

MEMO# 22615

June 17, 2008

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

[22615]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 21-08
FIXED-INCOME ADVISORY COMMITTEE No. 15-08
MONEY MARKET FUNDS ADVISORY COMMITTEE No. 14-08
SEC RULES MEMBERS No. 51-08
TAX MEMBERS No. 24-08 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 auction market preferred stock (“AMPS”) with a liquidity feature. The new type of stock, called liquidity protected preferred shares (“LPP”), is designed to be eligible for money market funds to hold. [\[1\]](#)

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”) [2] or the issuing fund (the “Fund Put”). [3]

The staff’s response covered three areas:

1. The Division of Investment Management agreed not to recommend enforcement action under Sections 34(b) or 35(d) of the Investment Company Act or Rule 22c-1 thereunder against money market funds if they purchase LPP, provided that the money market funds otherwise comply with the conditions of Rule 2a-7;
2. The Division of Investment Management concurred with Eaton Vance Management’s view that the liquidity feature, EVC Put and Fund Put features of the LPP would not cause the LPP to be “redeemable securities” under Section 2(a)(32) of the Investment Company Act; and
3. The Division of Corporation Finance agreed not to recommend enforcement action if the offers are conducted without complying with Rule 13e-4 of the Securities Exchange Act of 1934 and Regulations 14D and 14E thereunder (the tender offer rules).

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endnotes

[1] See Eaton Vance Management, SEC No-Action Letter (June 13, 2008), available at <http://www.sec.gov/divisions/investment/noaction/2008/eatonvance061308.pdf>. The Department of the Treasury separately issued guidance related to LPP on June 13. See [Memorandum](#) No. 22610, dated June 16, 2008.

[2] 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.

[3] 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.

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