Exemptive Relief filed for New "Exchange-Traded Managed Fund"

On March 27, 2013, Eaton Vance applied to the SEC for exemptive relief for a new type of exchange-traded fund, which it calls an exchange-traded managed fund ("ETMF"). Exchange-traded funds ("ETFs"), particularly actively managed ETFs, have been popular recently with fund managers.[1] This has been especially true following the SEC's decision to lift the moratorium on approval of applications for actively managed ETFs intending to use derivatives. However, one remaining drawback of actively managed ETFs in the eyes of many managers is the requirement for daily disclosure of portfolio holdings.

The ETMF proposal from Eaton Vance would, in lieu of daily disclosure of portfolio holdings, have ETMFs trade on an exchange during the day at a premium or discount to the to-be-determined end-of-day NAV (e.g., a trade at 10:00 am might be made at NAV+$0.02, with the NAV, and thus the final price of the trade, not being determined until the end of the day). Eaton Vance argues that the arbitrage mechanisms that operate to minimize premiums and discounts for an ETF would do the same for ETMFs. Eaton Vance suggests in its application that ETMF shares would remain attractive to purchasers on the secondary market who are seeking to access the particular investment strategy and who are attracted by the potential cost, performance and tax efficiency advantages of the ETMF structure.

This approach is intended to allow an ETMF to maintain incentives for arbitrage while allowing the ETMF to disclose portfolio holdings only periodically and with a lag, just as traditional mutual funds do. Eaton Vance argues that because ETMF trades are based on NAV, market makers would no longer need full transparency to hedge their inventories throughout the day, and would be less susceptible to shifts in the value of an ETMF's holdings during the day.

Except with respect to portfolio holdings disclosure, the conditions for relief proposed by Eaton Vance are largely similar to those of actively managed ETF orders recently approved by the SEC. Another difference from typical ETFs is that intraday indicative values would need to be published only every 15 minutes, rather than the standard 15 seconds for ETFs. As ETMFs would not be purchased at a price relating to the intraday indicative value, the value would serve merely to allow traders to estimate how many shares to buy or sell if they are looking to acquire or divest a specified dollar amount of ETMF holdings. While an ETMF would need to publicly disclose daily creation and redemption baskets to allow purchases in kind, Eaton Vance has indicated that, unlike ETF creation and redemption baskets, such baskets would normally vary from the ETMF's current portfolio holdings.

Should approval be granted, separate relief will also be required for the listing exchange to adopt a new rule or obtain specific approval under Rule 19b-4(e), as is currently the case for actively managed ETFs. Eaton Vance has disclosed that it intends to list the shares on NASDAQ.

Eaton Vance's website indicates that it intends to license ETMF technology through a subsidiary if approved by the SEC. Eaton Vance acquired much of the intellectual property when it acquired Managed ETFs in 2010.

[1] *See, e.g.*, R&G Client Alert, Recent Wave of Actively Managed ETFs Overcomes Lengthy Approval Process, March 13, 2012

ETMFs are only at the initial stages of the application process, and while Eaton Vance has reported constructive dialogue with the SEC staff over the past two years, the SEC could take a long time to grant approval—if it does at all. While approval of Eaton Vance's new ETMF application may not be imminent, the possibility of such an order will likely remain of interest to advisers of actively managed strategies that are considering the fast-growing ETF space.