ACT ICA of 1940
SECTION 17(a)
RULE 17a-8
PUBLIC AVAILABILITY JUL 25 1997

Our Ref. No. 97-346-CC
The Eaton Vance Group
of Investment Companies
File No. 132-3

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Your letter dated July 16, 1997 requests our assurance that we would not recommend enforcement action to the Commission under Section 17(a) of the Investment Company Act of 1940 (the "Act") if The Eaton Vance Group of Investment Companies (the "Funds") participate in the proposed reorganization transactions described in your letter in reliance on Rule 17a-8 under the Act.

Background

The Funds are structured as "master-feeder" funds in which two or three feeder funds invest all of their assets in a master fund. Each master fund is registered as an open-end investment company under the Act. The feeder funds are series of open-end investment companies registered under the Act. Each group of feeder funds investing in a master fund has identical investment objectives, policies and restrictions, and each feeder fund differs from the other feeder funds in the group only as to distribution arrangements. Eaton Vance Management (the "Adviser") serves as the investment adviser and administrator to each master fund, and as the administrator and distributor to each feeder fund.

The Funds propose to enter into a series of reorganization transactions through which the shareholders of the feeder funds in each master-feeder group will become shareholders of new classes of a single feeder fund investing in the same master fund. Specifically, each reorganization will involve the acquisition by one feeder fund in a group (each an "acquiring fund") of all of the assets and liabilities of the other feeder fund(s) in the group (each an "acquired fund") in exchange for shares of newly created classes of the acquiring fund. The distribution arrangements for each new class of an acquiring fund will correspond to the distribution arrangements of each feeder fund prior to the reorganization.

You state that the declarations of trust of the Funds provide that the reorganizations may be effected without a vote of the shareholders of the acquiring or acquired funds. You represent that the shareholders of the feeder funds will have the same proportionate interest in the same underlying portfolio of securities after the transaction as they will have prior to the transaction, and that the reorganizations will be non-taxable events for shareholders of the feeder funds. You represent that shareholders will experience no change in the value or cost basis of their investments,[1] or in the net asset value of their shares, as a result of the

[1] You note that some shareholders could receive different distributions of realized capital gains following the reorganizations than would be the case if the reorganizations did not occur. This result is due to different allocation methods for unrealized capital gains under the multiple class accounting rules to be followed after the reorganizations, versus the partnership accounting rules currently followed under the master-feeder structure.

reorganizations. You also represent that the reorganizations will not materially affect shareholders' voting rights.[2]

You represent that the board of trustees of each feeder fund, including all of the trustees who are not interested persons of the funds, have determined that it would be in the best interests of the funds and their shareholders to participate in the reorganizations. You state that the trustees' determination was based upon a number of factors, including that the shareholders would continue to participate in the same portfolio of investment securities with the same investment objectives, policies and restrictions. You represent that the reorganizations are expected to eliminate or reduce certain costs associated with operating master-feeder structures and increase the potential marketability of the Funds. You state that the costs of effecting the reorganizations are not significant because a proxy solicitation and shareholder vote are not required.

Section 17(a) of the Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from knowingly purchasing securities or other property from, or selling securities or other property to, the investment company or a company controlled by it. Rule 17a-8 under the Act exempts from the prohibitions of Section 17(a) mergers or consolidations of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors and/or common officers, provided that the conditions of the rule are satisfied.[3]

You state that the Funds may be precluded from relying on Rule 17a-8 because more than one feeder fund in each group may own more than five percent of the outstanding voting securities of its corresponding master fund. Each such feeder fund therefore may be affiliated with the master fund, and thus each such feeder fund may be affiliated with each other. In addition, the Adviser manages private accounts through which it holds discretionary voting authority over more than five percent of the outstanding shares of five of the feeder funds involved in the proposed transactions. Because of these potential

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[2] You note that because the reorganizations will increase the size of the acquiring funds, the voting power of individual shareholders will be diluted with respect to matters on which votes are taken on a fund-wide rather than individual class basis. You represent that the only likely matter on which a vote would be taken on a fund-wide basis is the approval of auditors.

