

SECURITIES AND EXCHANGE COMMISSION

FORM POS AMI

Post-effective amendments to 40 Act only filings

Filing Date: **2013-01-28**
SEC Accession No. [0000940394-13-000138](#)

([HTML Version](#) on [secdatabase.com](#))

FILER

SMID-Cap Portfolio

CIK: [1163472](#) | IRS No.: **000000000** | Fiscal Year End: **0930**
Type: **POS AMI** | Act: **40** | File No.: [811-10609](#) | Film No.: **13552411**

Mailing Address
*TWO INTERNATIONAL
PLACE
BOSTON MA 02110*

Business Address
*TWO INTERNATIONAL
PLACE
BOSTON MA 02110
617-482-8260*

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM N-1A

REGISTRATION STATEMENT
UNDER
THE INVESTMENT COMPANY ACT OF 1940 []

AMENDMENT NO. 11 [X]

SMID-CAP PORTFOLIO

(Exact Name of Registrant as Specified in Charter)

Two International Place, Boston, Massachusetts 02110
(Address of Principal Executive Offices)

(617) 482-8260
(Registrant' s Telephone Number, including Area Code)

Maureen A. Gemma
Two International Place, Boston, Massachusetts 02110
(Name and Address of Agent for Service)

Throughout this Amendment to the Registration Statement, information concerning SMID-Cap Portfolio (the “Portfolio”) is incorporated by reference from Amendment No. 144 to the Registration Statement of Eaton Vance Growth Trust (File No. 2-22019 under the Securities Act of 1933 (the “1933 Act”)) (the “Amendment”), which was filed electronically with the Securities and Exchange Commission on January 28, 2013 (Accession No. 0000940394- 13-000134). Amendment contains the prospectus and statement of additional information (“SAI”) of Eaton Vance Atlanta Capital SMID-Cap Fund (the “Feeder Fund”), which invests substantially all of its assets in the Portfolio. Certain investment practices and policies of the Feeder Fund are substantially the same as those of the Portfolio.

PART A

Responses to Items 1, 2, 3, 4 and 13 have been omitted pursuant to Paragraph B 2.(b) of the General Instructions to Form N-1A.

Item 5. Management

(a) Investment Adviser

Registrant incorporates by reference information concerning the Portfolio’ s management from “Fund Summaries - Management” in the Feeder Fund prospectus.

(b) Portfolio Manager(s)

Registrant incorporates by reference information concerning the Portfolio’ s management from “Fund Summaries - Management” in the Feeder Fund prospectus.

Item 6. Purchase and Sale of Portfolio Interests

(a) - (b) Purchase and Sale of Portfolio Interests

Interests in the Portfolio are issued solely in private placement transactions that do not involve any “public offering” within the meaning of Section 4(2) of the 1933 Act. Investments in the Portfolio may be made only by U.S. and foreign investment companies, common or commingled trust funds, pooled income funds, organizations or trusts described in Section 401(a) or 501(a) of the Internal Revenue Code of 1986, as amended (the “Code”), or similar organizations or entities that are “accredited investors” within the meaning of Regulation D under the 1933 Act. This Registration Statement, as amended, does not constitute an offer to sell, or the solicitation of an offer to buy, any “security” within the meaning of the 1933 Act.

Item 7. Tax Information

The Portfolio expects its allocations to constitute ordinary income and/or capital gains unless an investor is not subject to taxation.

Item 8. Financial Intermediary Compensation

Not applicable.

Item 9. Investment Objectives, Principal Investment Strategies, Related Risks and Disclosure of Portfolio Holdings

The Portfolio is a diversified, open-end management investment company.

The Portfolio is not intended to be a complete investment program, and a prospective investor should take into account its objectives and other investments when considering the purchase of an interest in the Portfolio. The Portfolio cannot assure achievement of its investment objective.

Registrant incorporates by reference information concerning the Portfolio's investment objective and investment practices and risks from "Investment Objective," "Principal Investment Strategies," "Principal Risks" and "Investment Objectives & Principal Policies and Risks" in the Feeder Fund prospectus. Registrant incorporates by reference the description of the Portfolio's policies and procedures with respect to the disclosure of portfolio holdings information from "Information about the Funds" under "Shareholder Account Features" in the Feeder Fund prospectus.

Item 10. Management, Organization, and Capital Structure

(a) Management

Registrant incorporates by reference information concerning the Portfolio's management from "Management and Organization" in the Feeder Fund prospectus.

(b) Capital Stock

Registrant incorporates by reference information concerning interests in the Portfolio from "Management and Organization" in the Feeder Fund SAI.

Item 11. Shareholder Information

(a) Pricing

The net asset value of the Portfolio is determined once each day only when the New York Stock Exchange (the "Exchange") is open for trading ("Portfolio Business Day"). This determination is made each Portfolio Business Day as of the close of regular trading on the Exchange (normally 4:00 p.m., eastern time) (the "Portfolio Valuation Time"). Registrant incorporates by reference information concerning the computation of net asset value and valuation of Portfolio assets from "Valuing Shares" in the Feeder Fund prospectus.

(b) and (c) Purchases and Redemptions

As described above, interests in the Portfolio are issued solely in private placement transactions that do not involve any "public offering" within the meaning of Section 4(2) of the 1933 Act. There is no minimum initial or subsequent investment in the Portfolio. The Portfolio reserves the right to cease accepting investments at any time or to reject any investment order. The placement agent for the Portfolio is Eaton Vance Distributors, Inc. ("EVD"), a wholly-owned subsidiary of Eaton Vance Corp. The principal business address of EVD is Two International Place, Boston, Massachusetts 02110. EVD receives no compensation from the Portfolio for serving as the placement agent ..

Each investor in the Portfolio may add to or reduce its investment in the Portfolio on each Portfolio Business Day as of the Portfolio Valuation Time. The value of each investor's interest in the Portfolio will be determined by multiplying the net asset value of the Portfolio by the percentage, determined on the prior Portfolio Business Day, which represents that investor's share of the aggregate interests in the portfolio on such prior day. Any additions or withdrawals for the current Portfolio Business Day will then be recorded. Each investor's percentage of the aggregate interest in the Portfolio will then be recomputed as a percentage equal to a fraction (i) the numerator of which is the value of such investor's investment in the Portfolio as of the Portfolio Valuation Time on the prior Portfolio Business Day plus or minus, as the case may be, the amount of any additions to or withdrawals from the investor's investment in the Portfolio on the current Portfolio Business Day and (ii) the denominator of which is the aggregate net asset value of the Portfolio as of the Portfolio Valuation Time on the prior Portfolio Business Day plus or minus, as the case may be, the amount of the net additions to or withdrawals from the aggregate investment in the Portfolio on the current Portfolio Business Day by all investors in the Portfolio. The percentage so determined will then be applied to determine the value of the investor's interest in the Portfolio for the current Portfolio Business Day.

An investor in the Portfolio may withdraw all of (redeem) or any portion of (decrease) its interest in the Portfolio if a withdrawal request in proper form is furnished by the investor to the Portfolio. All withdrawals will be effected as of the next Portfolio Valuation Time. The proceeds of a withdrawal will be paid by the Portfolio normally on the Portfolio Business Day the withdrawal is effected, but in any event within seven days. The Portfolio reserves the right to pay the proceeds of a withdrawal (whether a redemption or decrease) by a distribution in kind of portfolio securities (instead of cash). The securities so distributed would be valued at the same amount as that assigned to them in calculating the net asset value for the interest (whether complete or partial) being withdrawn. If an investor received a distribution in kind upon such withdrawal, the investor could incur brokerage and other charges in converting the securities to cash.

Investments in the Portfolio may not be transferred.

The right of any investor to receive payment with respect to any withdrawal may be suspended or the payment of the withdrawal proceeds postponed during any period in which the Exchange is closed (other than weekends or holidays) or trading on the Exchange is restricted as determined by the Securities and Exchange Commission (the "SEC") or, to the extent otherwise permitted by the Investment Company Act of 1940, as amended (the "1940 Act"), if an emergency exists as determined by the SEC, or during any other period permitted by order of the SEC for the protection of investors.

(d) Dividends and Distributions

The Portfolio will allocate at least annually among its investors each investor's distributive share of the Portfolio's net investment income, net realized capital gains, and any other items of income, gain, loss, deduction or credit.

(e) Frequent Purchases and Redemption of Fund Shares

In general, frequent purchases and redemptions of investment company shares may dilute the value of shares held by long-term shareholders. Excessive purchases and redemptions may disrupt efficient portfolio management, forcing an investment company to sell portfolio securities at

inopportune times to raise cash, or cause increased expenses such as increased brokerage costs, realization of taxable capital gains without attaining any investment advantage, or increased administrative costs.

The Boards of Trustees of the Eaton Vance funds have adopted policies for the Feeder Fund to discourage short-term trading and market timing and to seek to minimize the potentially detrimental effects of frequent purchases and redemptions of Feeder Fund shares. Registrant incorporates by reference additional information from “Restrictions on Excessive Trading and Market Timing” under “Purchasing Shares” in the Feeder Fund prospectus.

(f) Tax Consequences

Under the anticipated method of operation of the Portfolio, the Portfolio should be classified as a partnership under the Code and should not be subject to any U.S. federal income tax. However, each investor in the Portfolio will be required to take into account its allocable share of the Portfolio’s taxable ordinary income and capital gain in determining its U.S. federal income tax liability, if any. The determination of each such share will be made in accordance with the governing instruments of the Portfolio, which are intended to comply with the requirements of the Code and the regulations promulgated thereunder.

The Portfolio expects to manage its assets in such a way that an investment company investing in the Portfolio will be able to satisfy the requirements of Subchapter M of the Code, assuming that it invests all of its assets in the Portfolio or other regulated investment companies that so manage their assets.

Item 12. Distribution Arrangements

Not applicable.

