VIA E-MAIL **February 13, 2012**

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street
Washington, DC 20549-1090
rule-comments@sec.gov

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Comments@fdic.gov

Mr. John G. Walsh
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
250 E Street, SW Mail Stop 2-3
Washington, DC 20219
regscomments@occ.treas.gov

Re: Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds – OCC Docket ID OCC-2011-14; FRS Docket No. R-1432 and RIN 7100 AD 82; FDIC RIN 3064-AD85; and SEC File Number S7-41-11 (Proposed Rule)

Dear Sirs and Madams:

Eaton Vance Corp. (NYSE: EV), based in Boston, is one of the oldest investment management firms in the United States, with a history dating back to 1924. Eaton Vance and its affiliates managed $184.5 billion in assets as of December 31, 2011, offering individuals and institutions a broad array of investment strategies and wealth management solutions. Eaton Vance Corp. conducts its investment management activities primarily through two subsidiaries, Eaton Vance Management and Boston Management and Research (collectively referred to herein as Eaton Vance), which provide investment advisory and/or administration services to various Eaton Vance clients including registered investment companies.

Eaton Vance appreciates the opportunity to comment on the Proposed Rule to implement Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (commonly referred to as the Volcker Rule). We recognize and support the efforts of the above-listed agencies and agree with the importance of regulatory oversight that will help ensure the integrity of financial markets (particularly with respect to deposit taking financial institutions), while fostering greater accountability and transparency throughout the financial system. After reviewing the Proposed Rule, we join those commenters who have expressed concerns about the adverse impact the Proposed Rule could have on the stability and functioning of the financial markets[1] and we respectfully request that the Proposed Rule be revised as follows for the reasons set forth below:

[1] As a member firm of the Investment Company Institute (the ICI), we also support the ICI's efforts to represent the views of the investment company industry with respect to the Proposed Rule.

- The exemption from the restrictions on proprietary trading for government obligations set forth in the Proposed Rule (the government obligations exemption) should be expanded to include all municipal securities, including obligations of an agency of any State or political subdivision thereof because a failure to do so would likely result in a major disruption of the municipal market;

- Banking activities associated with tender option bond (TOB) programs and asset-backed commercial paper (ABCP) programs should be explicitly exempted from the Proposed Rule given that they are consistent with traditional bank financing activities and pose little risk to the safety and soundness of U.S. banking entities;

- Offshore affiliates of U.S. banks should be excluded from the prohibitions of the Proposed Rule if they serve as "primary dealers" of sovereign debt so that such securities will continue to be available to U.S. investors (including registered investment companies) and liquidity in the sovereign debt market will not be damaged; and

- The timeframe for implementing the Proposed Rule should be extended to at least five years (rather than the current period of two years with the possibility of three one-year extensions) so that alternative means of trading in fixed-income markets can be established and market disruption and instability can be minimized.

Inclusion of Agency Obligations in the Government Obligations Exemption

We believe the government obligations exemption set forth in the Proposed Rule should be expanded to include *all* municipal securities, including obligations of an agency of any State or political subdivision thereof (agency obligations).[2] In evaluating the impact of the Proposed Rule on the market for agency obligations, it is important to consider the uniqueness of the municipal securities market. It is estimated that the municipal market currently includes over 78,000 individual municipal issuers, representing more than 1,000,000 different CUSIPS. Given the absence of a centralized electronic exchange for trading municipal securities and the diversity of municipal issuers and issues, the ability of dealers (including banking entities) to engage in market-making activity in the municipal market is critical to the stability and functioning of the market. With approximately 51% of municipal securities in the hands of individuals, and approximately 70% of such securities held by a combination of individuals and investment companies, the individual investor is the primary source for municipal access to capital. Such investors would be adversely impacted by a significant disruption in the functioning or stability of the municipal market and thereafter may be reluctant to participate in the market, which would be detrimental to municipalities.

---

[2] Footnote 165 of the release relating to the Proposed Rule states that the "government obligations exemption does not extend to transactions in obligations of an agency of any State or political subdivision thereof." The municipal market has for many years traded municipal securities in a broad manner, with the terms "political subdivision", "agency", "authority", "municipal corporation" and other similar terms being used interchangeably in the municipal securities market to refer to issuers of municipal securities that are exempt from registration under the Securities Act of 1933, as amended.