[3] Generally, to satisfy the conditions of the rule, the board of directors of each affiliated registered investment company, including a majority of directors who are not interested persons of a registered investment company participating in the transaction, must determine that participation in the transaction is in the best interests of that investment company, and that the interests of existing shareholders of the company will not be diluted as a result of effecting the transaction.

affiliations, you state that the feeder funds may be deemed affiliated persons of each other by reason other than by sharing a common investment adviser, directors and/or officers. You believe, however, that the Funds nevertheless should be permitted to rely on the Rule in effecting the reorganization transactions.

Discussion

You note that in proposing Rule 17a-8, the Commission stated that when a merger involves investment companies which are affiliated persons solely because they share a common investment adviser, directors and/or officers, no person responsible for evaluating the merger on behalf of the investment companies would have a significant personal financial interest in improperly influencing the terms of the transaction. The Commission stated the Rule should not apply when a person owns five percent or more of the outstanding voting securities of the participating investment companies because the owner is presumed to have the potential ability to influence the terms of the transaction.[4] You believe that, in the instant case, no affiliated persons of the participating investment companies have a significant personal financial interest in the reorganizations or the ability to influence the terms of the transactions, and that the Funds therefore should be able to rely on Rule 17a-8.

With regard to a feeder fund's ownership of five percent or more of the shares of its master fund, you state that this affiliation exists solely as a result of the inherent nature of the master-feeder fund structure. You state that although a feeder fund may own more than five percent of the outstanding voting securities of its master fund, the concerns to which Section 17(a) and Rule 17a-8 are addressed are not implicated because: (1) the reorganizations do not involve any shareholder vote; (2) the reorganizations do not involve the master funds; (3) the feeder funds have no ability to influence the terms of the reorganizations; and (4) the feeder funds have no particular financial interest in the reorganizations, except that their shareholders may realize a possible reduction in expenses.

You assert that the Adviser's discretionary voting authority over five percent or more of the shares of certain feeder funds is irrelevant because the transactions will be effected without a shareholder vote, and that the Adviser will be unable to influence the terms of the reorganizations on this basis.[5] You further note that in Principal Preservation Portfolios, Inc. (pub. avail. Jan. 11, 1996), the staff stated that it would not recommend enforcement action to the Commission under Section 17(a) if a feeder fund undergoing a reorganization

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[4] See Investment Company Act Release No. 10886 (Oct. 2, 1979).

[5] Of course, the Adviser may be able to influence the terms of the reorganizations based upon its position as investment adviser to the Funds. You state that this influence, however, is no greater than the influence that the Adviser would have as a "common adviser" in transactions expressly within the scope of Rule 17a-8. Telephone conversation between Philip J. Fina and Brendan C. Fox, July 23, 1997.

relied on Rule 17a-8 where the fund's investment adviser, which held discretionary voting authority over more than five percent of the voting securities of the fund, passed this voting power through to the shares' beneficial owners. Similarly, in Thomson McKinnon Global Trust (pub. avail. Dec. 18, 1986), the staff stated that it would not recommend enforcement action to the Commission under Section 17(a) if certain funds relied on Rule 17a-8 where the funds' distributor, which nominally held more than five percent of the outstanding voting securities of the funds, could not vote the shares except at the direction of their beneficial owners. You argue that the Funds similarly should be permitted to rely on Rule 17a-8 because the Adviser will exercise no voting authority to approve the proposed reorganizations.

You further state that the Adviser has no particular financial interest in the reorganization of the five feeder funds over which it holds more than five percent of the outstanding voting securities. Although the Adviser may benefit from increased advisory fee revenues in the event that reduced fund expenses and improved marketability lead to future asset growth, you state that the Adviser's interest in these reorganizations is, as a practical matter, identical to its interest as a "common adviser," which is expressly permitted by Rule 17a-8. Based upon the forgoing, you believe that the concerns to which Section 17(a) of the Act are addressed are not raised in the instant case and that there is no policy reason to require the Funds to obtain exemptive relief under Section 17(b) of the Act before permitting the proposed transactions to proceed.

