Eaton Vance
Investment Managers

Thomas E. Faust Jr.
Chairman & Chief Executive Officer

Eaton Vance Corp.
Two International Place
Boston, MA 02110
Office (617)482-8260
eFax (617) 672-1405
tfaust@eatonvance.com

February 2, 2018

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, DC 20006-1506

Submitted via email to: pubcom@finra.org

Re: Regulatory Notice 17-41

Dear Ms. Mitchell:

On behalf of Eaton Vance Corp. and its subsidiaries and affiliates (together, Eaton Vance),[1] I write to respond to Financial Industry Regulatory Authority (FINRA) Regulatory Notice 17-41 requesting comment on FINRA Retrospective Rule Review on the Effectiveness and Efficiency of its Payment for Market Making Rule (FINRA Rule 5250).

As you may be aware, a subsidiary of Eaton Vance, NextShares Solutions LLC (NextShares Solutions), is the sponsor of NextShares™ exchange-traded managed funds (NextShares), a new type of exchange-traded product (ETP) first approved by the Securities and Exchange Commission (SEC) in 2014. NextShares seek to provide the conveniences and potential performance and tax advantages of exchange trading to investors in proprietary active strategies. It is primarily from the perspective of our sponsorship of NextShares[2] that Eaton Vance seeks to comment on potential changes to FINRA Rule 5250.

---

[1] Eaton Vance 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 $432.2 billion in assets as of December 31, 2017, offering individuals and institutions a broad array of investment strategies and wealth management solutions. For more information about Eaton Vance, visit www.eatonvance.com.

[2] Like exchange-traded funds (ETFs), NextShares utilize a creation/redemption process to grow or shrink in response to changes in investor demand, mitigating the potential development of significant premiums or discounts to fund net asset value (NAV). Different from ETFs, the price of all secondary market trades in NextShares equals the fund's next-determined daily NAV, plus or minus a trading cost (premium/discount) determined in the market when the order executes. As an illustration, a NextShares trade executed intraday at NAV +$0.02 will have a final price of $20.02 if the fund's NAV at the end of that day is $20.00. Unique among ETPs, this "NAV-based trading" provides NextShares investors with full, contemporaneous transparency of their trading costs at all times.

Background on Rule 5250

Rule 5250 prohibits a FINRA member or associated person from accepting payment or other consideration, directly or indirectly, from an issuer, or its affiliates and promoters, for publishing a quotation, acting as a market maker or submitting an application in connection therewith. The rule excepts: (1) payment for bona fide services, including, but not limited to, investment banking services (including underwriting compensation and fees); (2) reimbursement of any payment for registration imposed by the SEC or a state regulatory authority and for listing fees imposed by a self-regulatory organization; and (3) any payment expressly provided for under the rules of a national securities exchange that are effective after being filed with, or filed with and approved by, the SEC pursuant to the requirements of the Securities Exchange Act of 1934, as amended (Exchange Act).[3]

Originally introduced in 1975 and codified in 1997, Rule 5250 sought to prevent the erosion of investor confidence that could potentially arise if investors were not "able to ascertain which quotations in the marketplace are based on actual interest and which quotations are supported by issuers or promoters."[4] Rule 5250 predates both the explosive growth in ETP trading over the last 20 years and the regulatory (*e.g.*, Reg ATS, Reg NMS and decimalization) and technological advancements that have completely transformed U.S. market trading since Rule 5250 was introduced.

Currently Permitted ETP Market Maker Incentive Programs

In 2013, FINRA approved a carve-out from Rule 5250 to permit ETP sponsors seeking to improve the quality of fund trading to make incentive payments to market makers through exchange-administered programs. In permitting these programs, FINRA recognized that payments to market makers may benefit ETP investors by enhancing liquidity and improving market trading, and that the potential concerns that Rule 5250 were designed to address can, in the context of ETPs, be adequately addressed through appropriate disclosures.

Unfortunately, the currently authorized incentive programs have significant deficiencies that limit their utility for many ETPs. Because authorized payments must be determined on the basis of on-exchange trading volume, the large portion of ETP trading volume that is executed off-exchange does not give rise to permitted payments. Further, tying permitted payments to trading volume generally limits the amount of market maker support that can be provided early in a fund's life, when such support is often most critical. There is an incubation phase for any new ETP, during which the fund may be excluded from availability at major broker-dealers until trading volume, spread and/or fund size requirements imposed by each broker-dealer are satisfied. As an additional limitation, currently authorized incentive programs provide for payments only to a single LMM for each security.

---

[3] *See* FINRA Regulatory Notice 17-41 at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-17-41.pdf.

[4] *See* https://www.gpo.gov/fdsys/pkg/FR-1997-07-10/html/97-18090.htm.

Competition among ETP market makers could be enhanced if incentive payments to multiple parties were permitted.

Recommended Changes to Rule 5250

Eaton Vance encourages FINRA to modify Rule 5250 to permit ETP sponsors to make appropriately disclosed direct payments to LMMs and other market makers. We believe that permitting sponsor-directed payments to a range of market makers would benefit ETP investors by enhancing secondary market trading liquidity and facilitating greater market maker competition. Expanding the range of permitted market maker support beyond the currently authorized exchange-administered programs would be especially valuable for NextShares and other newer and thinly traded ETPs that cannot take advantage of the existing programs. Permitting direct payments to ETP market makers would not only benefit investors in existing ETPs, but also promote the development of new ETPs and new types of ETPs to the benefit of future investors.

We appreciate the consideration of our views and opinions, and welcome the opportunity to provide FINRA with additional information.

Sincerely,

Thomas E. Faust Jr.
Chairman and Chief Executive Officer