The supply-demand dynamics of the municipal marketplace effectively require an active participation from market-makers in order to maintain market stability, as short term spikes in supply (often driven by either increased municipal issuance or selling activity by individual investors and registered investment companies) could lead to increased volatility without the support of such firms. As noted above, the municipal market primarily is a market comprised of many individual participants. As evidenced by events in 2010, the mere suggestion that municipal securities may be headed for difficulties can initiate panicked selling by individual participants,[3] which can drive prices down and result in broad market disruption. Without the liquidity provided by market-makers (including banking entities), municipal market participants would be subject to sharper price volatility when there is an abundance of sellers in the market (such as occurred in 2008 as well as in 2010) or supply is otherwise higher than average.

If banking entities are not permitted to make markets in agency obligations, a liquidity premium for such obligations is likely to develop, and municipal bond investors would then see a decrease in the value of their investments, and municipal issuers would likely see an increase in the cost of financing projects in the new issue market. These higher costs may result in fewer capital projects where they are sorely needed, as well as fewer ancillary economic benefits. In 2011, estimates are that 59% of the $3.7 trillion municipal bond market consisted of agency obligations which would not be exempt under the government obligations exemption – impacting the issuance of agency-issued debt financing projects such as, but not limited to, hospitals, universities, infrastructure improvements, affordable housing and utility systems. In fact, many States utilize authorities and agencies as their primary financing vehicles. We understand that if the Proposed Rule had been in place in 2011, a significant portion of municipal underwriters would not have been able to participate in the issuance of approximately 68% of all municipal bonds issued in 2011 due to the exclusion of agency obligations from the Proposed Rule.[4] Given the recent financial turmoil experienced by many States and other municipal issuers driven by the economic downturn, higher financing costs could have a material adverse effect on the financial conditions of these issuers, and cause greater fiscal stress, instability and ratings and price volatility in the municipal market.

The reasons for excluding agency obligations from the government obligations exemption are not clear from the Proposed Rule's release. As investors in all types of municipal securities (including agency obligations[5]) we do not believe that agency obligations pose a threat to the safety and soundness of banks, particularly when there is little difference in the historic default experience of investment grade agency and general obligation bonds. To the extent that agency obligations may have been excluded from the government obligations exemption due to credit concerns, we believe those concerns are misplaced and that agency obligations should be included in the government obligations exemption under the Proposed Rule.

---

[3] Beginning in the fall of 2010, a well-known Wall Street analyst predicted there would be billions of dollars in defaults by issuers of municipal obligations in the coming year, which we believe triggered a massive sell-off of municipal securities by individual investors and registered investment companies (estimated at approximately $35 billion between October 14, 2010 and February 10, 2011).

[4] Based on estimates.

[5] Eaton Vance estimates that over 75% of municipal securities holdings currently held by Eaton Vance registered investment companies are agency securities.

The impact of the Proposed Rule's exclusion of agency obligations from the government obligations exemption appears far-reaching and likely will impact a large percentage of municipal underwritings and significantly impact the liquidity, functioning and stability of the municipal market. As noted above, we do not believe that including agency obligations in the government obligations exemption poses a risk to the safety and stability of banks. As such, Eaton Vance recommends that the government obligations exemption be expanded to include all municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934, as amended, including agency obligations.

Exemption of TOB and ABCP Programs

In enacting the Volcker Rule, Congress explicitly sought to avoid "interfering with longstanding traditional banking activities that do not produce high levels of risks or significant conflicts of interest."[6] As described in greater detail below, TOB and ABCP financing transactions have been in use for many years and provide banking entities with the right to ample collateral to secure the risks associated with such transactions. The inability of banking entities to continue to engage in these important activities could force investment companies to immediately dispose of assets to unwind their TOB and ABCP financings, which would be harmful to their shareholders and potentially disruptive to financial markets.

TOB Programs. TOBs are financing vehicles routinely utilized by registered investment companies that invest primarily in municipal obligations.[7] In a TOB transaction, an investment company sells a municipal bond to a trust and then uses the proceeds of the sale for investment purposes. The municipal bond held in the trust typically is of high quality (*i.e.,* generally rated AA or higher by a nationally recognized statistical rating organization). The source of funds used by the trust to purchase the bond from the investment company is primarily derived from the trust's issuance and sale of floating-rate notes typically to money market funds[8] and secondarily the sale of a residual interest in the trust to the investment company. A highly rated financial institution (often a banking entity that would be subject to the Proposed Rule as written) provides a liquidity backstop for the floating-rate notes issued by the TOB trust.[9] It is important to note that generally any losses incurred by the liquidity provider to the TOB trust are, by agreement, borne by the residual interest holder (being the investment company). Due to the

---

6 *See* S.REP.NO. 111-176 at 91 (2009).

