

FREQUENTLY ASKED QUESTIONS ABOUT UNIT INVESTMENT TRUSTS

Understanding Unit Investment Trusts

What is a “unit investment trust”?

A unit investment trust (“UIT”) is a type of registered investment company under the Investment Company Act of 1940, as amended (the “1940 Act”). Generally, Section 3 of the 1940 Act defines an investment company as an issuer that holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Because UITs issue securities, and use the issuance proceeds to invest in securities, they fall within the definition of an “investment company” under the 1940 Act.

The most significant distinguishing characteristic of a UIT compared to other investment companies is that it has “virtually no management.”¹ That is, UITs employ a “buy and hold” strategy, and once the portfolio securities are selected, they generally do not change.

Section 4(2) of the 1940 Act defines a UIT as an investment company “which (A) is organized under a trust indenture, contract, custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities,

¹ Hearings on S. 3580 Before Subcomm. Of Sen. Comm. On Banking and Commerce, 76th Cong., 3d Sess. 300 (1940) (statement of John H. Hollands, SEC staff attorney).

each of which represents an undivided interest in a unit of specified securities. . . .”

Who organizes UITs?

Most often, UITs are organized by investment banks or broker-dealers registered with the SEC. These “sponsors” create a marketable portfolio of securities. On a certain date, the sponsor deposits the securities (or contracts to purchase the securities) with a trustee pursuant to the terms of the trust indenture or agreement. In exchange for the deposit of securities (or contracts), the sponsor receives unit certificates representing shares of ownership.² An evaluator then values the securities held, and this valuation is used to establish the unit offering price.

Once the UIT and its units are registered for public sale, units are sold to the public in an underwritten public offering.

What does “unit of specified securities” mean?

By definition, UITs issue units, each of which represents an undivided interest in a “basket” of specified securities that has been determined in advance of the offering. In the SEC Staff’s view, because the structure

² While the deposit of the securities (or contracts) with the trustee in exchange for units constitutes a prohibited affiliate transaction under Section 17(a)(1) of the 1940 Act, Section 17(a)(1)(c) explicitly permits this transaction.

of a UIT does not include investment advisory management or safeguards against abuses of management discretion, UITs may not contemplate trading of securities. The Staff has stated that sales and purchases of portfolio securities, also referred to as eliminations and substitutions, should take place only under unusual circumstances, *i.e.*, circumstances indicating that the creditworthiness or economic viability of the issuer of a portfolio security is seriously in doubt.³ Only in extraordinary circumstances are UIT sponsors permitted to sell portfolio securities to purchase new securities.⁴

How many UITs are in the market already?

According to statistics published by the Investment Company Institute (“ICI”), as of June 30, 2017, there were a total of 5,117 UITs with a value of \$83.56 billion. At June 30, 2017, there were: 1,871 tax-free bond UITs, with a market value of \$9.94 billion; 640 taxable bond UITs, with a market value of \$2.54 billion; and 2,606 equity UITs, with a market value of \$71.07 billion. In July 2017 alone, 127 new UITs issued units, 120 of which were equity UITs.⁵

How are UITs organized?

Although the 1940 Act allows UITs three forms of organization (trust, custodian or agency), as a practical matter, nearly all UITs elect to organize as a trust under state law. A UIT may be organized as a single trust, or a series trust, with each series constituting a different portfolio. By creating several series, a UIT can sell units

of numerous portfolios without having to register an entirely new trust under the 1940 Act.

The trust indenture, or similar governing agreement, governs both the trust and the activities of those associated with the UIT, such as the trustee, sponsor/depositor and evaluator.

What are the requirements for a UIT trustee?

The trust indenture or agreement is of central importance to UIT operations, and Section 26 of the 1940 Act prescribes its minimum requirements. Section 26(a)(1) provides that a UIT’s trust indenture or agreement must designate a trustee that is a bank having a specified minimum amount of capital (not less than \$500,000).

How does a UIT’s trustee earn and pay fees?