PART B

Item 14. Cover Page and Table of Contents

	Page
Portfolio HistoryB-1
Description of the Portfolio and Its Investments and Risks	B-1
Management of the Portfolio	B-1
Control Persons and Principal Holders of Securities	B-2
Investment Advisory and Other Services	B-2
Portfolio Managers	B-2
Brokerage Allocation and Other Practices	B-3
Capital Stock and Other Securities	B-3
Purchase, Redemption and Pricing of Shares	B-4
Taxation of the Portfolio	B-4
Underwriters	B-7
Calculation of Performance Data	B-7
Financial Statements	B-7

Item 15. Portfolio History

The Portfolio is organized as a trust under the laws of the Commonwealth of Massachusetts under a Declaration of Trust dated December 14, 2009. Prior to that date, the Portfolio was organized as a New York Trust on December 10, 2001.

Item 16. Description of the Portfolio and Its Investments and Risks

Part A contains information about the investment objective and policies of the Portfolio. This Part B should be read in conjunction with Part A. Capitalized terms used in this Part B and not otherwise defined have the meanings given them in Part A.

Registrant also incorporates by reference additional information concerning the investment policies of the Portfolio as well as information concerning the investment restrictions of the Portfolio from “Strategies and Risks”, and “Additional Information About Investment Strategies ” in the Feeder Fund SAI. Registrant incorporates by reference the Portfolio’ s portfolio turnover rate from “Financial Highlights” in the Feeder Fund prospectus. Registrant incorporates by reference the Portfolio’ s policies regarding the disclosure of portfolio holdings information from “Disclosure of Portfolio Holdings and Related Information” under “Performance” in the Feeder Fund SAI.

Item 17. Management of the Portfolio

(a) - (c) Management Information, Board of Trustees and Compensation

Registrant incorporates by reference additional information concerning the management of the Portfolio from “Management and Organization” in the Feeder Fund SAI.

(d) Sales Loads

Not applicable.

(e) Code of Ethics

Registrant incorporates by reference information concerning relevant codes of ethics from “Code of Ethics” under “Investment Advisory and Administrative Services” in the Feeder Fund SAI.

(f) Proxy Voting Policies

Registrant incorporates by reference information concerning relevant proxy voting policies from “Proxy Voting Policy” under “Management and Organization” and from Appendix G and Appendix H in the Feeder Fund SAI.

Item 18. Control Persons and Principal Holders of Securities

(a) - (b) Control Persons and Principal Holders

As of January 1, 2013, the Feeder Fund controlled the Portfolio by virtue of owning approximately 99.8% of the value of the outstanding interests in the Portfolio. Because the Feeder Fund controls the Portfolio, the Feeder Fund may take actions without the approval of any other investor. The Feeder Fund has informed the Portfolio that it will vote in accordance with the requirements of the 1940 Act whenever requested to vote on Portfolio matters. The Feeder Fund is a series of Eaton Vance Growth Trust (the “Trust”), an open-end management investment company organized as a business trust under the laws of the Commonwealth of Massachusetts. The address of the Feeder Fund and the Trust is Two International Place, Boston, MA 02110.

(c) Management Ownership

As described in Part A, interests in the Portfolio may only be held by certain investment companies and other entities. Interests in the Portfolio cannot be purchased by a Trustee or officer of the Portfolio. The Trustees and officers of the Portfolio as a group do not own any interest in the Portfolio.

Item 19. Investment Advisory and Other Services

Registrant incorporates by reference information concerning investment advisory and other services provided to the Portfolio from “Investment Advisory and Administrative Services” and “Other Service Providers” in the Feeder Fund SAI.

Item 20. Portfolio Managers

As described in Part A, interests in the Portfolio may only be held by certain investment companies and other entities. Interests in the Portfolio cannot be purchased by a portfolio manager.

Registrant incorporates by reference information concerning the portfolio manager of the Portfolio from “Investment Advisory and Administrative Services” in the Feeder Fund SAI.

Item 21. Brokerage Allocation and Other Practices

Registrant incorporates by reference information concerning the brokerage practices of the Portfolio from “Portfolio Securities Transactions” in the Feeder Fund SAI.

Item 22. Capital Stock and Other Securities

Under the Portfolio’s Declaration of Trust, the Trustees are authorized to issue interests in the Portfolio. Investors are entitled to participate pro rata in distributions of taxable income, loss, gain and credit of the Portfolio. Upon dissolution of the Portfolio, the Trustees shall liquidate the assets of the Portfolio and apply and distribute the proceeds thereof as follows: (a) first, to the payment of all debts and obligations of the Portfolio to third parties including, without limitation, the retirement of outstanding debt, including any debt owed to holders of record of interests in the Portfolio (“Holders”) or their affiliates, and the expenses of liquidation, and to the setting up of any reserves for contingencies which may be necessary; and (b) second, in accordance with the Holders’ positive Book Capital Account balances after adjusting Book Capital Accounts for certain allocations provided in the Declaration of Trust and in accordance with the requirements described in Treasury Regulations Section 1.704-1(b)(2)(ii)(b)(2). Notwithstanding the foregoing, if the Trustees shall determine that an immediate sale of part or all of the assets of the Portfolio would cause undue loss to the Holders, the Trustees, in order to avoid such loss, may, after having given notification to all the Holders, to the extent not then prohibited by the law of any jurisdiction in which the Portfolio is then formed or qualified and applicable in the circumstances, either defer liquidation of and withhold from distribution for a reasonable time any assets of the Portfolio except those necessary to satisfy the Portfolio’s debts and obligations or distribute the Portfolio’s assets to the Holders in liquidation. The Trustees may authorize the issuance of certificates of beneficial interest to evidence the ownership of interests in the Portfolio.

Each Holder is entitled to vote in proportion to the amount of its interest in the Portfolio. Holders do not have cumulative voting rights. The Portfolio is not required and has no current intention to hold annual meetings of Holders, but the Portfolio will hold meetings of Holders when in the judgment of the Portfolio’s Trustees it is necessary or desirable to submit matters to a vote of Holders at a meeting. Any action which may be taken by Holders may be taken without a meeting if Holders holding more than 50% of all interests entitled to vote (or such larger proportion thereof as shall be required by any express provision of the Declaration of Trust of the Portfolio) consent to the action in writing and the consents are filed with the records of meetings of Holders.

The Portfolio’s Declaration of Trust may be amended by vote of Holders of more than 50% of all interests in the Portfolio at any meeting of Holders or by an instrument in writing without a meeting, executed by a majority of the Trustees and consented to by the Holders of more than 50% of all interests. The Trustees may also amend the Declaration of Trust (without the vote or consent of Holders) to change the Portfolio’s name or the state or other jurisdiction whose law shall be the governing law, to supply any omission or cure, correct or supplement any ambiguous, defective or inconsistent provision, to conform the Declaration of Trust to applicable federal law or regulations or to the requirements of the Code, or to change, modify or rescind any provision, provided that such change, modification or rescission is determined by the Trustees to be necessary or appropriate and not to have a materially adverse effect on the financial interests of the Holders. No amendment of the Declaration of Trust which would change any rights with respect to any Holder’s interest in the Portfolio by reducing the amount payable thereon upon liquidation of the Portfolio may be made, except with the vote or consent of the Holders of two-thirds of all interests. References in the Declaration of Trust and in Part A or this Part B to a specified percentage of, or fraction of, interests in

the Portfolio, means Holders whose combined Book Capital Account balances represent such specified percentage or fraction of the combined Book Capital Account balance of all, or a specified group of, Holders.

The Portfolio may merge or consolidate with any other corporation, association, trust or other organization or may sell or exchange all or substantially all of its assets upon such terms and conditions and for such consideration when and as authorized by the Holders of (a) 67% or more of the interests in the Portfolio present or represented at the meeting of Holders, if Holders of more than 50% of all interests are present or represented by proxy, or (b) more than 50% of all interests, whichever is less. The Portfolio may be terminated (i) by the affirmative vote of Holders of not less than two-thirds of all interests at any meeting of Holders or by an instrument in writing without a meeting, consented to by Holders of not less than two-thirds of all interests, or (ii) by the approval of a majority of the Trustees then in office to be followed by written notice to the Holders.

The Declaration of Trust provides that obligations of the Portfolio are not binding upon the Trustees individually but only upon the property of the Portfolio and that the Trustees will not be liable for any action or failure to act, but nothing in the Declaration of Trust protects a Trustee against any liability to which he would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence, or reckless disregard of the duties involved in the conduct of his office.

Item 23. Purchase, Redemption and Pricing of Shares

See Item 11 herein. Registrant incorporates by reference information concerning valuation of the Portfolio's assets from "Calculation of Net Asset Value" in the Feeder Fund SAI.

Item 24. Taxation of the Portfolio

Provided the Portfolio is operated at all times during its existence in accordance with certain organizational and operational documents, the Portfolio should be classified as a partnership under the Code, and it should not be a "publicly traded partnership" within the meaning of Section 7704 of the Code. Consequently, the Portfolio does not expect that it will be required to pay any U.S. federal income tax, and a Holder will be required to take into account in determining its U.S. federal income tax liability its share of the Portfolio's income, gains, losses, deductions and credits.

Under Subchapter K of the Code, a partnership is considered to be either an aggregate of its members or a separate entity depending upon the factual and legal context in which the question arises. Under the aggregate approach, each partner is treated as an owner of an undivided interest in partnership assets and operations. Under the entity approach, the partnership is treated as a separate entity in which partners have no direct interest in partnership assets and operations. In the case of a Holder that seeks to qualify as a registered investment company ("RIC"), the aggregate approach should apply, and each such Holder should accordingly be deemed to own a proportionate share of each of the assets of the Portfolio and to be entitled to the gross income of the Portfolio attributable to that share for purposes of all requirements of Subchapter M of the Code.

In order to enable a Holder (that is otherwise eligible) to qualify as a RIC, the Portfolio intends to satisfy the requirements of Subchapter M of the Code relating to sources of income and diversification of assets as if they were applicable to the Portfolio and to permit withdrawals in a manner that will enable a Holder which is a RIC to comply with the distribution requirements applicable to RICs (including those under Sections 852 and 4982 of the Code). The Portfolio will allocate at least annually to each Holder such Holder's distributive share of the Portfolio's net

investment income, net realized capital gains, and any other items of income, gain, loss, deduction or credit in a manner intended to comply with the Code and applicable Treasury Regulations.

