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October 31, 2014

Mr. Brent J. Fields
Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Proposed NASDAQ Stock Market LLC ("Nasdaq") Rule Change Relating to Listing and Trading of Exchange-Traded Managed Fund ("ETMF") Shares (Release No. 34-72350; File No. SR-NASDAQ-2014-020)[1]

Dear Mr. Fields:

On behalf of Eaton Vance Corp.[2] and its subsidiaries Eaton Vance Management ("Eaton Vance") and Navigate Fund Solutions LLC ("Navigate"), I write to respond to the comment letter submitted by Daniel J. McCabe on October 30, 2014 (the "McCabe Letter") addressing the proposed Nasdaq rule change referenced above. As background, Eaton Vance, Eaton Vance ETMF Trust and Eaton Vance ETMF Trust II (the "Applicants") have filed an application[3] (the "Exemptive Application") with the Commission seeking relief from certain provisions of the 1940 Act to permit the offering of ETMFs.

In the McCabe Letter, Mr. McCabe makes a number of assertions about ETMFs in support of his view that the Filing and Exemptive Application should not be approved. I address each of these below.

- *Mr. McCabe and his partner Paul Kuhnle are co-inventors of the intellectual property underlying NAV-Based Trading and have a continuing economic interest.*

As described in footnote 9 of the Exemptive Application (*see* page 3), aspects of NAV-Based Trading are protected intellectual property described in one or more of nine issued U.S. patents and in pending patent

[1] The proposed Nasdaq rule change request is described in Release No. 34-71657 dated March 6, 2014 (the "Filing"). Unless otherwise noted, capitalized terms used in this letter have the same meanings as in the Filing and/or the Exemptive Application.

[2] Eaton Vance Corp. 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 $293.6 billion in assets as of September 30, 2014, offering individuals and institutions a broad array of investment strategies and wealth management solutions. For more information about Eaton Vance, visit www.eatonvance.com.

[3] See File No. 812-14139 dated September 25, 2014.

applications. Mr. McCabe and Mr. Kuhnle are, together with Gary Gastineau and Todd Broms, co-inventors of one of the issued patents (U.S. Patent No. 7,496,531). Mr. Gastineau and Mr. Broms are joint or sole inventors of each of the other relevant patents, and have assigned to Navigate all their patent rights relating to NAV-Based Trading.

- *ETMF Shares are not redeemable securities.*

The term "redeemable security" is defined in section 2(a)(32) of the 1940 Act as:

> any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

As set forth in Section V.B.1 of the Exemptive Application (*see* pages 23-24), the Applicants believe that ETMF Shares could be viewed as satisfying the 1940 Act definition of a redeemable security because the Shares are securities "under the terms of which" an owner may receive his or her proportionate share of the ETMFs' current net assets. Because Shares are not individually redeemable, however, a possible question arises as to whether the definitional requirements of a "redeemable security" are met. For avoidance of doubt, the Exemptive Application requests an order to permit the Trusts to register as an open-end management investment company and the ETMFs to issue Shares that are redeemable in Creation Unit quantities only.

Investors may purchase ETMF Shares in Creation Unit quantities from each ETMF. Creation Units are redeemable in accordance with the provisions of the 1940 Act. Owners of Shares may purchase the requisite number of Shares and tender the resulting Creation Unit for redemption. Moreover, all holders of Shares will have the ability to buy and sell Shares throughout the day in the secondary market at trading prices that are directly linked to NAV. Applicants believe that ETMFs do not present any new issues with respect to the previously granted exemptions that allow for index-based and actively managed ETFs to redeem their shares only in Creation Unit quantities.

Applicants recognize that the Commission has long viewed contemporaneous portfolio holdings disclosure as necessary for effective arbitrage and efficient secondary market trading of ETFs. In ETF trading, tight bid-ask spreads and narrow premiums/discounts cannot be assured unless market makers have sufficient knowledge of portfolio holdings to enable them to effectively arbitrage differences between an ETF's market price and its underlying portfolio value and to hedge the intraday market risk they assume as they take inventory positions in connection with their market-making activities. In ETMF trading, by contrast, market makers do not engage in arbitrage and assume no intraday market risk in their Share inventory positions because all transaction prices are based on end-of-day NAV. No intraday market risk means no requirement for market makers to engage in intraday hedging activity, and therefore no associated requirement for current portfolio holdings disclosure to maintain a tight relationship between Share trading prices and NAV. Because they will provide market makers with an opportunity to earn reliable, low-risk profits without arbitrage or intraday hedging, ETMFs can be expected to trade at consistently narrow premiums/discounts to NAV and tight bid-ask spreads in the absence of full portfolio holdings disclosure. Accordingly, Applicants believe that ETMF Shares should be treated as redeemable securities and have requested exemptive relief in respect of the section 2(a)(32) definition of redeemable securities.