Section 26(a)(2) provides that the trustee may receive fees and expenses from the income earned by a UIT, or the UIT’s corpus if there is no income, only if the trust indenture so provides and the trustee is not otherwise compensated. Section 26(a)(2) also limits the ability of the trustee to treat payments to a UIT’s sponsor or principal underwriter as an expense subject to reimbursement by the UIT and requires that the trust indenture give the responsibility for possession of the UIT’s assets to the trustee.

Can a UIT’s trustee resign?

Section 26(a)(3) requires that the trust indenture provide that the trustee may not resign until the trust has been completely liquidated and the proceeds distributed to investors, or a successor has been appointed. This section, rooted in the origins of UITs, ensures that the trustee may not abandon the UIT should fees become unsatisfactory.

³ Nike Securities L.P., SEC No-Action Letter (Nov. 20, 1992).

⁴ Prudential Unit Trusts, SEC No-Action Letter (Dec. 21, 1987); Growth Stock Series, PaineWebber Equity Trust, SEC No-Action Letter (Sept. 24, 1986).

⁵ Investment Company Institute, *Monthly UIT Deposits July 2017*, available at https://www.ici.org/research/stats/uit/uits_07_17.

What are a UIT's recordkeeping obligations?

Section 26(a)(4) requires the sponsor to keep records and notify unitholders of substitutions of portfolio securities. If the trust indenture does not meet these requirements, Section 26(d) allows the trustee and sponsor to execute a separate agreement in compliance with Section 26(a) and file it with the SEC.

What are the initial funding requirements for a UIT?

Once the trust is formed, Section 14(a) of the 1940 Act requires that the UIT be funded with at least \$100,000 in seed capital before distributing its units. This capital is most often provided by a UIT's sponsor.

What are the benefits of a UIT?

UITs may offer investors diversification, liquidity and access to otherwise inaccessible investments at a reasonable price. They also offer investors some degree of predictability, since the UIT's portfolio securities change very little, if at all.

Since UITs are unmanaged, they may offer liquid investments at lower costs than more common investment companies, such as mutual funds.⁶

What types of securities do UITs issue?

Like other investment companies, a UIT invests in securities and issues fractional undivided interests, called "units," in the securities portfolio.

⁶ Mutual funds are open-end investment companies that provide daily liquidity. A mutual fund's investment adviser receives a contractual fee (typically a percentage of the assets in the portfolio) to manage the day-to-day investment decisions and strategic direction of the portfolio.

What differentiates a UIT from other investment companies?

Unlike other types of investment companies, such as mutual funds, UITs are passive and are not managed. UITs do not have an investment adviser that determines an investment strategy or manages portfolio holdings. Instead, fixed portfolio securities are deposited with the trustee and remain in the trust with little change for the duration of the UIT's existence. UITs also do not have a board of directors to oversee the operation of the trust, nor do they have officers, and have a fixed termination date. While termination dates vary and depend on the nature of the underlying portfolio, a UIT may terminate at any time from as little as one year to many years after its creation. The nature of the UIT's portfolio securities and its investment objective typically determine its longevity.

Do UITs issue multiple "classes" of units?

Since Rule 18f-3 under the 1940 Act, which permits mutual funds to issue multiple classes of shares of the same fund, applies only to registered open-end management investment companies (*i.e.*, mutual funds), it is not applicable to UITs.⁷ However, many UITs charge different fees to investors that invest through fee/wrap accounts rather than on a commission basis, and may also allow investors to choose whether to receive dividends in cash or reinvest them in additional units. Nonetheless, each unit still represents an undivided interest in the UIT.

⁷ Use of Derivatives by Registered Investment Companies and Business Development Companies, SEC Rel. No. IC-31933 at 52, n. 139 (Dec. 11, 2015) ("UITs are not subject to the requirements of [S]ection 18 [of the 1940 Act]."), available at <https://www.sec.gov/rules/proposed/2015/ic-31933.pdf>.

Are there any other provisions of the 1940 Act that do not apply to UITs?