On the basis of the facts and circumstances described in your letter, and without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission under Section 17(a) of the Act if the Funds proceed with the reorganization transactions in reliance on Rule 17a-8 under the Act. This response expresses the Division's position on enforcement action only and does not express any legal conclusions on the issues presented. Because this position is based on the facts and representations made in your letter, you should note that any different facts or representations might require a different conclusion.

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**<u>1940 Act/Section 17(a) and Rule 17a-8</u>**

July 16, 1997

Securities and Exchange Commission
Office of Chief Counsel
Division of Investment Management
Judiciary Plaza
450 Fifth Street, N.W.
Washington, D.C. 20549

Attn: Brendan Fox

Re: <u>The Eaton Vance Group of Investment Companies</u>

Ladies and Gentlemen:

On behalf of our clients, The Eaton Vance Group of Investment Companies ("Funds"), we hereby request the staff's confirmation that it would not recommend enforcement action against the Funds under Section 17(a) of the Investment Company Act of 1940 ("1940 Act") or Rule 17a-8 thereunder if the Funds participate in the non-taxable reorganizations described herein ("Reorganizations"). If the Reorganizations are consummated, the current shareholders of two or more "<u>feeder</u>" funds investing in a common "master" fund will become shareholders of two or more corresponding <u>classes</u> of a single feeder investing in the <u>same</u> master fund.

BO-63856.01

Background

The Funds are organized in a "master/feeder" structure consisting of 59 master funds and 131 feeder funds. Each master fund is registered as an open-end management investment company under the 1940 Act. The beneficial interests of each master fund are not registered under the Securities Act of 1933 ("1933 Act"). Each master fund offers and sells its beneficial interests only in private placement transactions to feeder funds, or to Eaton Vance Management or its affiliates ("Eaton Vance"). The feeder funds are series of open-end management investment companies organized, for the most part, as Massachusetts business trusts and registered under the 1940 Act; their shares are registered under the 1933 Act.[1] Eaton Vance serves as the administrator and investment adviser to the master funds, and as the administrator and distributor to the feeder funds.

Under the Funds' current structure, at least two, and sometimes three, 1940 Act registered feeder funds invest in each master fund. Each group of two (or three) feeder funds investing in a particular master fund has identical investment objectives, policies and restrictions, and are series of a single registered open-end investment company. The sole distinction among the feeder funds in each group is in their distribution structure. Typically, there is one feeder fund (i.e., the "Traditional" fund) with a front-end sales load and a service fee up to 25 basis points; a second feeder fund (i.e., the "Classic" fund) with a one-year contingent deferred sales charge and a 75 basis points12b-1 fee and a service fee of up to 25 basis points; and, in certain cases, a third feeder fund (i.e., the "Marathon" fund) with a six year declining contingent deferred sales charge, a 75 basis point Rule 12b-1 fee and a service fee of up to 25 basis points.

Each Reorganization will be a tax-free transaction, involving (1) the acquisition by one feeder fund in a group with common investment objectives and policies ("acquiring fund") of all of the assets of the remaining feeder fund(s) in the group ("acquired fund(s)"), with such assets consisting of its (or their) interest(s) in the corresponding master fund; and (2) the assumption by the acquiring fund of all of the liabilities of the acquired funds. In exchange, each acquired fund will receive shares of a newly-designated class of the acquiring fund. Shareholders of each acquired fund would become shareholders of the class of shares of the acquiring fund corresponding to the acquired fund's current distribution structure, and shareholders of the acquiring fund would become shareholders of the class of shares of the acquiring fund corresponding to the acquiring fund's distribution structure. For example, shareholders of an acquired Traditional fund will become holders of Class A shares of the acquiring fund. Existing