7 Eaton Vance manages over 40 registered investment companies investing primarily in municipal securities with assets of approximately $14 billion. All of such investment companies are permitted to engage in TOB transactions. TOBs also have historically provided an important source of demand for high quality new issue municipal bonds (and helped lower financing costs for their issuers).

8 TOB floating-rate notes are often eligible investments for money market funds and are attractive because of the strength of their collateral (being the high quality bond held by the trust) and the creditworthiness of liquidity provided by the sponsor (described below).

9 The presence of the liquidity backstop is essential to money market fund investors in TOB floating-rate notes because it allows them to rely on the creditworthiness of the liquidity backstop provider rather than the creditworthiness of the issuer of the municipal obligation underlying the TOB trust. Absent the liquidity backstop, prior to investing in floating-rate notes money market funds would be required to perform a credit analysis of the bonds underlying each TOB trust. This would likely be impractical given the numerous issuers in the municipal market and the expertise required to analyze them.

quality of the collateral in the TOB trust and the investment company's obligation to bear losses relating to the TOB, we believe TOBs pose minimal risk to the safety and soundness of a banking entity serving as a TOB sponsor or liquidity backstop provider.

TOB programs have played an important role in the management of registered investment companies for nearly 20 years. The total market for TOBs is currently estimated to be $75 billion and has been as high as $175 billion in the past.[10] Eaton Vance open-end and closed-end investment companies have utilized TOB financing vehicles since the early 1990s. TOBs were used by many closed-end investment companies (including those sponsored by Eaton Vance) to replace auction rate preferred securities, the market for which collapsed in February 2008, and also are used by both open-end and closed-end investment companies to seek to generate incremental income for shareholders. Notably, when bank lending activity significantly declined beginning in 2008 and credit became scarce, TOBs continued to be available in the market. In addition to the importance of TOBs to municipal bond investment companies, the implementation of the Volker Rule as proposed would likely have the effect of eliminating the ability of money market funds to acquire TOB floating-rate notes, which represent a significant source for meeting the demand for municipal securities by money market mutual funds.

Despite being economically equivalent to repurchase agreements or securities lending transactions,[11] it appears TOBs would be considered "covered funds" under the Proposed Rule because they are effected through the creation of a trust that relies upon available exemptions contained within Section 3 of the Investment Company Act of 1940, as amended (1940 Act) to avoid being classified as an investment company. The result of such categorization is that banking entities will be prohibited from facilitating TOB transactions, including providing the liquidity backstop that it is critical to prospective money market fund investors.[12] If banking entities are prohibited from participating in TOB programs, we expect that existing TOB transactions will have to be unwound[13] – requiring investment companies to dispose of the municipal securities acquired with the proceeds of TOB financing. As noted above, approximately $75 billion in TOBs are outstanding. A forced sale of all or a significant portion of the municipal bonds acquired with TOB financings would be extremely harmful to the market as the supply of bonds would likely far outweigh the demand in this market dominated by individual investors. The lack of liquidity that would result from this type of supply-demand imbalance would drive prices down and likely interrupt the normal functioning and stability of the municipal market. For these reasons, Eaton Vance believes the Proposed Rule should be revised to either exclude TOBs as "covered funds" or specifically include TOB transactions within the current loan securitization exemption provided under the Proposed Rule.

---

[10] Eaton Vance estimates that currently 90% of the TOB trusts in which Eaton Vance registered investment companies invest hold agency obligations. *See also* discussion above under "Inclusion of Agency Obligations in the Government Obligations Exemption" above.

[11] TOBs are accounted for pursuant to FASB ASC 860 *(Transfers and Servicing of Financial Assets and Extinguishment of Liabilities)* where the investment company accounts for the transaction as a secured borrowing.

[12] We also understand that the Proposed Rule's Super 23A provisions which limit relationships with a covered fund would also restrict banks from engaging in credit enhancement or liquidity support for TOBs.

[13] There are few alternatives for replacement financing for registered investment companies that invest primarily in municipal obligations.