Since UITs differ in many ways from other types of investment companies, certain sections of the 1940 Act do not apply to UITs. For example, Section 15 (investment advisory and underwriting contracts), Section 10 (affiliations of directors) and Section 16 (changes in board of directors) are inapplicable to UITs. Moreover, Rule 12b-1, which permits mutual funds to pay on-going distribution (and shareholder servicing) fees from fund assets pursuant to a properly adopted written plan, does not apply to UITs.

What is the tax treatment of UITs?

UITs are typically structured as pass-through entities for U.S. federal income tax purposes. Generally, this is accomplished in one of two ways: as a “regulated investment company” (“RIC”) under Subchapter M of the Internal Revenue Code of 1986 (the “Code”) or as a grantor trust under Section 671 of the Code.

In order to qualify as a RIC, a UIT must generally earn sufficient qualifying income, hold a diversified portfolio of qualifying assets, and make periodic distributions to shareholders of its taxable income, among other requirements. The diversification requirement under Subchapter M of the Code could be difficult for a UIT to meet, since the UIT may hold only a limited amount of securities. Furthermore, a UIT may plan to invest in assets that prohibit the UIT from qualifying as a RIC.

In some cases, taxation as a grantor trust under Section 671 of the Code may be a better means for a UIT to obtain the benefit of pass-through tax treatment. Investors in a UIT are generally treated as owning the assets of the UIT directly. In order to qualify as a

grantor trust, the UIT is generally not permitted to alter its investment portfolio.

Accordingly, careful consideration should be given to the tax structure of a UIT. The best choice will depend upon the composition of the UIT’s assets, the ability of the UIT to alter its portfolio, and the UIT’s planned liquidity.

Mechanics and Participants

Who provides services to the UIT?

While UITs do not have directors or investment advisers, other service providers are responsible for its day-to-day functions. These include the trustee, sponsor (or depositor) and evaluator. Each role is defined in the trust indenture, as are the responsibilities entailed in carrying out each role.

What is the trustee’s role?

The trustee’s role is analogous to that of a custodian. It maintains the UIT’s assets, records ownership and ensures that any advances received are credited and that the UIT’s expenses are paid. The trustee may also be responsible for reporting to the unitholders. In exchange for these services, the trustee receives a fee, which is typically based upon the total value of the UIT. To protect unitholders, Section 26 of the 1940 Act sets forth certain minimum requirements of a trustee to ensure, for example, its solvency and its ongoing ability to meet its responsibilities.

What is the sponsor’s role?

A UIT’s sponsor is usually its principal underwriter, and it is responsible for organizing the trust and establishing its investment objective. It is also

responsible for bearing the initial costs of establishing a UIT, but it can be reimbursed by the UIT for many of these costs.⁸

In most UITs, the sponsor is responsible for purchasing the portfolio securities and for instructing the trustee on the disposition of securities should they need to be sold to meet redemption needs. For its services, the sponsor is compensated by the sales charge (load) attached to unit sales, and it may also be compensated for providing portfolio supervisory services, subject to certain limitations.

To ensure the sponsor's integrity, Section 9 of the 1940 Act prohibits a person from serving as a sponsor if that person has committed certain offenses or has been found guilty of certain securities-related misconduct.

What is the evaluator's role?

The evaluator is typically responsible for valuing the securities held by the UIT. The evaluator may also perform other supervisory services as well.

For its services, the evaluator typically receives a fixed annual fee. While the evaluator may be independent from the sponsor/depositor, it does not have to be, and may often be an affiliate.

What are the governance and code of ethics requirements for a UIT?

While the central governance sections of the 1940 Act are, generally, inapplicable to UITs, which do not have a board of trustees or an investment adviser, UITs are still subject to Rule 38a-1 under the 1940 Act. Generally, Rule 38a-1 requires UITs to adopt and implement

written policies and procedures reasonably designed to prevent violations of the federal securities laws. Moreover, UITs are required to review these policies and procedures at least annually, and they must designate a chief compliance officer ("CCO") responsible for administering such policies and procedures. A UIT's principal underwriter or depositor must approve its compliance policies and procedures and its CCO, and will receive reports related to the CCO's annual review of the UIT's compliance policies and procedures.