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[1] Certain feeder funds are organized and operated exclusively offshore, and accordingly are not registered under the 1940 Act, nor are their shares registered under the 1933 Act. The Reorganizations described herein do not involve any of these offshore feeder funds and no-action relief is not being requested with respect to these offshore feeder funds.

shareholders of both the acquiring and acquired funds will experience no change in the value or cost basis of their investments,[2] nor in the net asset value of their shares, as a result of the Reorganizations. The Reorganizations will not materially affect shareholder voting rights.[3] Moreover, unlike reorganizations involving funds that are not in a master/feeder structure, there will be no change in the underlying portfolio securities implicated in each Reorganization. Shareholders of both the acquiring fund and the acquired fund(s) will thus effectively have the same proportionate interests in the same underlying portfolio of securities after the Reorganizations as they will have had before the Reorganizations.

Each Reorganization will be effected in accordance with a plan of reorganization adopted by the board of trustees of the investment company of which the acquiring fund and the acquired fund(s) are series. Pursuant to the terms of the declarations of trust of each such investment company, each Reorganization will be effected without a vote of the shareholders of the acquiring fund or the acquired fund(s).[4] As a practical matter, a Reorganization can only be effected on the last day of each fund's fiscal year. Subject to the receipt of this no-action relief, the trustees, including all of the non-interested trustees, of each fund have authorized the Reorganizations, which would commence with those funds having July 31 fiscal year ends.

[2] It is possible that some shareholders could, following the Reorganizations, receive different distributions of realized capital gains than would be the case if the restructuring did not occur. This result could occur because allocation of a master fund's current unrealized capital gains will be different under multiple-class accounting rules than has been the case under the partnership accounting followed by the master/feeder structure. The actual realization of capital gains in the future remains uncertain and depends not only on the investment adviser's decisions but also on the fluctuating market valuation of specific securities.

[3] Because the Reorganizations will increase the size of the acquiring funds, the voting power of individual shareholders will be diluted with respect to matters on which votes are taken on a fund-wide, rather than on an individual class, basis. The only likely matter on which a vote would be taken on a fund wide basis is the approval of auditors, which currently are the same for each group of funds.

[4] One feeder fund, EV Traditional Worldwide Health Services Fund, Inc., requires a shareholder vote to reorganize from a Maryland corporation to a series of Eaton Vance Growth Trust prior to the above described Reorganization.

The trustees of the feeder funds, including all of the non-interested trustees, have determined that it would be in the best interests of the funds and their respective shareholders to reorganize each such group of two or more feeder funds into a single feeder fund with multiple classes corresponding to the distribution structures currently in effect for the separate feeder funds. The trustees' determination was based on a number of factors including: Shareholders of the feeder funds would continue to participate in the same investment securities portfolio, with the same investment objective(s), policies and restrictions. The Reorganizations are expected to eliminate or reduce costs associated with maintaining multiple separate feeder funds, including costs of separate audits, fund accounting expenses, legal expenses, printing costs, and blue sky fees.[5] The Reorganizations will be non-taxable transactions for shareholders of the feeder fund. The costs of effecting the Reorganizations (which will be borne by the feeder funds) are not significant, particularly relative to the anticipated future expense reductions, because a proxy solicitation and shareholder vote is not required. The Reorganizations are also expected to increase the potential marketability of the feeder funds' shares by simplifying and clarifying the organizational structure of the funds.

Applicable Statute and Regulation

Section 17(a) of the 1940 Act generally prohibits an affiliated person, or an affiliated person of an affiliated person, of a registered investment company from knowingly purchasing securities from, or selling securities or other property to, the investment company. The Reorganizations may be deemed to involve purchases and/or sales of securities or property between two or more funds and therefore subject to the prohibition of Section 17(a) if one fund is deemed to be an affiliated person, or affiliated person of an affiliated person, of the other.

Rule 17a-8 under the 1940 Act exempts from the prohibitions of Section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets involving registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment advisor, common directors, and/or common officers, provided that the conditions set forth in the rule are met. These conditions require, as here relevant, that the board of directors of each of the affiliated registered investment companies participating in the transaction, including a majority of the directors of each investment company who are not interested persons of either of the participating registered investment companies, determine (1) that participation in the transaction is in the best interest of that registered investment company; and (2) that the interest of existing shareholders of that registered investment company will not be diluted as a result of effecting the transaction.

