July 20, 2020

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

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

Dear Ms. Countryman:

The Bank of New York Mellon ("BNY Mellon") is grateful to have the opportunity to comment on the Securities and Exchange Commission's (the "Commission") proposed Rule 2a-5 (the "Proposed Rule") under the Investment Company Act of 1940 (the "1940 Act") regarding fair valuation of fund investments. BNY Mellon has for several decades been one of the principal trustees of unit investment trusts ("UITs") and currently acts as trustee of more than 4,472 UITs. BNY Mellon wishes to comment on the provisions of the Proposed Rule relating to UITs.[1]

Under the Proposed Rule, the Commission assigns to the trustee of the UIT the fair value determinations under the Proposed Rule. In the release proposing Rule 2a-5 (Investment Company Act Rel. No. 33845 (April 21, 2020), the "*Proposing Release*"), the staff requests comments, among other things, as to 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. For the reasons discussed below, we believe that the Proposed Rule should provide that, with respect to UITs, the requirements of paragraph (a) of the Proposed Rule shall be performed by such of UIT's depositor, trustee, evaluator or portfolio supervisor, as specified in the UIT's trust agreement and consistent with market practice. Such party is not chosen by the trustee and is not subject to the trustee's oversight; it is, however, contractually obligated to the unitholders pursuant to the terms of the trust agreement. Additionally, as UITs do not involve delegation of the type described in paragraph (b) of the Proposed Rule, it should be made clear that paragraph (b) does not apply to UITs.

Section 2(a)(41) of the 1940 Act 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 [of directors]." However, a UIT does not have a board of directors. Instead, the trust agreement by which the UIT is established specifies the party to the trust agreement who is responsible and the procedures to be applied in valuing the trust's securities.

[1] The comments in this letter address only UITs that are not ETFs.

Typically, the parties to the UIT trust agreement include the depositor, who creates the trust and exercises general supervision over the trust administration; the trustee, who has custody of the trust assets; a portfolio supervisor who advises depositor with respect to actions to be taken with respect to the trust's securities; and an evaluator, who is responsible for the valuation of the trust's securities for purposes of calculation of net asset value. Under some trust agreements, the party acting as portfolio supervisor may also act as evaluator. The party acting as portfolio supervisor or evaluator may be affiliated with the depositor. In a limited number of cases, the evaluation function is performed by the trustee, per specific direction in the trust agreement.

While the parties charged with the administration of the UIT may vary, the trust agreement invariably assigns the valuation function to a specified party who is contractually obligated to perform the function and against whom the unit holders have recourse for failure to perform in accordance with the standard of care specified in the trust agreement. Often the party serving as evaluator has expertise relevant to the valuation function, as, for example, in the circumstance where the portfolio supervisor, who is typically a registered investment advisor, serves as evaluator. The trustee does not oversee the valuation process.

Because the existing trust agreements and established practice in the UIT market assign valuation to a particular party to the trust agreement, we believe the Proposed Rule should be revised to provide that the fair valuation functions of paragraph (a) in the Proposed Rule be performed by the party specified by the trust agreement. Such party may, if authorized by the trust agreement, use an agent to assist with such functions, provided that the party named in the trust agreement shall be responsible to the unitholders for the acts of its agent to the same extent that it would be if it had performed the fair valuation functions itself.

This arrangement is consistent with both long-established market practice and the expectations of the unitholders. It would generally permit the fair value function to continue to be performed by the party currently providing valuation, who is both directly responsible to the unitholders and likely to be the party having the appropriate expertise. However, it would also allow the trust agreement to assign the fair value function to a different party in an appropriate case, as, for example, if the current evaluator is not the portfolio supervisor and the parties to the trust agreement determine that the fair value function should be performed by the portfolio supervisor, who, as noted previously, is typically a registered investment advisor.

As the responsibilities under paragraph (a) in the Proposed Rule would fall to the party designated in the trust agreement, no assignment of the type described in paragraph (b) of the Proposed Rule would be necessary and, to the extent such party utilizes an agent, it would remain responsible for compliance with the requirements set forth in paragraph (a). We suggest it should therefore be expressly clarified that paragraph (b) of the Proposed Rule would not apply to UITs.

We believe that this arrangement, which would be generally compatible with existing trust agreements, will also minimize the cost to the unitholders of amending the trust agreements to comply with the Proposed Rule. If adopted as proposed, we believe that there would be substantial additional work for the parties involved with UITs to evaluate and implement

compliance with the terms of the Proposed Rule, accompanied by increased costs to the parties and unitholders. We have only begun to assess the impact of the rule in this regard.

The proposing release includes many areas and questions that will benefit from comment by fund industry participants. Our comments are limited in this correspondence to the matter of UIT valuation and should not be interpreted to mean that BNY Mellon does not have views or concerns about other aspects of the Proposed Rule.

We again thank the Commission for the opportunity to provide these comments and would be pleased to respond to any questions.at the convenience of the Commission's staff.

Very truly yours,

Benjamin Slavin

Benjamin Slavin
BNY Mellon
Global Head of ETFs & UITs, Asset Servicing