

**MEMO# 22683**

July 11, 2008

## **Institute Submits Letter To SEC Staff On Liquidity Protected Preferred Shares**

[22683]

July 11, 2008

TO: CLOSED-END INVESTMENT COMPANY COMMITTEE No. 25-08  
SEC RULES COMMITTEE No. 47-08 RE: INSTITUTE SUBMITS LETTER TO SEC STAFF ON  
LIQUIDITY PROTECTED PREFERRED SHARES

Earlier today we submitted a letter to the Staff of the Securities and Exchange Commission asking for their views on an issue relating to liquidity protected preferred shares (“LPP”) issued by closed-end investment companies. LPP was the subject of a recent no-action letter from the Staff to Eaton Vance Management. [\[1\]](#) A copy of the letter, which is briefly described below, is attached.

The Institute’s letter addresses an issue not addressed in the EV Letter – whether a liquidity provider would be deemed to control, or otherwise to be an affiliated person of, a closed-end fund issuing LPP solely on the basis of (a) the liquidity provider’s acquisition of LPP pursuant to the LPP’s liquidity feature and (b) contractual arrangements between the fund and the liquidity provider regarding LPP of the type described in the EV Letter (such as the right of the liquidity provider to require the fund to repurchase its LPP in certain circumstances). For the reasons expressed in the letter, the Institute believes that funds and liquidity providers should be able to rely upon the presumption of non-control in Section 2(a)(9) of the Investment Company Act of 1940 (the “Act”), and that the acquisition of LPP through the operation of the LPP’s liquidity feature and the contractual arrangements described in the EV Letter should not provide a sufficient basis for rebutting that presumption. The letter seeks the Staff’s concurrence in that view.

The letter is the second letter the Institute has submitted to the Staff on LPP. [2] Our earlier letter (the "April 30th letter") addressed a number of issues, including the affiliation question that is the subject of the current letter. We have concluded that most of the issues raised in our April 30th letter, other than the affiliation issue, have been sufficiently addressed in the EV Letter and in our discussions with the Staff. Specifically:

As a result, we do not intend to pursue a formal Staff response to our April 30th letter.

Robert C. Grohowski  
Senior Counsel  
Securities Regulation - Investment Companies

#### [Attachment](#)

#### **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 "EV Letter").

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

[3] Funds considering LPP with longer remarketing cycles, such as 28 days, should consider whether the longer cycles raise additional issues under Rule 2a-7.