[5] Many of these expenses have been borne by Eaton Vance in the past on a voluntary basis for certain feeder funds.

Two aspects of the proposed Reorganizations would arguably preclude the Funds from relying upon Rule 17a-8. First, in all cases, at least one feeder fund owns more than 5% of the master fund. Where two or more feeder funds in each group investing in the same master fund each own more than 5% of the interests in the corresponding master fund, the feeder funds may be deemed to be affiliated persons of affiliated persons each other, other than solely by reason of having a common investment adviser, common board of directors or common officers. Second, with respect to five feeder funds, Eaton Vance, by virtue of its position as an investment advisor to private accounts, has discretionary voting authority over the shares held in those accounts, which accounts hold more than 5% of the outstanding shares of these feeder funds. As a result, each of these feeder funds could be deemed to be an affiliated person, or an affiliated person of an affiliated person, of other feeder funds in its group, other than solely by reason of having a common investment adviser, common board of directors or common officers.

For the reasons set forth below, we believe that under the circumstances here involved, the Reorganizations should nevertheless be governed by Rule 17a-8. Providing the relief requested herein would, in our view, be consistent with past no-action relief granted by the Staff in this area, as discussed below.

Discussion

Congress adopted Section 17(a) to protect shareholders by prohibiting a purchase or sale transaction when a party to the transaction is an affiliated person, or an affiliated person of an affiliated person, and has both the ability and the pecuniary incentive to influence the actions of the investment company. See Investment Company Act Release No. 10886 (October 3, 1979) ("Release No. 10886") (citing hearings on S. 3580 before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d. Sess., 17 (1940)). The Commission has frequently taken the position that a merger or other consolidation of two registered investment companies with a "common" board of directors/trustees and/or a common advisor may involve affiliated persons. See Release No. 10886 at p.2.

Rule 17a-8 is based on the rationale that when a merger, consolidation, or purchase or sale of substantially all assets involves investment companies that are affiliated persons exclusively by virtue of sharing common directors, officers, and/or an investment adviser, no person who is responsible for evaluating and approving the terms of the transaction on behalf of the various participating investment companies would have a significant financial interest in improperly influencing the terms of the reorganization. See Release No. 10886 at p.2. The rule also reinforces the fundamental policy that shareholders of each investment company involved in the reorganization are entitled, as a matter of fundamental fiduciary principles, to have their trustees act in the best interests of the investment company's shareholders.

If participating investment companies are affiliated in a manner other than that specified in Rule 17a-8, the investment companies may be prohibited from engaging in the transaction absent receipt of an order pursuant to Section 17(b). Specifically, in footnote 9 to Release No. 10886, the Commission stated that when the affiliation among participating investment companies "is based upon a person owning 5% or more of the outstanding securities [of the relevant entities] ..., the owner ... would be presumed to have certain potential abilities to influence the terms of the transaction, in which ... he may have a particular financial interest." (Emphasis added)

1. Affiliation Because of Master/Feeder Structure

For purposes of this letter, we are assuming that because of the master/feeder structure, and more specifically because of some feeder fund's ownership of more than 5% of the interests of its corresponding master fund, each Reorganization will involve feeder funds that are affiliates, or affiliates of affiliates, of each other. Rule 17a-8, of course, was adopted prior to the development of the master/feeder structure, and Rule 17a-8 therefore does not specifically address the affiliations between feeder investment companies that are inherent in a master/feeder structure. As the staff has accepted in Principle (sic) Preservation Portfolios, Inc. (pub. avail. Jan. 11, 1996), however, affiliations between funds created by reason of the master/feeder structure should not necessarily preclude feeder funds from relying on the exemption afforded by Rule 17a-8.