- *A market professional buying ETMF Shares from an investor will have an economic incentive to provide the worst price to the investor.*

In this respect, ETMF Shares are no different from other traded securities. Market forces exert pressure on market professionals to offer competitive prices to investors. A market maker who seeks to trade ETMF Shares (or other traded securities) at uncompetitive prices will not attract the volume of trading required to earn meaningful profits. As described in Section IV.C of the Exemptive Application (*see* page 10), because making markets in ETMFs is simple to manage and low risk, competition among market makers seeking to earn reliable, low-risk profits should enable ETMFs to routinely trade at tight bid-ask spreads and narrow premiums/discounts to NAV. Applicants expect that the cost of intermediation for ETMFs would be contained, and profits would be relatively more predictable than for ETFs, which would foster intermediary participation in the market for ETMFs and therefore the competition necessary to limit the levels of the premium/discount.

- *Traders that accumulate large positions in ETMF Shares will be incentivized to move the NAV in their favor.*

This is completely false. As described in Section IV.C of the Exemptive Application (*see* page 9), the amount of profit a market maker or other trader earns by buying (or selling) Shares in the market at a net discount (premium) to NAV, and then redeeming (acquiring) an offsetting number of Shares at the end of the day in transactions with the ETMF is not affected by movements in NAV. It doesn't matter whether the ETMF's NAV is $10, $20 or $200 per Share, or whether the ETMF's NAV has moved higher or lower intraday—no level of NAV provides market makers with more profit than any other NAV. In NAV-Based Trading, traders cannot possibly "move the NAV *in their favor*" because all NAVs are equally favorable.

- *NAV-Based Trading provides no discernible benefit to investors because it does not permit the acquisition or disposition of ETMF Shares at prices determined intraday.*

Like mutual funds, ETMF Shares will not offer investors the opportunity to transact intraday based on current (versus end-of-day) determinations of fund value. As described in Section IV.H of the Exemptive Application (*see* page 17), each ETMF's registration statement, website and any advertising or marketing materials will include prominent disclosure of this fact. While it is true that investors in ETMF Shares cannot trade at prices determined intraday, it hardly follows that NAV-Based Trading provides "no discernible benefit" to investors. In Section V.A of the Exemptive Application (*see* pages 17-22), the potential advantages of ETMFs versus traditional mutual funds are described as (a) protecting fund shareholders from the dilutive effects of other shareholders' transactions; (b) protecting fund shareholders from tax realizations in connection with other shareholders' transactions; (c) realizing savings in shareholder servicing and other fund expenses; and (d) enhancing the competitiveness of fund distribution. Compared to fully transparent actively managed ETFs, ETMFs offer the potential advantages of: (a) maintaining the confidentiality of portfolio trading activity; (b) providing trade execution cost transparency and quality control to fund investors; and (c) facilitating tight bid-ask spreads and narrow premium/discounts in secondary market trading. Eaton Vance believes that the potential advantages of the proposed ETMF structure for investors in actively managed fund strategies far outweigh its limited utility as a vehicle for short-term trading.

- *Pricing of ETMF Share trades at the end of the day can cause funding problems within investor accounts.*

Purchases and sales of ETMF Shares will differ from transactions in ETFs and other exchange-traded securities in that the final trade price is not determined until NAV is computed at the end of the trading day. The McCabe Letter asserts that, for purchases of ETMF Shares, "significant problems" could arise if a spike in the NAV of an ETMF causes the settlement value of purchased Shares to exceed the available funds in an investor's account. It should be understood that the same issue can arise with conventional market orders, particularly orders to buy individual securities that demonstrate significantly greater price volatility than a diversified fund (this issue also applies to orders to buy share amounts of mutual funds). For ETMFs, the risk of a significant upward move in price is mitigated by the requirement that all orders are automatically cancelled if not executed on the trading day when placed (*see* Section IV.G of the Exemptive Application at page 16). Based on extensive discussions with multiple broker-dealers, we believe that broker-dealer account control procedures are fully adequate to accommodate trading of ETMF Shares and to mitigate the associated risk of inadequate investor account fundings. This finding is further reinforced by a review of broker-dealer account funding guidelines that are routinely in place to assure adequate funding for share purchases of mutual funds and securities exhibiting high levels of price volatility.

- *The inclusion of foreign securities in ETMFs may be problematic due to difficulties calculating NAV.*

The McCabe Letter asserts that it may be difficult for an ETMF holding foreign securities to determine an appropriate NAV upon which to base Share trading prices. The letter asserts that use of the last local market close could invite market timing activity, and use of the next day's local opening price would delay NAV calculation times and require the short settlement of Share trades. As suggested by Mr. McCabe, an appropriate resolution would be use of fair value pricing. Mutual funds holding foreign securities routinely apply fair value pricing procedures to determine their daily NAV. We expect ETMFs to do the same and see no issues here.

- *Implementation of NAV-Based Trading will require broker-dealers to significantly modify their risk and compliance systems.*

The McCabe Letter asserts that broker-dealers holding large positions in ETMF Shares would be unable to calculate their net capital positions on an intraday basis as required by the Commission. Although we are not experts on the valuation procedures applicable to broker-dealer net capital requirements, we would be surprised if ETMFs are the only asset held by broker-dealers that do not lend themselves to minute-by-minute intraday updated valuations. Based on how we expect ETMF market making to function, we would not expect market makers to hold large ETMF inventory positions, particularly over multi-day periods. An ETMF market maker operating within relatively tight limits of its net capital requirement may wish to build a buffer into the valuation of its ETMF positions to ensure continued capital adequacy. In our extensive conversations with multiple potential ETMF market makers, none of them have raised this issue as a potential concern.