To the extent the cash proceeds of any withdrawal (or, under certain circumstances, such proceeds plus the value of any marketable securities distributed to an investor) (“liquid proceeds”) exceed a Holder’s adjusted basis of his interest in the Portfolio, the Holder will generally realize a gain for U.S. federal income tax purposes. If, upon a complete withdrawal (redemption of the entire interest), a Holder receives only liquid proceeds (and/or unrealized receivables) and the Holder’s adjusted basis of his interest exceeds the liquid proceeds of such withdrawal and the Holder’s basis in any unrealized receivables, the Holder will generally realize a loss for U.S. federal income tax purposes. In addition, on a distribution to a Holder from the Portfolio, (1) income may be recognized if the distribution changes a distributee’s share of any unrealized receivables held by the Portfolio and (2) gain or loss may be recognized on a distribution to a Holder that contributed property to the Portfolio. The tax consequences of a withdrawal of property (instead of or in addition to liquid proceeds) will be different and will depend on the specific factual circumstances. A Holder’s adjusted basis of an interest in the Portfolio will generally be the aggregate prices paid therefore (including the adjusted basis of contributed property and any gain recognized on the contribution thereof), increased by the amounts of the Holder’s distributive share of items of income (including income exempt from U.S. federal income taxation) and realized net gain of the Portfolio, and reduced, but not below zero, by (i) the amounts of the Holder’s distributive share of items of Portfolio loss, (ii) the amount of any cash distributions (including distributions of income exempt from U.S. federal income taxation and cash distributions on withdrawals from the Portfolio) and the basis to the Holder of any property received by such Holder other than in liquidation, and (iii) the Holder’s distributive share of the Portfolio’s nondeductible expenditures not properly chargeable to capital account. Increases or decreases in a Holder’s share of the Portfolio’s liabilities may also result in corresponding increases or decreases in such adjusted basis.

The Portfolio’s investments in options, futures contracts, hedging transactions, forward contracts and certain other transactions will be subject to special tax rules (including mark-to-market, constructive sale, straddle, wash sale, short sale and other rules), the effect of which may be to accelerate income to the Portfolio, defer Portfolio losses, cause adjustments to the holding periods of Portfolio securities, convert capital gain into ordinary income and convert short-term capital losses into long-term capital losses. These rules could therefore affect the amount, timing and character of distributions to investors, including RIC shareholders.

A partnership has the option to make an election to adjust the basis of the partnership’s assets in the event of a distribution of partnership property to a partner or a transfer of a partnership interest. This optional adjustment could either increase or decrease such basis depending on the relevant facts. There can be no assurance that the Portfolio will make such an election in the future. Furthermore, this basis adjustment is mandatory in certain circumstances.

The Portfolio may be subject to foreign taxes on its income (including, in some cases, capital gains) from foreign securities. These taxes may be reduced or eliminated under the terms of an applicable U.S. income tax treaty. The anticipated extent of the Portfolio’s investment in foreign securities is such that it is not expected that a Holder that is a RIC will be eligible to pass through to its shareholders foreign taxes paid by the Portfolio and allocated to the Holder, so that shareholders of such RIC will not be entitled to foreign tax credits or deductions for foreign taxes paid by the Portfolio and allocated to the RIC. Transactions in foreign currencies, foreign currency-denominated debt securities and certain foreign currency options, futures contracts, and forward contracts (and similar instruments) may give rise to ordinary income or loss to the extent such income or loss results from

fluctuations in the value of the foreign currency concerned. Certain uses of foreign currency may be limited in order to enable an investor that is a RIC to preserve its qualification as a RIC. Investments in “passive foreign investment companies” could subject the Portfolio to adverse U.S. federal income tax consequences or other charges on certain distributions from such companies and on disposition of investment in such companies; however, the tax effects of such investments may be mitigated by making an election to mark such investments to market annually or treat the passive foreign investment company as a “qualified electing fund.” Investment by the Portfolio in the stock of certain passive foreign investment companies may be made, if available, in order to enable an investor that is a RIC to preserve its qualification as a RIC.

“Qualified dividend income” received by an individual is taxed at the rates applicable to long-term capital gain. In order for the dividends received by the Portfolio to be qualified dividend income, the Portfolio must meet holding period and other requirements with respect to the dividend-paying stocks. A dividend will not be treated as qualified dividend income (at either the Fund or shareholder level) (1) if the dividend is received with respect to any share of stock held for fewer than 61 days during the 121-day period beginning at the date which is 60 days before the date on which such share becomes ex-dividend with respect to such dividend (or, in the case of certain preferred stock, 91 days during the 181-day period beginning 90 days before such date), (2) to the extent that the recipient is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property, (3) if the recipient elects to have the dividend income treated as investment interest, or (4) if the dividend is received from a foreign corporation that is (a) not eligible for the benefits of a comprehensive income tax treaty with the United States (with the exception of dividends paid on stock of such a foreign corporation readily tradable on an established securities market in the United States), or (b) treated as a foreign personal holding company, foreign investment company, or passive foreign investment company. In any event, if the aggregate qualified dividends received by a RIC investing in the Portfolio during any taxable year are 95% or more of its gross income, then 100% of such RIC’s dividends (other than property designated capital gain dividends) will be eligible to be treated as qualified dividend income. For this purpose, the only gain included in the term “gross income” is the excess of net short-term capital gain over net long-term capital loss.

The Portfolio will allocate at least annually to its investors their respective distributive shares of any net investment income and net capital gains which have been recognized for federal income tax purposes (including unrealized gains at the end of the Portfolio’s fiscal year on certain options and futures transactions that are required to be marked-to-market).

An entity that is treated as a partnership under the Code, such as the Portfolio, is generally treated as a partnership under state and local tax laws, but certain states may have different entity classification criteria and may therefore reach a different conclusion. Entities that are classified as partnerships are not treated as separate taxable entities under most state and local tax laws, and the income of a partnership is considered to be income of partners both in timing and in character. The laws of the various states and local taxing authorities vary with respect to the status of a partnership interest under state and local tax laws, and each Holder of an interest in the Portfolio is advised to consult his own tax advisor ..

The foregoing discussion does not address the special tax rules applicable to certain classes of investors, such as tax-exempt entities, foreign investors, insurance companies and financial institutions. Investors should consult their own tax advisors with respect to special tax rules that may apply in their particular situations, as well as the state, local or foreign tax consequences of investing in the Portfolio. It is not possible at this time to predict whether or to what extent any

changes in the Code or interpretations thereof will occur. Prospective investors should consult their own tax advisors regarding pending and proposed legislation and other changes.

Item 25. Underwriters

The placement agent for the Portfolio is EVD. Investment companies, common and commingled trust funds, pooled income funds and similar entities may continuously invest in the Portfolio.

Item 26. Calculation of Performance Data

Not applicable.

Item 27. Financial Statements

The following audited financial statements of the Portfolio are incorporated by reference into this Part B and have been so incorporated in reliance upon the report of Deloitte & Touche LLP, an independent registered public accounting firm, as experts in accounting and auditing.

Portfolio of Investments as of September 30, 2012
Statement of Assets and Liabilities as of September 30, 2012
Statement of Operations for fiscal year ended September 30, 2012
Statements of Changes in Net Assets for the two fiscal years ended September 30, 2012
and 2011
Supplementary Data for each of the five fiscal years ended September 30, 2012
Notes to Financial Statements
Report of Independent Registered Public Accounting Firm

For the purposes of the EDGAR filing of this amendment to the Portfolio's registration statement, the Portfolio incorporates by reference the above audited financial statements as previously filed electronically with the SEC on Form N-CSR on November 27, 2012 pursuant to Section 39(b)(2) of the Investment Company Act of 1940 (Accession No. 0000950123- 12-481513).

PART C

Item 28. Exhibits (with inapplicable items omitted)

- (a) Amended and Restated Declaration of Trust of SMID-Cap Portfolio dated as of April 23, 2012 filed herewith.
- (b) Amended and Restated By-Laws of SMID-Cap Portfolio adopted as of April 23, 2012 filed herewith ..
- (c) Reference is made to Item 28(a) and 28(b) above.
- (d)(1) Investment Advisory Agreement between the Registrant and Boston Management and Research dated December 10, 2001 filed as Exhibit (d)(1) to the Original Registration Statement filed December 21, 2001 and incorporated herein by reference.
- (2)(a) Investment Sub-Advisory Agreement between Boston Management and Research and Atlanta Capital Management Company, LLC dated December 10, 2001 filed as Exhibit (d)(2) to the Original Registration Statement filed December 21, 2001 and incorporated herein by reference.
- (b) Fee Reduction Agreement between Boston Management and Research and Atlanta Capital Management Company, LLC dated November 1, 2011 filed as Exhibit (d)(2)(6) to Amendment No. 10 filed January 27, 2012 (Accession No. 0000940394-12-000088) and incorporated herein by reference ..
- (e) Placement Agent Agreement with Eaton Vance Distributors, Inc. dated December 10, 2001 filed as Exhibit (e) to the Original Registration Statement filed December 21, 2001 and incorporated herein by reference.
- (f) The Securities and Exchange Commission has granted the Registrant an exemptive order that permits the Registrant to enter into deferred compensation arrangements with its independent Trustees. See In the Matter of Capital Exchange Fund, Inc., Release No. IC-20671(November 1, 1994).
- (g)(1) Master Custodian Agreement with State Street Bank & Trust Company dated September 1, 2010 filed as Exhibit (g)(1) to Post-Effective Amendment No. 125 of Eaton Vance Municipals Trust (File Nos. 33-572, 811-4409) filed November 30, 2010 (Accession No. 0000940394-10-001163) and incorporated herein by reference.
- (2) Amended and Restated Services Agreement with State Street Bank & Trust Company dated September 1, 2010 filed as Exhibit (g)(2) to Post-Effective Amendment No. 108 of Eaton Vance Special Investment Trust (File Nos. 02-27962, 811-1545) filed September 27, 2010 (Accession No. 0000940394-10-001000) and incorporated herein by reference.