While the Commission has been reluctant to permit use of Rule 17a-8 where an affiliation among participating investment companies is based on a person owning 5% or more of the outstanding securities of the relevant entities, the Commission's concern has arisen because "the owner ... would be presumed to have certain potential abilities to influence the terms of the transaction, in which ... he may have a particular financial interest." (Emphasis added) Here, of course, the feeder funds – as the "owners" of 5% interests in the master funds -- will have no ability, potential or otherwise, to influence the terms of the Reorganizations (which will, in any event, only nominally involve the master funds "owned" by them). No business combination is occurring at the master fund level, and no vote of the feeder funds is required to establish the terms of the Reorganizations or to effect them. Rather, the terms of the Reorganizations will be determined by the trustees of the registered investment companies comprising the feeder funds. Moreover, the feeder funds will have no particular financial interest in the Reorganizations. None of the feeder funds involved in the Reorganizations expects to receive any direct pecuniary benefit vis-a-vis any of the other feeder funds as a result of the Reorganizations. Rather, as described above, the Reorganizations are expected to benefit feeder fund shareholders by eliminating or reducing costs associated with maintaining multiple series, including costs of separate audits, fund accounting expenses, legal expenses, printing costs, and blue sky fees.[6]

As noted above, Rule 17a-8 is based on the rationale that when the only affiliations present are the affiliations described in the rule, it is unnecessary to require investment companies to incur the delay and expense of obtaining a Section 17(b) order prior to effecting transactions of the types specified, because no person who is responsible for evaluating and approving the terms of the transaction on behalf of the various participating investment companies would have a significant financial interest in improperly influencing the terms of the reorganization. Where an additional level of affiliation among the participating investment companies is created solely by the inherent nature of the master/feeder structure, there is no policy reason that the exemption afforded by Rule 17a-8 should not continue to be available, at least where, as here, (1) the shareholders of the participating investment companies will, in effect, have the same proportionate interests in the same underlying portfolio of securities after the transaction as they will have had before the transaction, (2) shareholders of the participating investment companies will experience no change in the value or cost basis of their investments, nor in the net asset value of their shares, as a result of the transaction, and (3) no vote by the participating investment companies is requested or required. Under these circumstances, the concerns at which Section 17(a) and Rule 17a-8 are directed are not implicated, and permitting the transaction to proceed without prior Section 17(b) relief is consistent with the policies underlying the section and the rule.

2. Affiliation Because of Voting Authority Through Investment Advisory Accounts

As noted above, Eaton Vance, by virtue of its position as an investment advisor to private accounts, has discretionary voting authority over more than 5% of the outstanding shares[7] with respect to only five of the 131 feeder funds involved in the Reorganizations.[8] As a result, each of these five feeder funds could be deemed to be an affiliated person, or an affiliated person of an affiliated person, of other feeder funds in its group, other than solely by reason of having a

[6] In recent years Eaton Vance has assumed a portion of certain feeder funds' expenses. Eaton Vance has provided such subsidies purely on a voluntary basis, and there is no obligation on the part of Eaton Vance to continue any such subsidies in the future, regardless of whether the Reorganizations are effected.

[7] Section 2(a)(3) of the 1940 Act provides that an "affiliated person" of another person means "(A) any person . . . controlling or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are. . . controlled or held with power to vote, by such other person. . . ."

[8] The five affected feeder funds range in size from approximately 4.7 million to $120.2 million assets. The combined assets of these five funds total less than approximately $210 million, out of a total of approximately $11.3 billion in assets in the 131 feeder funds involved in the Reorganizations.

common investment adviser, common board of directors or common officers. The policy "concern" would be that Eaton Vance would use its authority to vote the shares to influence or direct the effecting of the Reorganizations.

Here, pursuant to the terms of the declarations of trust of the investment companies involved in the Reorganizations, no vote of shareholders is required to effect the Reorganizations. Thus, the fact that Eaton Vance may nominally hold with the power to vote 5% or more of the outstanding voting securities of certain of the participating feeder funds will not place Eaton Vance in a position, in its capacity as "owner," to influence the terms of the Reorganizations because there is simply no voting authority for it to exercise with respect to the Reorganizations. Because a shareholder vote on the Reorganizations is not required and will not be obtained, Eaton Vance's voting authority over 5% or more of the shares of five of the feeder funds is completely irrelevant to effecting the Reorganizations.