UITs are also required to adopt a written code of ethics. Generally, Rule 17j-1 under the 1940 Act requires that the code contain provisions "reasonably necessary to prevent" unlawful conduct. In addition to adopting its own code, a UIT's code of ethics must also be approved by its principal underwriter or depositor. If the UIT has more than one principal underwriter or depositor, the principal underwriters and depositors may designate which is to be responsible for approving the code and any material changes to it.

Are transactions with affiliates prohibited?

Section 17 of the 1940 Act regulates all investment companies and prohibits certain affiliated transactions. Generally, Section 17(a)(1) prohibits an affiliated person of an investment company from knowingly selling any security or other property to the investment company. Section 2(a)(3) of the 1940 Act generally defines an affiliated person of an investment company to include, among others, any person owning 5% or more of the company's voting securities, any person in which the investment company owns 5% or more of the voting securities, any person directly or indirectly controlling, controlled by or under common control with the

⁸ Letter to Pierre de St. Phalle, Re: Unit Investment Trust Organization Expenses (May 9, 1995), available at <https://www.sec.gov/divisions/investment/noaction/1995/uit050995.pdf>.

company, and if the company is an unincorporated investment company without a board of directors, the depositor.

An affiliated transaction with a UIT would, therefore, include a transaction between a UIT and its sponsor/depositor or principal underwriter. Section 17(a)(1)(C), however, excepts from the prohibition securities deposited with the trustee of a UIT by the depositor. Since a UIT can eliminate or substitute its portfolio securities only under rare circumstances, under most circumstances the prohibition imposed by Section 17(a) would be inapplicable.

Under certain circumstances, however, a UIT may, as an investment strategy, choose to invest in certain other series of the same UIT or a different UIT within the same investment complex. If such series are under the control of the same depositor, they could be affiliates, and the sale or redemption of their units could be deemed to be a principal transaction prohibited under Section 17(a). To permit a strategy of this type, UITs often seek and receive exemptive relief from the SEC under Sections 6(c) and 17(b) of the 1940 Act.

What sales charges are typically assessed?

A typical unit is subject to a front-end sales charge, a deferred charge or a combination of both. When sold with a front-end sales charge, the price per unit is equal to its net asset value (“NAV”) plus the sales charge assessed. When sold with a deferred sales charge, collection of the charge is deferred over a period of time after the initial purchase of the unit. Generally, the deferred charge is deducted from the holder’s distributions until the entire amount is paid. If a unit is redeemed before the entire charge has been paid, the

balance of the charge is deducted from the redemption proceeds.

The 1940 Act requires UIT units to be “redeemable,” which means that investors must have the ability to redeem, or sell, their units back to the UIT at their current value. Rule 22c-1 under the 1940 Act requires that the price of a redeemable security be based on the security’s NAV. Thus, charging a deferred sales charge raises issues with respect to the units’ redemption, because the investor will receive less than the units’ full value upon redemption. In practice, however, UITs issuing units subject to a charge of this type seek and receive exemptive relief from the SEC that permits deferred sales charges.

**Registration and Disclosure Under the
Securities Laws and Sale of Units**

What are the registration requirements?

Generally, Section 5 of the Securities Act of 1933 (the “Securities Act”) requires that securities be registered, and a registration statement deemed effective by the SEC, prior to their public offer or sale. Moreover, Section 8(b) of the 1940 Act requires investment companies to register with the SEC. While mutual funds, for example, accomplish both Securities Act and 1940 Act registrations on one integrated form (Form N-1A), UITs must file two: Form N-8B-2, registering the trust as an investment company under the 1940 Act; and Form S-6 registering the UIT’s units for sale under the Securities Act. Each subsequent series of the UIT must also register separately on Form S-6.

What is Form N-8B-2?

Generally, Form N-8B-2 includes information such as:

- a summary of the material terms of the trust indenture and other contracts into which the trust has entered;
- a description of the securities offered;
- a description of sales loads, fees, charges and expenses;
- information regarding the sponsor;
- distribution arrangements;
- information regarding the trustee, custodian and other service providers;
- information regarding portfolio insurance, if applicable;
- tax information; and
- audited financial statements.