- (l) Investment representation letter of Eaton Vance Management dated December 17, 2001 filed as Exhibit (l) to the Original Registration Statement filed December 21, 2001 and incorporated herein by reference.
- (p)(1) Code of Ethics adopted by Eaton Vance Corp., Eaton Vance Management, Boston Management and Research, Eaton Vance Distributors, Inc. and the Eaton Vance Funds effective September 1, 2000, as revised July 15, 2011, filed as Exhibit (p) to Post-Effective Amendment No. 39 of Eaton Vance Municipals Trust II (File Nos. 33-71320 , 811- 08134) filed May 29, 2012 (Accession No. 0000940384- 12-000641) and incorporated herein by reference.
- (2) Code of Business Conduct and Ethics adopted by Atlanta Capital Management Company, LLC effective January 1, 2006, as revised January 1, 2011 filed as Exhibit (p)(2) to Post-Effective Amendment No. 178 of Eaton Vance Mutual Funds Trust (File Nos. 2-90946 and 811-4015) filed August 17, 2011 (Accession No. 0000940394-11-000993) and incorporated herein by reference.

Item 29. Persons Controlled by or Under Common Control with Registrant

Not applicable.

Item 30. Indemnification

Article V of the Registrant' s Declaration of Trust contains indemnification provisions for Trustees and officers. The Trustees and officers of the Registrant and the personnel of the Registrant' s investment adviser are insured under an errors and omissions liability insurance policy.

The Placement Agent Agreement also provides for reciprocal indemnity of the Placement Agent, on the one hand, and the Trustees and officers, on the other.

Item 31. Business and Other Connections of the Investment Adviser and Sub-Adviser

Reference is made to: (i) the information set forth under the caption "Management and Organization" in the Feeder Fund SAI; (ii) the Eaton Vance Corp. 10-K filed under the Securities Exchange Act of 1934 (File No. 1-8100); and (iii) the Forms ADV of Eaton Vance Management (File No. 801-15930), Boston Management and Research (File No. 801-43127) and Atlanta Capital Management Company, LLC (File No. 801-52179) filed with the SEC, all of which are incorporated herein by reference.

Item 32. Principal Underwriters

Not applicable.

Item 33. Location of Accounts and Records

All applicable accounts, books and documents required to be maintained by the Registrant by Section 31(a) of the 1940 Act and the Rules promulgated thereunder are in the possession and custody of the Registrant's custodian, State Street Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116, with the exception of, certain corporate documents which are in the possession and custody of the Registrant's investment adviser at Two International Place, Boston, MA 02110 and portfolio trading documents which are in the possession and custody of the Registrant's sub-adviser at 1075 West Peachtree Street, Suite 2100, Atlanta, GA 30309. The Registrant is informed that all applicable accounts, books and documents required to be maintained by registered investment advisers are in the custody and possession of the Registrant's investment adviser and the sub-adviser.

Item 34. Management Services

Not applicable.

Item 35. Undertakings

Not applicable.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the Registrant has duly caused this Amendment No. 11 to the Registration Statement on Form N-1A to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Boston and Commonwealth of Massachusetts on the 28th day of January, 2013 ..

SMID-CAP PORTFOLIO

By: /s/ Duncan W. Richardson
Duncan W. Richardson
President

INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
(a)(6) April 23, 2012	Amended and Restated Declaration of Trust of SMID-Cap Portfolio dated as of April 23, 2012
(b)	Amended and Restated By-Laws of SMID-Cap Portfolio adopted as of April 23, 2012

SMID-CAP PORTFOLIO



AMENDED AND RESTATED DECLARATION OF TRUST

Dated as of April 23, 2012

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE I - <u>The Trust</u>	1
Section 1.1 Name	1
Section 1.2 Definitions	1
ARTICLE II -- <u>Trustees</u>	3
Section 2.1 Number and Qualification	3Term
Section 2.2	3
Section 2.3 Resignation, Removal and Retirement	3
Section 2.4 Vacancies	4
Section 2.5 Meetings	4
Section 2.6 Officers; Chairman of the Board	5
Section 2.7 By-Laws	5
ARTICLE III - <u>Powers of Trustees</u>	5
Section 3.1 General	5
Section 3.2 Investments	5
Section 3.3 Legal Title	7
Section 3.4 Sale of Shares	7
Section 3.5 Redemptions of Shares	7
Section 3.6 Borrow Money	7
Section 3.7 Delegation; Committees	8
Section 3.8 Collection and Payment	8
Section 3.9 Expenses	8
Section 3.10 Miscellaneous Powers	8
Section 3.11 Further Powers	8
Section 3.12 Litigation	9
ARTICLE IV - <u>Investment Advisory, Administration and Placement Agent Arrangements</u>	9
Section 4.1 Investment Advisory, Administration and Other Arrangements	9
Section 4.2 Parties to Contract	9
ARTICLE V -- <u>Limitations of Liability of Holders, Trustees and Others.</u>	10
Section 5.1 No Personal Liability of Holders, Trustees Officers and Employees	10
Section 5.2 Trustee' s Good Faith Action; Advice of Others; No Bond or Surety	10
Section 5.3 Indemnification	10
Section 5.4 No Duty of Investigation	11
Section 5.5 Reliance on Records and Experts	11

020_0488

ARTICLE VI - <u>Shares of Beneficial Interest</u>	11
Section 6.1 Beneficial Interest	11
Section 6.2 Rights of Holders	11
Section 6.3 Trust Only	12
Section 6.4 Issuance of Shares	12
Section 6.5 Register of Shares	12
Section 6.6 Total Number of Holders	12
ARTICLE VII -- <u>Purchases and Redemptions of Shares</u>	12
ARTICLE VIII-- <u>Determination of Book Capital Account Balances, and Distributions</u>	13
Section 8.1 Book Capital Account Balances	13
Section 8.2 Allocations and Distributions to Holders	13
Section 8.3 Power to Modify Foregoing Procedures	13
Section 8.4 Signature on Returns; Tax Matters Partner	14
ARTICLE IX - <u>Holdings</u>	14
Section 9.1 Rights of Holders	14
Section 9.2 Reports	14
Section 9.3 Inspection of Records	14
ARTICLE X -- <u>Duration; Termination; Amendment; Mergers; Etc.</u>	14
Section 10.1 Duration	14
Section 10.2 Termination	15
Section 10.3 Dissolution	16
Section 10.4 Amendment Procedure	16
Section 10.5 Merger, Consolidation and Sale of Assets	17
Section 10.6 Incorporation	17
ARTICLE XI - <u>Miscellaneous</u>	18
Section 11.1 Governing Law	18
Section 11.2 Counterparts	18
Section 11.3 Reliance by Third Parties	18
Section 11.4 Provisions in Conflict With Law or Regulations	18

020_0488

AMENDED AND RESTATED DECLARATION OF TRUST

OF

SMID-CAP PORTFOLIO

This AMENDED AND RESTATED DECLARATION OF TRUST of SMID-Cap Portfolio is made as of the 23rd day of April, 2012 by the parties signatory hereto, as Trustees (as defined in Section 1.2 hereof).

W I T N E S S E T H:

WHEREAS, on December 14, 2009, the Trustees established a Massachusetts business trust for the investment and reinvestment of its assets; and

WHEREAS, it is proposed that the trust assets be composed of money and property contributed thereto by the holders of Shares in the trust entitled to ownership rights in the trust; and

WHEREAS, the Trustees desire to amend and restate said Declaration of Trust pursuant to the provisions thereof;

NOW, THEREFORE, the Trustees hereby declare that they will hold in trust all money and property contributed to the trust fund and will manage and dispose of the same for the benefit of the holders of Shares in the Trust and subject to the provisions hereof, to wit:

ARTICLE I

The Trust

1.1. Name. The name of the trust created hereby (the “Trust”) shall be SMID-Cap Portfolio and so far as may be practicable the Trustees shall conduct the Trust’s activities, execute all documents and sue or be sued under that name, which name (and the word “Trust” wherever hereinafter used) shall refer to the Trustees as Trustees, and not individually, and shall not refer to the officers, employees, agents or independent contractors of the Trust or holders of Shares in the Trust.

1.2. Definitions. As used in this Declaration, the following terms shall have the following meanings:

“Administrator” shall mean any party furnishing services to the Trust pursuant to any administration contract described in Section 4.1 hereof.

“Book Capital Account” shall mean, for any Holder at any time, the Book Capital Account of the Holder for such day, determined in accordance with Section 8.1 hereof.

“Code” shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time (or any corresponding provision or provisions of succeeding law).

“Commission” shall mean the U.S. Securities and Exchange Commission.

“Declaration” shall mean this Declaration of Trust as amended from time to time. References in this Declaration to “Declaration”, “hereof”, “herein” and “hereunder” shall be deemed to refer to this Declaration rather than the article or section in which any such word appears.

“Fiscal Year” shall mean an annual period determined by the Trustees which shall end on such date as the Trustees may, from time to time determine.

“Holders” shall mean as of any particular time all holders of record of Shares in the Trust.

“Institutional Investor(s)” shall mean any regulated investment company, segregated asset account, foreign investment company, common trust fund, group trust or other investment arrangement, whether organized within or without the United States of America.

“Interested Person” shall have the meaning given it in the 1940 Act.

“Investment Adviser” shall mean any party furnishing services to the Trust pursuant to any investment advisory contract described in Section 4.1 hereof.

“Majority Shares Vote” shall mean the vote, at a meeting of Holders, of (A) 67% or more of the Shares present or represented at such meeting, if Holders of more than 50% of all Shares are present or represented by proxy, or (B) more than 50% of all Shares, whichever is less.

“Person” shall mean and include individuals, corporations, partnerships, trusts, associations, joint ventures and other entities, whether or not legal entities, and governments and agencies and political subdivisions thereof.

“Redemption” shall mean a partial or complete redemption of the Share of a Holder.

“Share(s)” shall mean the Share of a Holder in the Trust, including all rights, powers and privileges accorded to Holders by this Declaration, which Share represents a percentage, determined by calculating, at such times and on such basis as the Trustees shall from time to time determine, the ratio of each Holder’s Book Capital Account balance to the total of all Holders’ Book Capital Account balances. Reference herein to a specified percentage of, or fraction of, Shares, means Holders whose combined Book Capital Account balances represent such specified percentage or fraction of the combined Book Capital Account balances of all, or a specified group of, Holders. Share(s) may also be referred to herein or in other documents relating to the Trust as an Interest or Interests.