- *The Consolidated Tape must be significantly altered to accommodate NAV-Based Trading.*

This is not true. Because ETMF trading prices and quotes will always be reported to the Consolidated Tape in proxy price format (*i.e.*, representing NAV as 100.00, NAV+$0.01 as 100.01 and NAV-$0.01 as 99.99), no special changes to the Consolidated Tape are required to accommodate ETMFs.

- *Broker-dealers, vendors and quote system operators will have to significantly alter their systems to accommodate NAV-Based Trading.*

The process of buying and selling ETMFs will be quite similar in most respects to buying and selling ETFs and other exchange-traded securities. Nasdaq member firms will utilize existing order types and interfaces to transmit ETMF Share bids and offers to Nasdaq, which will process ETMF Share trades like trades in shares of ETFs and other listed securities. Entering orders to buy and sell ETMFs will take place in the customary manner. The only significant distinction is that price limits for limit orders will be expressed relative to NAV rather than as an absolute dollar price. The execution, reporting, clearance and settlement of ETMF trades will be substantially the same as for other exchange-traded securities. In reporting ETMF trades, Nasdaq will send the transacting parties both a notice of order execution—provided at the time of the trade and reflecting the number of shares bought or sold—and a final confirmation— provided at the end of the day after NAV is computed and including final trade pricing information.

Based on extensive discussions with broker-dealers and providers of market data services, Eaton Vance is confident that the systems modifications to accommodate the introduction of ETMFs are relatively modest and can readily be achieved in the anticipated timeframe for the launch of the Initial ETMFs.

- *The proposed method of displaying ETMF prices will be confusing for investors.*

To avoid potential investor confusion, Nasdaq and Eaton Vance are working with Nasdaq member firms and providers of market data services to ensure that representations of intraday bids, offers and execution prices for ETMFs that are made available to the investing public consistently follow the "NAV-$0.01/NAV+$0.01" (or similar) display format. All ETMFs listed on Nasdaq will have a unique identifier associated with their ticker symbols indicating that the Shares are traded using NAV-Based Trading.

- *Dissemination of timely and accurate IIVs is required for ETMF shares to trade efficiently.*

The McCabe Letter demonstrates a fundamental misunderstanding of the role of IIVs for ETMFs. The letter asserts that the proposed dissemination of IIVs at 15 minute intervals and reliance on potentially stale prices to compute IIVs may interfere with effective ETMF market making and the efficiency of Share trading. This is completely untrue. As explained in Section IV.F of the Exemptive Application (*see* page 14), the sole purpose of IIVs in the context of ETMFs is to help investors determine the number of Shares to buy or sell if they want to transact in an approximate dollar amount. ETMF market makers will never have any reason to refer to IIVs in connection with their market making function.

As described in Section IV.H of the Exemptive Application (*see* page 16), Eaton Vance is committed to establishing and maintaining a robust education program to support the launch of ETMFs. To seek to ensure that potential investors adequately understand ETMFs, we will focus attention on the key distinctions of ETMF investing, including the role of IIVs in ETMF trading.

- *NAV-Based Trading may not take away the need for arbitrage of ETMF positions.*

The McCabe Letter demonstrates a fundamental misunderstanding of how market making will work for ETMFs. The letter asserts that market makers holding positions in ETMF Shares may wish to sell short the ETMF's Basket Instruments to hedge their intraday market exposure, but will be limited in their ability to do this because they will not know how the value of the Basket Instruments is tracking the value of the ETMF's net assets. As explained in Section IV.C of the Exemptive Application (*see* page 9), a market maker holding positions in ETMF Shares is not exposed to intraday market risk. No exposure to intraday market risk means no requirement for market makers to hedge their positions intraday. How closely an ETMF's Basket tracks the performance of the ETMF itself is completely irrelevant to ETMF market makers.

- *ETMFs will likely not provide tax benefits comparable to existing ETFs and may cost more to operate.*

Like ETFs, ETMFs will utilize in-kind purchases and redemptions and Creation Unit transaction fees to limit the impact of shareholder inflows and outflows on fund trading costs and capital gains realizations. While the utilization of in-kind transactions by ETMFs may be somewhat less than for ETFs holding similar investments, we view the more relevant comparison for ETMFs to be versus similar mutual funds. We expect ETMFs to achieve significant performance and tax efficiency advantages over similar mutual funds by utilizing in-kind purchases and redemptions and by imposing Creation Unit transaction fees to offset the associated processing and trading costs to the fund.

In closing, I wish to express my continued confidence in the value of the ETMF structure to investors and to thank the SEC Commissioners and Staff for their consideration.

Sincerely,

Thomas E. Faust Jr.
Chairman and Chief Executive Officer