The Form N-8B-2 is subject to review by the SEC's Division of Investment Management.

What is Form S-6?

To register units for a public offering, each series of the UIT must file a separate Form S-6. Each series must also prepare its own preliminary prospectus, which is used by the underwriter or underwriting syndicate to obtain indications of interest in the units. Form S-6 generally requires disclosure, in a prospectus, of information similar to that required in Form N-8B-2. The filing for the initial series of a UIT on Form S-6 is subject to review by the SEC's Division of Corporate Finance.

Does Rule 35d-1 (the "Names Rule") apply to UITs?

Section 35(d) of the 1940 Act makes it unlawful for "any registered investment company to adopt as a part of the name or title of such company, or of any securities of

which it is the issuer, any word or words that the SEC finds are materially deceptive or misleading."

Rule 35d-1 under the 1940 Act, the so-called "Names Rule," generally requires that a UIT with a name suggesting that it focuses on a particular investment or industry to invest a particular percentage of its assets (typically, at least 80 percent) in the suggested investment or industry. This percentage threshold requirement applies at the time of investment. Since UITs are fixed portfolios and generally are unable to adjust their portfolios to comply with the Rule, however, UITs that made an initial deposit of securities before July 31, 2002, are exempt from the Rule's requirements.

What are the typical regulatory requirements as to which exemptive relief is sought by UIT sponsors?

Some UIT structures and the investment strategies chosen require that the UIT seek exemptive relief from the SEC from certain provisions of the 1940 Act. While the particulars of each application may vary, UITs often seek exemptive relief to permit deferred sales charges and other transactions. To permit transactions of this type, UITs generally seek exemptions from the following sections of the 1940 Act:

- Section 2(a)(32) (because the imposition of a deferred sales charge may cause the UIT to fall outside of the definition of "redeemable security" as a unit could be redeemed at a price less than NAV);
- Section 2(a)(35) (because the imposition of a deferred sales charge may fall outside of the definition of "sales load");

- Rule 22c-1 (to permit purchases and redemptions of units at prices less than NAV as a result of a deferred sales charge structure);⁹
- Section 22(d) (to permit waivers, deferrals or other scheduled variations in the sales load);¹⁰
- Section 26(a)(2)(C) (to permit a UIT's trustee to collect the sales charge deductions and disburse them to the depositor);
- Section 14(a) (to exempt the UIT from the \$100,000 net worth requirement, since the SEC interpretation of the requirement is that the initial capital investment in the investment company be made without the intention to dispose of the investment; a UIT will deposit securities into the trust, and distribute *pro rata* units to investors); and
- Section 19(b) and Rule 19b-1 (to permit the UIT to distribute long-term gains more than once every 12 months).

UITs may also seek exemptive relief from Sections 12(d)(1)(A), (B) and (C) of the 1940 Act to permit them to acquire shares of certain other investment companies in excess of the limitations imposed by Section 12(d)(1).

Can UITs permit holders to exchange their units for units of another UIT or roll over their units?

Generally, Section 11(c) of the 1940 Act prohibits an offer of exchange of a unit of one UIT for a unit of another (or any other investment company security). However, UITs that are part of a complex or family of

other UITs or series often offer this as a privilege for unitholders. In addition, such exchanges may be offered with reduced sales charges. To accomplish this, exemptive relief from Section 11(c) may be available from the SEC upon application and request.

How are subsequent series registered?

While there is no "shelf registration" process for UITs, UITs organized as a series trust are afforded some flexibility for conducting subsequent series offerings by Rule 487 under the Securities Act.

To avail itself of this flexibility, the initial series of a UIT must file a Form S-6 registration statement that is subject to review by the SEC. Once the SEC has declared the Form S-6 for the initial series effective, the UIT may rely on Rule 487 for offerings of units of future series.

What are the conditions of Rule 487?