“Trustees” shall mean each signatory to this Declaration, so long as such signatory shall continue in office in accordance with the terms hereof, and all other individuals who at the time in question have been duly elected or appointed and have qualified as Trustees in accordance

with the provisions hereof and are then in office, and reference in this Declaration to a Trustee or Trustees shall refer to such individual or individuals in their capacity as Trustees hereunder.

“Trust Property” shall mean as of any particular time any and all property, real or personal, tangible or intangible, which at such time is owned or held by or for the account of the Trust or the Trustees.

The “1940 Act” shall mean the U.S. Investment Company Act of 1940, as amended from time to time, and the rules and regulations thereunder.

ARTICLE II

Trustees

2.1. Number and Qualification. The number of Trustees shall be fixed from time to time by action of the Trustees taken as provided in Section 2.5 hereof; provided, however, that the number of Trustees so fixed shall in no event be less than two or more than 15. Any vacancy created by an increase in the number of Trustees may be filled by the appointment of an individual having the qualifications described in this Section 2.1 made by action of the Trustees taken as provided in Section 2.5 hereof. Any such appointment shall not become effective, however, until the individual named in the written instrument of appointment shall have accepted in writing such appointment and agreed in writing to be bound by the terms of this Declaration. No reduction in the number of Trustees shall have the effect of removing any Trustee from office. Whenever a vacancy occurs, until such vacancy is filled as provided in Section 2.4 hereof, the Trustees continuing in office, regardless of their number, shall have all the powers granted to the Trustees and shall discharge all the duties imposed upon the Trustees by this Declaration. A Trustee shall be an individual at least 21 years of age who is not under legal disability.

2.2. Term. Each Trustee named herein, or elected or appointed in accordance with the terms of this Declaration, shall hold office until a successor to such Trustee has been elected or appointed and qualified (except in the event of such Trustee’s resignation, retirement or removal pursuant to Section 2.3). Subject to the provisions of Section 16(a) of the 1940 Act and except as provided in Section 2.3 hereof, each Trustee shall hold office during the lifetime of the Trust and until its termination as hereinafter provided.

2.3. Resignation, Removal and Retirement. Any Trustee may resign his or her trust (without need for prior or subsequent accounting) by an instrument in writing executed by such Trustee and delivered or mailed to the Chairman, if any, the President or the Secretary of the Trust and such resignation shall be effective upon such delivery, or later date according to the terms of the instrument. Any Trustee may be removed, with or without cause, by (i) the affirmative vote of Holders of two-thirds of the Shares or (ii) the affirmative vote of, or a written instrument executed by, at least two-thirds of the remaining Trustees, provided, however, that the removal of any Trustee who is not an Interested Person of the Trust shall additionally require the affirmative vote of, or a written instrument executed by, at least two-thirds of the remaining Trustees who are not Interested Persons of the Trust. Any Trustee who, pursuant to a resolution or written policy adopted from time to time by at least two-thirds of the Trustees, is required to retire from the Board shall be deemed to have retired automatically and without

action by such Trustee or the remaining Trustees in accordance with the terms of such resolution or policy, effective as of the date determined in accordance therewith.

2.4. Vacancies. The term of office of a Trustee shall terminate and a vacancy shall occur in the event of the death, resignation, retirement, adjudicated incompetence or other incapacity to perform the duties of the office, or removal, of a Trustee. No such vacancy shall operate to annul this Declaration or to revoke any existing agency created pursuant to the terms of this Declaration. In the case of a vacancy, including a vacancy resulting from an increase in the number of Trustees, such vacancy may be filled by (i) Holders of a plurality of the Shares entitled to vote, acting at any meeting of Holders held in accordance with the By-Laws, or (ii) to the extent permitted by the 1940 Act, the vote of a majority of the Trustees. Any Trustee so elected by the Holders or appointed by the Trustees shall hold office as provided in this Declaration.

2.5. Meetings. Meetings of the Trustees shall be held from time to time upon the call of the Chairman, if any, the President, the Secretary, an Assistant Secretary or any two Trustees, at such time, on such day and at such place, as shall be designated in the notice of the meeting. Regular meetings of the Trustees may be held without call or notice at a time and place fixed by the By-Laws or by resolution of the Trustees. Notice of any other meeting shall be given by mail, by telegram (which term shall include a cablegram), by facsimile or delivered personally (which term shall include by telephone). If notice is given by mail, it shall be mailed not later than 48 hours preceding the meeting and if given by telegram, facsimile or personally, such notice shall be sent or delivery made not later than 24 hours preceding the meeting. Notice of a meeting of Trustees may be waived before or after any meeting by signed written waiver. Neither the business to be transacted at, nor the purpose of, any meeting of the Trustees need be stated in the notice or waiver of notice of such meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting except in the situation in which a Trustee attends a meeting for the express purpose of objecting, at the commencement of such meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. The Trustees may act with or without a meeting, but no notice need be given of action proposed to be taken by written consent. A quorum for all meetings of the Trustees shall be a majority of the Trustees. Unless provided otherwise in this Declaration, any action of the Trustees may be taken at a meeting by vote of a majority of the Trustees present (a quorum being present) or without a meeting by written consent of a majority of the Trustees.

Any committee of the Trustees, including an executive committee, if any, may act with or without a meeting. A quorum for all meetings of any such committee shall be a majority of the members thereof. Unless provided otherwise in this Declaration, any action of any such committee may be taken at a meeting by vote of a majority of the members present (a quorum being present) or without a meeting by written consent of a majority of the members.

With respect to actions of the Trustees and any committee of the Trustees, Trustees who are Interested Persons of the Trust or otherwise interested in any action to be taken may be counted for quorum purposes under this Section 2.5 and shall be entitled to vote to the extent permitted by the 1940 Act.

All or any one or more Trustees may participate in a meeting of the Trustees or any committee thereof by means of a conference telephone or similar communications equipment

by means of which all individuals participating in the meeting can hear each other and participation in a meeting by means of such communications equipment shall constitute presence in person at such meeting.

2.6. Officers; Chairman of the Board. The Trustees shall, from time to time, elect a President, a Secretary and a Treasurer. The Trustees may elect or appoint, from time to time, a Chairman of the Board to preside at meetings of the Trustees and carry out such other duties as the Trustees may designate. The Trustees may elect or appoint or authorize the President to appoint such other officers, agents or independent contractors with such powers as the Trustees may deem to be advisable. The Chairman, if any, shall be and each officer may, but need not, be a Trustee. A Trustee elected or appointed as Chairman shall not be considered an officer of the Trust by virtue of such election or appointment.

2.7. By-Laws. The Trustees may adopt and, from time to time, amend or repeal By-Laws for the conduct of the business of the Trust.

ARTICLE III

Powers of Trustees

3.1. General. The Trustees shall have exclusive and absolute control over the Trust Property and over the business of the Trust to the same extent as if the Trustees were the sole owners of the Trust Property and such business in their own right, but with such powers of delegation as may be permitted by this Declaration. The Trustees may perform such acts as in their sole discretion they deem proper for conducting the business of the Trust. The enumeration of or failure to mention any specific power herein shall not be construed as limiting such exclusive and absolute control. The powers of the Trustees may be exercised without order of or resort to any court.

3.2. Investments. The Trustees shall have power:

(a) To conduct, operate and carry on the business of an investment company;

(b) To acquire or buy, and invest Trust Property in, own, hold for investment or otherwise, and to sell or otherwise dispose of, all types and kinds of securities and investments of any kind including, but not limited to, stocks, profit-sharing interests or participations and all other contracts for or evidences of equity interests, bonds, debentures, warrants and rights to purchase securities, and interest in loans, certificates of beneficial interest, bills, notes and all other contracts for or evidences of indebtedness, money market instruments including bank certificates of deposit, finance paper, commercial paper, bankers' acceptances and other obligations, and all other negotiable and non-negotiable securities and instruments, however named or described, issued by corporations, trusts, associations or any other Persons, domestic or foreign, or issued or guaranteed by the United States of America or any agency or instrumentality thereof, by the government of any foreign country, by any State, territory or possession of the United States, by any political subdivision or agency or instrumentality of any State or foreign country, or by any other government or other governmental or quasi-governmental agency or instrumentality, domestic or foreign; to acquire and dispose of interests in domestic or foreign loans made by banks and other

financial institutions; to deposit any assets of the Trust in any bank, trust company or banking institution or retain any such assets in domestic or foreign cash or currency; to purchase and sell gold and silver bullion, precious or strategic metals, coins and currency of all countries; to engage in “when issued” and delayed delivery transactions; to enter into repurchase agreements, reverse repurchase agreements and firm commitment agreements; to employ all types and kinds of hedging techniques and investment management strategies; and to change the investments of the Trust.

(c) To acquire (by purchase, subscription or otherwise), to hold, to trade in and deal in, to acquire any rights or options to purchase or sell, to sell or otherwise dispose of, to lend and to pledge any Trust Property or any of the foregoing securities, instruments or investments; to purchase and sell (or write) options on securities, currency, precious metals and other commodities, indices, futures contracts and other financial instruments and assets and enter into closing and other transactions in connection therewith; to enter into all types of commodities contracts, including without limitation the purchase and sale of futures contracts on securities, currency, precious metals and other commodities, indices and other financial instruments and assets; to enter into forward foreign currency exchange contracts and other foreign exchange and currency transactions of all types and kinds; to enter into interest rate, currency and other swap transactions; and to engage in all types and kinds of hedging and risk management transactions.

(d) To exercise all rights, powers and privileges of ownership or interest in all securities and other assets included in the Trust Property, including without limitation the right to vote thereon and otherwise act with respect thereto; and to do all acts and things for the preservation, protection, improvement and enhancement in value of all such securities and assets, and to issue general unsecured or other obligations of the Trust, and enter into indenture agreements relating thereto.

(e) To acquire (by purchase, lease or otherwise) and to hold, use, maintain, lease, develop and dispose of (by sale or otherwise) any type or kind of property, real or personal, including domestic or foreign currency, and any right or interest therein.