The staff has accepted in Principle Preservation Portfolios, Inc. and Thomson McKinnon Global Trust (pub. avail. Dec. 18, 1986) that this type of affiliation between funds need not necessarily preclude them from relying on the exemption afforded by Rule 17a-8. In granting no-action relief in Principle Preservation Portfolios, Inc. the staff appears to have been influenced by the fact that notwithstanding that the affiliate at issue (an adviser) held discretionary voting authority over more than 5% of the shares of the affected investment companies involved in the transaction at issue (i.e., a "despoking" and "dehubbing" transaction), that voting power with respect to such shares was being "passed through" to the account owners and would not be exercised by the adviser. There, the adviser could vote such shares only at, and in accordance with, instructions received from the account owners. In the case of the Eaton Vance feeder funds no voting power will be exercised in the Reorganizations. Similarly, in granting no-action relief in Thomson McKinnon Global Trust, the staff appears to have been influenced by the fact that the affiliate at issue (a distributor) was only the "nominal" owner of more than 5% of the shares of the affected investment companies involved in the transaction at issue (i.e., the reorganization of a Massachusetts business trust as a new series of an existing business trust), and that the affiliate could vote those shares only in accordance with the instructions of the beneficial owners. In both Thomson McKinnon Global Trust and Principle Preservation Portfolios, Inc., the staff has taken a no action position where the affiliates were unable to influence the terms of the transactions in their capacities as nominal "owners" of 5% positions because they would not be exercising their voting authority.[9]

Moreover, under the circumstances here presented, it can not be said that Eaton Vance has any "particular financial interest" in the five Reorganizations involving the five feeder funds at issue distinct from its interest as a "common adviser" which is expressly permitted – indeed, the reason for -- Rule 17a-8. As noted, these five Reorganizations involve total feeder fund assets of $210 million, comprising less than 2% of the total assets of the 131 feeder funds involved in the Reorganizations as a whole. Thus, the nature of Eaton Vance's "interest" in effectuating these five Reorganizations is, as a practical matter, identical to the nature of its "interest" in effectuating the remaining Reorganizations – i.e., to reduce feeder fund costs and to develop a more focused marketing message that should, over time, make the feeder funds more competitive and more attractive to investors. While future asset growth would increase advisory fees earned by Eaton Vance, it would also increase efficiencies and create economies of scale that potentially would enhance yield and shareholder return. As in Principle Preservation Portfolios, Inc., we do not believe that these anticipated mutual benefits create any conflicts of interest between Eaton Vance and the feeder funds that raise concerns that the legislature sought to address in adopting Section 17(a).

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In summary, we believe that the proposed Reorganizations are consistent with the policies underlying Rule 17a-8. We therefore ask that the staff confirm that it will not recommend enforcement action under Section 17(a) of the 1940 Section or Rule 17a-8 thereunder if the Reorganizations are implemented as described above.

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[9] By contrast, the staff has been more reluctant to grant no action relief where an affiliate's 5% share ownership included a direct economic component. See, e.g., New England Mutual Life Insurance Co. (pub. avail. June 3, 1987) (affiliate directly owned approximately 14% of the assets of the liquidating fund, consisting of the affiliate's seed money plus market appreciation); Locust Street Fund (pub. avail. May 14, 1991) (although affiliate would pass through voting authority to beneficial owners, affiliate owned more than 6% of shares at the time the merger was negotited).

Thank you in advance for your consideration of this request. If you have any questions or would like any additional information or documents, please call the undersigned at (617) 261-3156.

Sincerely yours,

Philip J. Fina

Philip J. Fina

cc: Alan R. Dynner, Esq.
Eric G. Woodbury, Esq.
Eaton Vance Management