

MEMO# 22612

June 17, 2008

SEC Staff Issues No-Action Letter Regarding Liquidity Protected Preferred Shares

[22612]

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TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 24-08 SEC RULES COMMITTEE No. 40-08 RE: SEC STAFF ISSUES NO-ACTION LETTER REGARDING LIQUIDITY PROTECTED PREFERRED SHARES

On June 13, 2008, the staff of the Securities and Exchange Commission issued a letter providing various no-action assurances related to a particular type of liquidity protected preferred shares ("LPP"), designed to be eligible for money market funds to hold.[\[1\]](#) As you know, the Institute has also been working with the SEC staff to resolve regulatory issues with several types of LPP currently being contemplated[\[2\]](#) and working with the Department of the Treasury to ensure that LPP would be treated as equity, rather than debt, for tax purposes.[\[3\]](#)

The letter describes a type of auction market preferred stock ("AMPS") with a liquidity feature. The LPP described in the letter has the following characteristics:

- It could supplement or replace existing AMPS;
- LPP dividends will be reset every seven days in a remarketing process;
- LPP will be sold at a price equal to their liquidation preference (\$25,000) plus accumulated and unpaid dividends;
- A liquidity provider with a requisite short-term rating will be obligated to purchase unconditionally all LPP subject to sell orders in a remarketing that have not been

- matched with purchase orders; and
- Additional terms may take effect upon failed remarketings, including escalating dividend rates, additional fees to the liquidity provider, a “put” of the LPP to the parent company of the fund’s adviser (the “EVC Put”)[4] or the issuing fund (the “Fund Put”).[5]

The staff’s response covered three areas:

The letter does not address several issues raised in the Institute’s draft letter to the staff, including whether the liquidity provider could become an affiliate of the fund through its ownership of LPP, whether AMPS and LPP would constitute multiple classes of preferred stock, and whether the Fund Put could be deemed to create a senior security.[6] With respect to each of these issues, however, it is worth noting that the Institute’s letter merely requested the Staff’s concurrence in our view that LPP did not violate the relevant provisions of the Investment Company Act or the rules thereunder.

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Securities Regulation - Investment Companies

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[1] See Eaton Vance Management, SEC No-Action Letter (June 13, 2008), available at <http://www.sec.gov/divisions/investment/noaction/2008/eatonvance061308.pdf>.

[2] See Memorandum No. 22471, dated April 30, 2008.

[3] The Department of the Treasury separately issued guidance relating to LPP on June 13. See Memorandum No. 22610, dated June 16, 2008.

[4] The EVC Put is not expected to be an ongoing feature of the LPP and will be offered only to the liquidity provider for the first LPP offering.

[5] The Fund Put would be exercisable only after the liquidity facility had been in place for one year and only with respect to any LPP that the liquidity provider held and was unable to sell for more than three consecutive months.

[6] See Memorandum No. 22471, dated April 30, 2008 (summarizing the Institute's letter).

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