(f) To borrow money and in this connection issue notes, commercial paper or other evidence of indebtedness; to secure borrowings by mortgaging, pledging or otherwise subjecting as security all or any part of the Trust Property; to endorse, guarantee, or undertake the performance of any obligation or engagement of any other Person; and to lend all or any part of the Trust Property to other Persons.

(g) To aid, support or assist by further investment or other action any Person, any obligation of or interest in which is included in the Trust Property or in the affairs of which the Trust has any direct or indirect interest; to do all acts and things designed to protect, preserve, improve or enhance the value of such obligation or interest; and to guarantee or become surety on any or all of the contracts, securities and other obligations of any such Person.

(h) To carry on any other business in connection with or incidental to any of the foregoing powers referred to in this Declaration, to do everything necessary, appropriate or desirable for the accomplishment of any purpose or the attainment of any object or the furtherance of any power referred to in this Declaration, either alone or in association with

others, and to do every other act or thing incidental or appurtenant to or arising out of or connected with such business or purposes, objects or powers.

The foregoing clauses shall be construed both as objects and powers, and shall not be held to limit or restrict in any manner the general and plenary powers of the Trustees.

Notwithstanding any other provision herein, the Trustees shall have full power in their discretion, without any requirement of approval by Holders, to invest part or all of the Trust Property, or to dispose of part or all of the Trust Property and invest the proceeds of such disposition, in securities issued by one or more other investment companies registered under the 1940 Act. Any such other investment company may (but need not) be a trust (formed under the laws of the Commonwealth of Massachusetts or of any other state) which is classified as a partnership for federal income tax purposes.

3.3. Legal Title. Legal title to all Trust Property shall be vested in the Trustees as joint tenants except that the Trustees shall have the power to cause legal title to any Trust Property to be held by or in the name of one or more of the Trustees, or in the name of the Trust, or in the name or nominee name of any other Person on behalf of the Trust, on such terms as the Trustees may determine.

The right, title and interest of the Trustees in the Trust Property shall vest automatically in each individual who may hereafter become a Trustee upon his election or appointment and qualification. Upon the resignation, removal or death of a Trustee, such resigning, removed or deceased Trustee shall automatically cease to have any right, title or interest in any Trust Property, and the right, title and interest of such resigning, removed or deceased Trustee in the Trust Property shall vest automatically in the remaining Trustees. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

3.4. Sale of Shares. The Trustees, in their discretion, may, from time to time, without a vote of the Holders, permit any Institutional Investor to purchase a Share or increase its Share, for such type of consideration, including cash or property, at such time or times (including, without limitation, each business day), and on such terms as the Trustees may deem best, and may in such manner acquire other assets (including the acquisition of assets subject to, and in connection with the assumption of, liabilities) and businesses. A Holder that has completely redeemed its Share may not be permitted to purchase a new Share until the later of 60 calendar days after the date of such complete Redemption or the first day of the Fiscal Year next succeeding the Fiscal Year during which such complete Redemption occurred.

3.5. Redemptions of Shares. Subject to Article VII hereof, the Trustees, in their discretion, may, from time to time, without a vote of the Holders, permit a Holder to redeem all of its Share, or or a portion of its Share, for either cash or property, at such time or times (including, without limitation, each business day), and on such terms as the Trustees may deem best.

3.6. Borrow Money. The Trustees shall have power to borrow money or otherwise obtain credit and to secure the same by mortgaging, pledging or otherwise subjecting as security the assets of the Trust, including the lending of portfolio securities, and to endorse,

guarantee, or undertake the performance of any obligation, contract or engagement of any other Person.

3.7. Delegation; Committees. The Trustees shall have power, consistent with their continuing exclusive and absolute control over the Trust Property and over the business of the Trust, to delegate from time to time to such of their number or to officers, employees, agents or independent contractors of the Trust the doing of such things and the execution of such instruments in either the name of the Trust or the names of the Trustees or otherwise as the Trustees may deem expedient.

3.8. Collection and Payment. The Trustees shall have power to collect all property due to the Trust; and to pay all claims, including taxes, against the Trust Property; to prosecute, defend, compromise or abandon any claims relating to the Trust or the Trust Property; to foreclose any security interest securing any obligation, by virtue of which any property is owed to the Trust; and to enter into releases, agreements and other instruments.

3.9. Expenses. The Trustees shall have power to incur and pay any expenses which in the opinion of the Trustees are necessary or incidental to carry out any of the purposes of this Declaration, and to pay reasonable compensation from the Trust Property to themselves as Trustees. The Trustees shall fix the compensation of all officers, employees and Trustees. The Trustees may pay themselves such compensation for special services, including legal and brokerage services, as they in good faith may deem reasonable, and reimbursement for expenses reasonably incurred by themselves on behalf of the Trust.

3.10. Miscellaneous Powers. The Trustees shall have power to: (a) employ or contract with such Persons as the Trustees may deem appropriate for the transaction of the business of the Trust and terminate such employees or contractual relationships as they consider appropriate; (b) enter into joint ventures, partnerships and any other combinations or associations; (c) purchase, and pay for out of Trust Property, insurance policies insuring the Investment Adviser, Administrator, placement agent, Holders, Trustees, officers, employees, agents or independent contractors of the Trust against all claims arising by reason of holding any such position or by reason of any action taken or omitted by any such Person in such capacity, whether or not the Trust would have the power to indemnify such Person against such liability; (d) establish pension, profit-sharing and other retirement, incentive and benefit plans for the Trustees, officers, employees or agents of the Trust; (e) make donations, irrespective of benefit to the Trust, for charitable, religious, educational, scientific, civic or similar purposes; (f) to the extent permitted by law, indemnify any Person with whom the Trust has dealings, including the Investment Adviser, Administrator, placement agent, Holders, Trustees, officers, employees, agents or independent contractors of the Trust, to such extent as the Trustees shall determine; (g) guarantee indebtedness or contractual obligations of others; (h) determine and change the Fiscal Year and the method by which the accounts of the Trust shall be kept; and (i) adopt a seal for the Trust, but the absence of such a seal shall not impair the validity of any instrument executed on behalf of the Trust.

3.11. Further Powers. The Trustees shall have power to conduct the business of the Trust and carry on its operations in any and all of its branches and maintain offices, whether within or without the Commonwealth of Massachusetts, in any and all states of the United States of America, in the District of Columbia, and in any and all commonwealths, territories, dependencies, colonies, possessions, agencies or instrumentalities of the United States of

America and of foreign governments, and to do all such other things and execute all such instruments as they deem necessary, proper, appropriate or desirable in order to promote the interests of the Trust although such things are not herein specifically mentioned. Any determination as to what is in the interests of the Trust which is made by the Trustees in good faith shall be conclusive. In construing the provisions of this Declaration, the presumption shall be in favor of a grant of power to the Trustees. The Trustees shall not be required to obtain any court order in order to deal with Trust Property.

3.12. Litigation. The Trustees shall have full power and authority, in the name and on behalf of the Trust, to engage in and to prosecute, defend, compromise, settle, abandon, or adjust by arbitration or otherwise, any actions, suits, proceedings, disputes, claims and demands relating to the Trust, and out of the assets of the Trust to pay or to satisfy any liabilities, losses, debts, claims or expenses (including without limitation attorneys' fees) incurred in connection therewith, including those of litigation, and such power shall include without limitation the power of the Trustees or any committee thereof, in the exercise of their or its good faith business judgment, to dismiss or terminate any action, suit, proceeding, dispute, claim or demand, derivative or otherwise, brought by any Person, including a Holder in its own name or in the name of the Trust, whether or not the Trust or any of the Trustees may be named individually therein or the subject matter arises by reason of business for or on behalf of the Trust.

ARTICLE IV

Investment Advisory, Administration and Placement Agent Arrangements

4.1. Investment Advisory, Administration and Other Arrangements. The Trustees may in their discretion, from time to time, enter into investment advisory contracts, administration contracts or placement agent agreements whereby the other party to such contract or agreement shall undertake to furnish the Trustees such investment advisory, administration, placement agent and/or other services as the Trustees shall, from time to time, consider appropriate or desirable and all upon such terms and conditions as the Trustees may in their sole discretion determine. Notwithstanding any provision of this Declaration, the Trustees may authorize any Investment Adviser (subject to such general or specific instructions as the Trustees may, from time to time, adopt) to effect purchases, sales, loans or exchanges of Trust Property on behalf of the Trustees or may authorize any officer, employee or Trustee to effect such purchases, sales, loans or exchanges pursuant to recommendations of any such Investment Adviser (all without any further action by the Trustees). Any such purchase, sale, loan or exchange shall be deemed to have been authorized by the Trustees.

4.2. Parties to Contract. Any contract of the character described in Section 4.1 hereof or in the By-Laws of the Trust may be entered into with any corporation, firm, trust or association, although one or more of the Trustees or officers of the Trust may be an officer, director, Trustee, shareholder or member of such other party to the contract, and no such contract shall be invalidated or rendered voidable by reason of the existence of any such relationship, nor shall any individual holding such relationship be liable merely by reason of such relationship for any loss or expense to the Trust under or by reason of any such contract or accountable for any profit realized directly or indirectly therefrom, provided that the contract when entered into was reasonable and fair and not inconsistent with the provisions of this

Article IV or the By-Laws of the Trust. The same Person may be the other party to one or more contracts entered into pursuant to Section 4.1 hereof or the By-Laws of the Trust, and any individual may be financially interested or otherwise affiliated with Persons who are parties to any or all of the contracts mentioned in this Section 4.2 or in the By-Laws of the Trust.

ARTICLE V

Limitations of Liability of Holders, Trustees and Others

5.1. No Personal Liability of Holders, Trustees, Officers and Employees. No Holder shall be subject to any personal liability whatsoever to any Person in connection with Trust Property or the acts, obligations or affairs of the Trust. All Persons dealing or contracting with the Trustees as such or with the Trust shall have recourse only to the Trust for the payment of their claims or for the payment or satisfaction of claims, obligations or liabilities arising out of such dealings or contracts. No Trustee, officer or employee of the Trust, whether past, present or future, shall be subject to any personal liability whatsoever to any such Person, and all such Persons shall look solely to the Trust Property, for satisfaction of claims of any nature arising in connection with the affairs of the Trust. If any Holder, Trustee, officer or employee, as such, of the Trust, is made a party to any suit or proceeding to enforce any such liability of the Trust, he shall not, on account thereof, be held to any personal liability.