Rule 487 permits the Form S-6 registration statement relating to a subsequent series of a UIT to become effective automatically without affirmative action by the SEC if it satisfies a number of conditions:

- The UIT must identify one or more prior series that the SEC has declared effective;
- The UIT must represent that the securities deposited in the new series being registered do not differ materially in type or in quality from those deposited in the prior series, and the disclosure in the prospectus for the series being registered may not differ materially from the disclosure in the prior series' registration statement; and

⁹ By rule, the SEC permits open-end investment companies to assess deferred sales charges. See Rule 6c-10 under the 1940 Act.

¹⁰ By rule, the SEC permits the sale of redeemable securities at prices that reflect sales loads, but UITs often seek this exemption for clarity. See Rule 22d-1.

- The UIT must deliver a preliminary prospectus in compliance with Rule 460 (delivery to underwriters).

This process has the effect of permitting frequent offers by series of the UIT on an expedited basis.

What are the requirements of Rule 24f-2?

Rule 24f-2 under the 1940 Act permits a UIT to register an indefinite amount of units upon initial registration. After accounting for the number of units sold and redeemed during the UIT’s fiscal year, a UIT must file a Rule 24f-2 notice 90 days after year-end, netting units sold against units redeemed or repurchased and paying any related registration fees.

What are the ongoing reporting obligations of a UIT?

Section 10(a)(3) of the Securities Act requires that a UIT’s prospectus be maintained and updated.¹¹ In order to accomplish this, sponsors typically file post-effective amendments to the UIT’s registration statement.

In addition to maintaining a current registration statement, like many other issuers and investment companies, a UIT is subject to ongoing reporting obligations under the Securities Exchange Act of 1934 (“Exchange Act”). A UIT may satisfy its periodic reporting obligations under the Exchange Act by filing a Form N-SAR under Rule 30a-1 of the 1940 Act within 60 days after the close of each calendar year. The sponsor, in conjunction with the trustee, typically prepares this annual report on behalf of the UIT.

What are the requirements for Form N-SAR?

The Form N-SAR is required to disclose information regarding, among other things:

- information about the sponsor and trustee;
- sales during the period;
- affiliated transactions; and
- sales loads and other fees and expenses.

The Form N-SAR is not required to contain audited financial statements and UITs are not required to provide unitholders with annual reports containing financial statements. As a result, UITs are exempt from the certification requirements of Section 302 of Sarbanes-Oxley. In practice, however, the trustee typically will provide an annual report to unitholders detailing the activities of the trust. This report customarily contains audited financial statements and the trustee’s discussion of fund operations and investment results.

Are UITs subject to blue sky registration and review?

The National Securities Markets Improvement Act of 1996 (“NSMIA”) preempts state law, and prohibits states from imposing registration requirements or standards upon companies that are registered under the 1940 Act, among others. While a UIT is, therefore, not subject to substantive review by state securities officials, it still must comply with each state’s blue sky requirements prior to offering the sale of units in that state. Requirements vary from state to state, but many states require an initial notice filing, such as a filing on Form NF, or a state’s version of the notice filing, and renewal notices. Other states require the filing of the UIT’s SEC-filed registration statement. States may also require that a UIT file a Form U-2, or similar form, consenting to the service of process in that state. Moreover, UITs are subject to state registration and renewal fees, which vary from a flat registration fee to a percentage of the total aggregate offering price.

¹¹ Information in the prospectus cannot be more than 16 months old.

Are UITs subject to advertising rules under the securities laws?

UIT advertising materials are subject to several SEC rules, in addition to FINRA requirements. Rule 482 under the Securities Act covers investment company advertisements for securities subject to a filed registration statement. Rule 482 allows the UIT issuer to include information in an advertisement that may not be included in the prospectus, but requires certain disclosures and legends depending on the content of the advertisement. Rule 156 under the Securities Act provides guidance about factors to be weighed in determining whether a UIT's sales literature is misleading.

Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, prohibit misstatements and omissions in connection with the purchase or sale of any security, including units issued by a UIT. The review, recordkeeping, filing and content requirements of FINRA Rule 2210 (Communications with the Public) apply to UIT advertisements used by a FINRA member, including Rule 482-compliant advertisements.