ABCP Programs. Eaton Vance believes ABCP Programs also warrant specific exemption from the Proposed Rule similar to that provided for repurchase agreements and securities lending transactions. An ABCP Program is comprised of a bankruptcy-remote special purpose vehicle, or conduit, that issues short-term notes (typically of high grade quality) and uses the proceeds of such issuance primarily to (i) provide financing to borrowers (such as investment companies) with repayment dates of generally less than a year and (ii) acquire short-term assets (such as corporate receivables). ABCP generally is supported by credit enhancement and committed liquidity facilities provided by banking entities, with the banking entity having recourse to the assets of the borrower or to all or some of the receivables held in the Program to minimize risk to such entities.

ABCP Programs have been in existence since 1983 and provide much needed low cost, reliable financing for registered investment companies, including closed-end investment companies that employ leverage to enhance returns. Eaton Vance sponsored funds have participated in ABCP Programs since 1998. The current ABCP Program used by Eaton Vance funds has approximately $34 billion of commitments and was once as large as $65 billion. In 2008, when U.S. banks were reluctant to extend credit, ABCP Programs continued to function without interruption. We believe that the financing provided to registered investment companies pursuant to ABCP Programs poses little risk to the safety and soundness of banks given that such investment companies are expressly required by federal law to maintain prescribed asset coverage in connection with borrowings.[14] If the Proposed Rule is not amended to exempt ABCP Programs (either as a specific exempted securitization vehicle or from the definition of "covered fund") it would likely result in deleveraging by registered investment companies, which will force the sale of assets at what could be inopportune times and prices. Such sales would be harmful to underlying fund shareholders and negatively impact the supply-demand balance in the financial markets. Given the minimal risk to banking entities posed by ABCP Programs and the important role they play in financing investment company and corporate activities, we believe it is appropriate to exempt them from the prohibitions in the Proposed Rule.

Impact on Foreign Investing

The Proposed Rule contains an explicit exemption to the general prohibition on proprietary trading for non-U.S. affiliates of U.S. banks that engage in proprietary trading activity solely outside of the United States with non-U.S. persons and entities. As currently proposed, this exemption would severely restrict the ability of U.S. investors (including registered investment companies) that invest in sovereign debt to trade with a non-U.S. affiliate of a U.S. bank – even where such affiliate is, or performs functions akin to, a "primary dealer" in such debt.[15] This could effectively preclude U.S. investors (either directly or indirectly through a registered investment company) from investing in the sovereign debt market and/or limit the number of possible trading partners for such investors in certain countries. By doing so, the Proposed Rule severely impedes U.S. investment in developed and emerging sovereign debt markets because many counterparties in these markets are non-U.S affiliates of U.S. banks. Restrictions on U.S. investment in these markets may impair the liquidity of sovereign debt and

[14] *See* Section 18 of the 1940 Act.

[15] Primary dealers typically serve as trading counterparties to governments in connection with the implementation of monetary policy and as market-makers for sovereign debt.

the functioning and stability of the sovereign debt market. For these reasons, we recommend that non-U.S. affiliates of U.S. banks be excluded from the prohibitions of the Proposed Rule where such affiliates are, or perform functions akin to, primary dealers in sovereign debt.

Extension of Implementation Timeframe

As noted by several commenters on the Proposed Rule, banking entities are key participants in providing liquidity in the financial markets, promoting the orderly functioning of the markets as well as the commitment of capital when needed by investors to facilitate trading. This is particularly true in the fixed-income sectors of the market, where no centralized trading function exists and banks and other market participants play a significant market-making role. The Proposed Rule is proposed to become effective two years after its final approval with an opportunity thereafter for three one-year extensions if approved. Given the likelihood that implementation of the Proposed Rule will cause banks to curtail market-making activities resulting in lower market liquidity and higher volatility, we believe more time will be needed to implement the Proposed Rule to permit more non-banks and capital markets alternatives to develop and take on this critical market-making role, particularly in the municipal market (as discussed in greater detail above). For this reason, we strongly recommend that if the Proposed Rule is adopted that the implementation period be a minimum of five full years (*i.e.,* an effective date of July 21, 2017).

* * * * *

Eaton Vance appreciates the opportunity to comment on the Proposed Rule. If you have any questions or wish to discuss the above comments further, please feel free to contact me at 617.482.8260.

Sincerely,

/s/ Payson F. Swaffield
Payson F. Swaffield, CFA
Chief Income Investment Officer
Eaton Vance Management