture which may be the trustee, principal underwriter, depositor or another party named as evaluator to perform the valuation functions described in paragraph (a) of the Proposed Rule.

We believe that structuring the rule in this manner would be consistent with the approach the staff has taken in addressing UITs in other rules. For example, in the recently adopted Rule 22e-4 on fund liquidity, the Commission adopted a limited review requirement for UITs pursuant to which the UIT's *principal underwriter or 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 recognizes 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, a UIT's *principal underwriter or depositor* must approve the fund's policies 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.

Although Rule 22e-4 and 38a-1 only reference the principal underwriter or depositor, we recommend allowing for valuation functions to be performed by an evaluator named in a UIT's trust indenture. Many UITs utilize a separate named evaluator that is a registered investment adviser. While AAM is itself a registered investment adviser and serves as evaluator, in the future AAM may decide to separate its investment adviser and broker-dealer in which case it would likely follow the widespread UIT practice of having the broker-dealer serve as the depositor and the affiliated investment adviser serve as the supervisor and evaluator. Additionally, some UIT complexes utilize the resources and expertise of a named evaluator unaffiliated with the depositor, principal underwriter or trustee to perform the valuation functions for a UIT. We see no reason to deviate from continuing to allow these widespread practices in UITs. UITs generally do not raise the same level of conflicts of interest with respect to valuation as confronted by managed funds. UITs are unmanaged and do not have investment advisers with an advisory fee based on the value of assets under management which may create an incentive for a managed fund's investment adviser to overvalue portfolio holdings to obtain a larger fee. Further, we note that UITs, given their unmanaged nature and relatively fixed term, rarely hold Level 3 securities (as defined under Accounting Standards Codification 820, "Fair Value Measurements") which further limits 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 managed funds.

As a result, we propose that paragraph (d) of the Proposed Rule be adopted as follows:

"(d) *Unit investment trusts.* If the fund is a unit investment trust, the requirements of paragraph (a) must be carried out by the fund's trustee, principal underwriter, depositor or an evaluator designated in the fund's trust indenture, contract of custodianship or agency, or similar instrument."

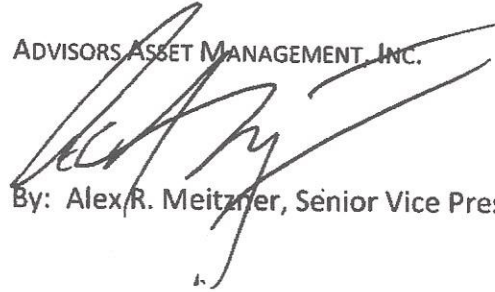
Each UIT has a finite term and each UIT's trust indenture sets forth the responsibilities of the various parties which organize and operate each UIT including with respect to valuation. As described above, the Proposed Rule is inconsistent with the current allocation of responsibilities in the trust indentures for AAM UITs and most other UITs. Accordingly, if the Commission declines to make the changes to paragraph (d) that we describe above, we also request that the final rule grandfather in the valuation responsibilities laid out in trust indentures for UITs created before the final rule's effective date.

Finally, paragraph (b) of the Proposed Rule describes responsibilities of the board of directors of a management company or business development company under the Act. We request that the final rule make it clear that the requirements of paragraph (b) of the Proposed Rule are not applicable to UITs. Accordingly, we suggest changing the first sentence of paragraph (b) of the Proposed Rule to read "The board of a fund that is a registered management investment company or a business development company must determine fair value in good faith for any or all fund investments by carrying out the functions required in paragraph (a) of this section."

We appreciate your consideration of the views set forth in this letter and we would be pleased to have the opportunity to discuss these matters further with you or with any member of the Commission staff. In the meantime, please feel free to contact the undersigned at (609) 853-2950 with any questions.

Sincerely,

ADVISORS ASSET MANAGEMENT, INC.

A handwritten signature in black ink, appearing to read 'Alex R. Meitzner', written over the company name.

By: Alex R. Meitzner, Senior Vice President