Redemption and Secondary Markets

How are units redeemed?

By definition, a UIT must issue redeemable securities. A "redeemable security," as defined in Section 2(a)(32) of the 1940 Act, includes a security, other than short-term paper, that by its terms entitles the holder to present it to the issuer (or someone designated by the issuer) and to receive approximately the value of the holder's proportionate share of the issuer's current net assets. Unless a secondary market is maintained, a UIT

and its sponsor, therefore, must be ready to redeem units. If units are redeemed for their cash value, the 1940 Act requires that they be redeemed at NAV, which, like mutual funds, is calculated daily. For these purposes, the redemption price is the NAV per unit calculated on the date the trustee receives the redemption notice.

How do units trade on the secondary market?

While not required, in practice, it is typical for a UIT sponsor to maintain a secondary market in and to act as a market maker for the UIT's units. In other words, the sponsor may stand ready to purchase units from unitholders and sell them to interested purchasers. In addition to providing investors with enhanced liquidity, this secondary trading also avoids depleting the UIT's assets due to sales of portfolio securities to meet redemptions. The SEC considers a sponsor making a market in a UIT's securities to be the "issuer" of those securities. As such, the sponsor is required to keep current the registration statement in connection with any secondary market sales and must deliver a prospectus in connection with such sales.

Section 22(d) of the 1940 Act and Rule 22c-1 require that investment company redeemable securities be sold at NAV. Because of this requirement, it is not possible to list units of a UIT on a national securities exchange because the market price may not equal NAV. However, the SEC frequently grants exemptive relief to UITs to enable them to list their securities on a national securities exchange.

What are the prospectus delivery requirements for sponsors that make a market in UITs?

Section 5(b)(2) of the Securities Act makes it unlawful for a person to deliver a security for sale, or for delivery

after a sale, unless a prospectus that meets certain legal requirements accompanies or precedes the security. Section 5(b)(1) of the Securities Act requires transmittal of a prospectus to investors following the filing of a registration statement. As an issuer of securities, UITs must comply with Section 5(b) of the Securities Act. Accordingly, as units are offered for sale, a UIT's sponsor must deliver a legally permissible prospectus. If a sponsor purchases and sells units in a secondary market, these transactions are also subject to the prospectus delivery requirements.

In addition to the sponsor, any dealer in units must also provide investors with a current prospectus; dealers in units cannot utilize the "dealers' exception" of Section 4(a)(3) of the Securities Act, since Section 24(d) of the 1940 Act explicitly excludes UITs from the prospectus delivery exemptions of Section 4(a)(3) of the Securities Act.

The chart on the following page provides a comparison of UITs and open-end mutual funds.

By Kelley A. Howes, Of Counsel,
Investment Management Practice
and

Remmelt A. Reigersman, Partner,
and David J. Goett, Associate,
Federal Tax Practice

Morrison & Foerster LLP

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Comparison of Products

	UITs	Open-End Funds
Structure/Governance	Trust/no directors; minimal supervision by trustee	Business trust or corporation/board of directors
Unit (Share) Issuance	IPO/ongoing	Ongoing
Unit (Share) Redemption	Every day at NAV, but secondary market often maintained	Every day at NAV
Termination Date	Yes	No
Management	Buy and hold; no ongoing management	Managed by a registered investment adviser
Fees	Sales charges, including creation and development fees, and minimal ongoing fees for trustee, sponsor, portfolio consultant or evaluator	Advisory, custody, transfer agency, distribution (12b-1) and administration fees, among others
Ongoing Fees/Expenses	Lower	Higher
Initial Cost/Load	Front-end/deferred sales charge	Front-end/deferred sales charge/no-load
Fully Invested	Yes	No
Tax Structure	Grantor trust/RIC	RIC
Diversification Requirement	RIC = Yes Grantor trust = No	Yes
Integrated Registration	No (Form N-8B-2 and Form S-6)	Yes (Form N-1A)