5.2. Trustee's Good Faith Action; Advice of Others; No Bond or Surety. The exercise by the Trustees of their powers and discretions hereunder shall be binding upon everyone interested. A Trustee shall not be liable for errors of judgment or mistakes of fact or law. The Trustees shall not be responsible or liable in any event for any neglect or wrongdoing of them or any officer, agent, employee, consultant, investment adviser or other adviser, administrator, distributor or principal underwriter, custodian or transfer, dividend disbursing, shareholder servicing or accounting agent of the Trust, nor shall any Trustee be responsible for the act or omission of any other Trustee. The Trustees may take advice of counsel or other experts with respect to the meaning and operation of this Declaration and their duties as Trustees, and shall be under no liability for any act or omission in accordance with such advice or for failing to follow such advice. In discharging their duties, the Trustees, when acting in good faith, shall be entitled to rely upon the records, books and accounts of the Trust and upon reports made to the Trustees by any officer, employee, agent, consultant, accountant, attorney, investment adviser or other adviser, principal underwriter, expert, professional firm or independent contractor. The Trustees as such shall not be required to give any bond or surety or any other security for the performance of their duties. No provision of this Declaration shall protect any Trustee or officer of the Trust against any liability to the Trust of its Holders to which he would otherwise be subject by reason of his own willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office.

5.3. Indemnification. The Trustees may provide, whether in the By-Laws or by contract, vote or other action, for the indemnification by the Trust of the Holders, Trustees, officers and employees of the Trust and of such other Persons as the Trustees in the exercise of their discretion may deem appropriate or desirable. Any such indemnification may be mandatory or permissive, and may be insured against by policies maintained by the Trust.

5.4. No Duty of Investigation. No purchaser, lender or other Person dealing with the Trustees or any officer, employee or agent of the Trust shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trustees or by said officer, employee or agent or be liable for the application of money or property paid, loaned, or delivered to or on the order of the Trustees or of said officer, employee or agent. Every obligation, contract, instrument, certificate, Share, other security or undertaking of the Trust, and every other act or thing whatsoever executed in connection with the Trust shall be conclusively presumed to have been executed or done by the executors thereof only in their capacity as Trustees under this Declaration or in their capacity as officers, employees or agents of the Trust. Every written obligation, contract, instrument, certificate, Share, other security or undertaking of the Trust made or issued by the Trustees may recite that the same is executed or made by them not individually, but as Trustees under the Declaration, and that the obligations of the Trust under any such instrument are not binding upon any of the Trustees or Holders individually, but bind only the Trust Property, and may contain any further recital which they may deem appropriate, but the omission of any such recital shall not operate to bind the Trustees or Holders individually.

5.5. Reliance on Records and Experts. Each Trustee, officer or employee of the Trust shall, in the performance of his duties, be fully and completely justified and protected with regard to any act or any failure to act resulting from reliance in good faith upon the records, books and accounts of the Trust, upon an opinion or other advice of legal counsel, or upon reports made or advice given to the Trust by any Trustee or any of its officers employees or by the Investment Adviser, Administrator, accountants, appraisers or other experts, advisers, consultants or professionals selected with reasonable care by the Trustees or officers of the Trust, regardless of whether the person rendering such report or advice may also be a Trustee, officer or employee of the Trust.

ARTICLE VI

Shares of Beneficial Interest

6.1. Beneficial Interest. The interest of the beneficiaries of the Trust initially shall be divided into transferable Shares of beneficial interest without par value.

6.2. Rights of Holders. The ownership of the Trust property of every description and the right to conduct any business of the Trust are vested exclusively in the Trustees, and the Holders shall have no interest therein other than the beneficial interest conferred by their Shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests of the Trust nor can they be called upon to share or assume any losses of the Trust or suffer an assessment of any kind by virtue of their ownership of Shares. The Shares shall be personal property giving only the rights specifically set forth in this Declaration. The Shares shall not entitle the holder to preference, preemptive, appraisal, conversion or exchange rights.

Every Holder by virtue of having become a Holder shall be held to have expressly assented and agreed to the terms of this Declaration and the Bylaws and to have become a party hereto and thereto.

6.3. Trust Only. It is the intention of the Trustees to create only the relationship of Trustee and beneficiary between the Trustees and each Holder from time to time. It is not the intention of the Trustees to create a general partnership, limited partnership, joint stock association, corporation, bailment or any form of legal relationship other than a Massachusetts business trust. Nothing in this Declaration shall be construed to make the Holders, either by themselves or with the Trustees, partners or members of a joint stock association.

6.4. Issuance of Shares. The Trustees in their discretion may, from time to time and without any authorization or vote of the Holders, issue Shares in addition to the then issued and outstanding Shares, to such party or parties and for such amount and type of consideration, including cash or property, a such time or times and on such terms as the Trustees may deem appropriate or desirable, and may in such manner acquire other assets (including the acquisition of assets subject to, and in connection with the assumption of, liabilities) and businesses. The Trustees may authorize the issuance of certificates of beneficial interest to evidence the ownership of Shares.

6.5. Register of Interests. A register shall be kept at the Trust under the direction of the Trustees which shall contain the name, address and Book Capital Account balance of each Holder. Such register shall be conclusive as to the identity of the Holders, and the Trust shall not be bound to recognize any equitable or legal claim to or interest in Shares which is not contained in such register. No Holder shall be entitled to receive payment of any distribution, nor to have notice given to it as herein provided, until it has given its address to such officer or agent of the Trust as is keeping such register for entry thereon. No certificates certifying the ownership of Shares shall be issued except as the Trustees may otherwise determine from time to time. The Trustees may make such rules as they consider appropriate for the issuance of Share certificates, the transfer of Shares and similar matters. The Trustees may at any time discontinue the issuance of Share certificates and may, by written notice to each Holder, require the surrender of Share certificates to the Trust for cancellation. Such surrender and cancellation shall not affect the ownership of Shares in the Trust.

6.6. Total Number of Holders. Notwithstanding anything in this Declaration to the contrary, the total number of Holders (as determined under Treasury Regulations Section 1.7704-1(h)(3)) shall not exceed 100, unless the Trust shall have obtained a ruling from the U.S. Internal Revenue Service to the effect that the admission of additional Holders would not cause the Trust to be considered a "publicly traded partnership" within the meaning of Section 7704 of the Code. In determining the number of Holders for purposes of this limitation, each person owning a Trust Share through an entity that would be treated as a partnership, grantor trust, or S corporation for U.S. federal income tax purposes shall be counted as a Holder if substantially all of such entity's assets consist of direct or indirect ownership of a Trust Share.

ARTICLE VII

Purchases, Increases and Redemptions of Shares

Subject to applicable law, to the provisions of this Declaration and to such restrictions as may from time to time be adopted by the Trustees, each Holder shall have the right to vary its investment in the Trust at any time without limitation by increasing its Share or redeeming its

Share in whole or in part. An increase by a Holder of its Share in the Trust shall be reflected as an increase in the Book Capital Account balance of that Holder and a partial or complete Redemption of the Share of a Holder shall be reflected as a decrease in the Book Capital Account balance of that Holder. The Trust shall, upon appropriate and adequate notice from any Holder permit the purchase, increase or Redemption, in whole or in part, of such Holder's Share for an amount determined by the application of a formula adopted for such purpose by resolution of the Trustees; provided that (a) the amount received by the Holder upon any such Redemption shall not exceed the decrease in the Holder's Book Capital Account balance effected by such Redemption of its Share and (b) if so authorized by the Trustees, the Trust may, at any time and from time to time, charge fees for effecting any such Redemption, at such rates as the Trustees may establish, and may, at any time and from time to time, suspend such right of Redemption. The procedures for effecting Redemptions shall be as determined by the Trustees from time to time.

ARTICLE VIII

Determination of Book Capital Account Balances and Distributions

8.1. Book Capital Account Balances. The Book Capital Account balance of each Holder shall be determined on such days and at such time or times as the Trustees may determine. The Trustees shall adopt resolutions setting forth the method of determining the Book Capital Account balance of each Holder. The power and duty to make calculations pursuant to such resolutions may be delegated by the Trustees to the Investment Adviser, Administrator, custodian, or such other Person as the Trustees may determine. Upon the complete Redemption of a Holder's Share, the Holder of that Interest shall be entitled to receive the balance of its Book Capital Account. A Holder may not transfer, sell or exchange its Book Capital Account balance.

8.2. Allocations and Distributions to Holders. The Trustees shall, in compliance with the Code, the 1940 Act and generally accepted accounting principles, establish the procedures by which the Trust shall make (i) the allocation of unrealized gains and losses, taxable income and tax loss, and profit and loss, or any item or items thereof, to each Holder, (ii) the payment of distributions, if any, to Holders, and (iii) upon liquidation, the final distribution of items of taxable income and expense. Such procedures shall be set forth in writing and be furnished to the Trust's accountants. The Trustees may amend the procedures adopted pursuant to this Section 8.2 from time to time. The Trustees may retain from the net profits such amount as they may deem necessary to pay the liabilities and expenses of the Trust, to meet obligations of the Trust, and as they may deem desirable to use in the conduct of the affairs of the Trust or to retain for future requirements or extensions of the business.

8.3. Power to Modify Foregoing Procedures. Notwithstanding any of the foregoing provisions of this Article VIII, the Trustees may prescribe, in their absolute discretion, such other bases and times for determining the net income of the Trust, the allocation of income of the Trust, the Book Capital Account balance of each Holder, or the payment of distributions to the Holders as they may deem necessary or desirable to enable the Trust to comply with any provision of the 1940 Act or any order of exemption issued by the Commission or with the Code.

8.4. Signature on Returns; Tax Matters Partner

- (a) Eaton Vance Management shall sign on behalf of the Trust the tax returns of the Trust, unless applicable law requires a Holder to sign such documents, in which case such documents shall be signed by Eaton Vance Management.
- (b) Eaton Vance Management shall be designated the “tax matters partner” of the Trust pursuant to Section 6231(a)(7)(A) of the Code and applicable Treasury Regulations.

ARTICLE IX

Holdings

9.1. Rights of Holders. The ownership of the Trust Property and the right to conduct any business described herein are vested exclusively in the Trustees, and the Holders shall have no right or title therein other than the beneficial interest conferred by their Shares and they shall have no power or right to call for any partition or division of any Trust Property.

9.2. Reports. The Trustees shall cause to be prepared and furnished to each Holder, at least annually as of the end of each Fiscal Year, a report of operations containing a balance sheet and a statement of income of the Trust prepared in conformity with generally accepted accounting principles and an opinion of an independent public accountant on such financial statements. The Trustees shall, in addition, furnish to each Holder at least semi-annually interim reports of operations containing an unaudited balance sheet as of the end of such period and an unaudited statement of income for the period from the beginning of the then-current Fiscal Year to the end of such period.

9.3. Inspection of Records. The books and records of the Trust shall be open to inspection by Holders during normal business hours for any purpose not harmful to the Trust.

ARTICLE X

Duration; Termination;
Amendment; Mergers; Etc.

10.1. Duration. The Trust shall continue without limitation of time but subject to the provisions of this Article X. The death, declination, resignation, retirement, removal or incapacity of the Trustees, or any one of them, shall not operate to terminate or annul the Trust or to revoke any existing agency or delegation of authority pursuant to the terms of this Declaration or of the By-Laws.

10.2. Termination.

(a) The Trust may be terminated (i) by the affirmative vote of Holders of not less than two-thirds of all Shares at any meeting of Holders or by an instrument in writing without a meeting consented to by Holders of not less than two-thirds of all Shares, or (ii) by the approval of a majority of the Trustees then in office to be followed by written notice to the Holders. Upon any such termination,

(i) the Trust shall carry on no business except for the purpose of winding up its affairs;

(ii) the Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under this Declaration shall continue until the affairs of the Trust have been wound up, including the power to fulfill or discharge the contracts of the Trust, collect the assets of the Trust, sell, convey, assign, exchange or otherwise dispose of all or any part of the Trust Property to one or more Persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay the liabilities of the Trust, and do all other acts appropriate to liquidate the business of the Trust; provided that any sale, conveyance, assignment, exchange or other disposition of all or substantially all the Trust Property shall require approval of the principal terms of the transaction and the nature and amount of the consideration by the vote of Holders holding more than 50% of all Shares; and

(iii) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements as they deem necessary for their protection, the Trustees shall distribute the remaining Trust Property, in cash or in kind or partly each, among the Holders according to their respective rights as set forth in the procedures established pursuant to Section 8.2 hereof.

(b) Upon termination of the Trust and distribution to the Holders as herein provided, a Trustee or an officer of the Trust shall execute and file with the records of the Trust an instrument in writing setting forth the fact of such termination and distribution. Upon termination of the Trust, the Trustees shall thereupon be discharged from all further liabilities and duties hereunder, and the rights and interests of all Holders shall thereupon cease.

(c) After termination of the Trust, and distribution to the Holders as herein provided, a Trustee or an officer of the Trust shall execute and lodge among the records of the Trust and file with the Massachusetts Secretary of State an instrument and a certificate (which may be part of such instrument) in writing setting forth the fact of such termination and that it has been duly adopted by the Trustees, and the Trustees shall thereupon be discharged from all further liabilities and duties with respect to the Trust, and rights and interests of all Holders of the Trust.

10.3. Dissolution. The Trust shall be dissolved 120 days after a Holder of Share either (i) makes an assignment for the benefit of creditors, or (ii) files a voluntary petition in bankruptcy, or (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief in any bankruptcy or insolvency proceeding, or (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any bankruptcy statute or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding referred to in clauses (iii) or (iv), or (vi) seeks, consent to or acquiesces in the appointment of a trustee, receiver or liquidator of such Holder or of all or any substantial part of its properties, whichever shall first occur; provided, however, that if within such 120 days Holders (excluding the Holder with respect to which such event of dissolution has occurred) owning a majority of the Shares vote to continue the Trust, such Trust shall not dissolve and shall continue as if such event of dissolution had not occurred.

10.4. Amendment Procedure.

(a) This Declaration may be amended by the vote of Holders of more than 50% of all Shares at any meeting of Holders or by a majority of the Trustees and consented to by the Holders of more than 50% of all Shares. This Declaration may be amended by a majority of the Trustees, and without the vote or consent of Holders, for any one or more of the following purposes: (i) to change the name of the Trust, (ii) to supply any omission, or to cure, correct or supplement any ambiguous, defective or inconsistent provision hereof, (iii) to conform this Declaration to the requirements of applicable federal law or regulations or the requirements of the applicable provisions of the Code, (iv) to change the state or other jurisdiction designated herein as the state or other jurisdiction whose law shall be the governing law hereof, (v) to effect such changes herein as the Trustees find to be necessary or appropriate (A) to permit the filing of this Declaration under the law of such state or other jurisdiction applicable to trusts or voluntary associations, (B) to permit the Trust to elect to be treated as a “regulated investment company” under the applicable provisions of the Code, or (C) to permit the transfer of Shares (or to permit the transfer of any other beneficial interest in or share of the Trust, however denominated), (vi) in conjunction with any amendment contemplated by the foregoing clause (iv) or the foregoing clause (v) to make any and all such further changes or modifications to this Declaration as the Trustees find to be necessary or appropriate, and (vii) to change, modify or rescind any provision of this Declaration provided such change, modification or rescission is found by the Trustees to be necessary or appropriate and to not have a materially adverse effect on the financial interests of the Holders; provided, however, that (i) unless effected in compliance with the provisions of Section 10.4(b) hereof, no amendment otherwise authorized by this sentence may be made which would reduce the amount payable with respect to any Shares upon liquidation of the Trust and; (ii) the Trustees shall not be liable for failing to make any amendment permitted by this Section 10.4(a); and (iii) any amendment to the terms of Article II, Section 2.3 with respect to the removal of Trustees (or to this sub-clause (iii) of this proviso to Section 10.4 (a)) shall require the affirmative vote of, or a written instrument executed by, at least two-thirds of all Trustees. Once duly adopted in accordance with this Declaration, any amendment shall be effective as provided by its terms or, if there is no provision therein with respect to effectiveness, (i) upon the signing of an instrument by a majority of the Trustees then in office or (ii) upon the execution of an instrument and a certificate (which may be part of such instrument) executed by a Trustee or officer of the Trust to the effect that such amendment has been duly adopted.

(b) No amendment may be made under Section 10.4(a) hereof which would change any rights with respect to any Shares by reducing the amount payable thereon upon liquidation of the Trust, except with the vote or consent of Holders of two-thirds of all Shares.

(c) A certification in recordable form executed by a majority of the Trustees setting forth an amendment and reciting that it was duly adopted by the Holders or by the Trustees as aforesaid or a copy of the Declaration, as amended, in recordable form, and executed by a majority of the Trustees, shall be conclusive evidence of such amendment when filed with the records of the Trust.

Notwithstanding any other provision hereof, until such time as Shares are first sold, this Declaration may be terminated or amended in any respect by the affirmative vote of a majority of the Trustees at any meeting of Trustees or by an instrument executed by a majority of the Trustees.

10.5. Merger, Consolidation and Sale of Assets. The Trust may merge or consolidate with any other corporation, association, trust or other organization or may sell, lease or exchange all or substantially all of its property, including its good will, upon such terms and conditions and for such consideration when and as authorized by the Trustees and without any authorization, vote or consent of the Holders; and any such merger, consolidation, sale, lease or exchange shall be deemed for all purposes to have been accomplished under and pursuant to the statutes of the Commonwealth of Massachusetts. The Trustees may also at any time sell and convert into money all the assets of the Trust. Upon making provision for the payment of all outstanding obligations, taxes, and other liabilities, accrued or contingent, of the Trust, the Trustees shall distribute the remaining assets of such Trust among the Holders according to their respective rights. Upon completion of the distribution of the remaining proceeds or the remaining assets, the Trust shall terminate and the Trustees shall take the action provided in Section 10.2(c) hereof and they shall thereupon be discharged from all further liabilities and duties with respect to the Trust, and the rights and interests of all Holders of the Trust shall thereupon cease..

10.6. Incorporation. Upon a Majority Shares Vote, the Trustees may cause to be organized or assist in organizing a corporation or corporations under the law of any jurisdiction or a trust, partnership, association or other organization to take over the Trust Property or to carry on any business in which the Trust directly or indirectly has any interest, and to sell, convey and transfer the Trust Property to any such corporation, trust, partnership, association or other organization in exchange for the equity interests thereof or otherwise, and to lend money to, subscribe for the equity interests of, and enter into any contract with any such corporation, trust, partnership, association or other organization, or any corporation, trust, partnership, association or other organization in which the Trust holds or is about to acquire equity interests. The Trustees may also cause a merger or consolidation between the Trust or any successor thereto and any such corporation, trust, partnership, association or other organization if and to the extent permitted by law. Nothing contained herein shall be construed as requiring approval of the Holders for the Trustees to organize or assist in organizing one or more corporations, trusts, partnerships, associations or other organizations and selling, conveying or transferring a portion of the Trust Property to one or more of such organizations or entities.

ARTICLE XI

Miscellaneous

11.1. Governing Law. This Declaration is executed by the Trustees and delivered in the Commonwealth of Massachusetts with reference to the law thereof applicable to a trust of the type commonly called a “Massachusetts business trust”. The rights of all parties and the validity and construction of every provision hereof shall be subject to and construed in accordance with the laws of the Commonwealth of Massachusetts applicable to such a trust and matters not specifically covered herein or as to which an ambiguity exists shall be resolved with reference to the laws of the Commonwealth of Massachusetts.

11.2. Counterparts. This Declaration may be simultaneously executed in several counterparts, each of which shall be deemed to be an original, and such counterparts, together, shall constitute one and the same instrument, which shall be sufficiently evidenced by any one such original counterpart.

11.3. Reliance by Third Parties. Any certificate executed by an individual who, according to the records of the Trust or of any recording office in which this Declaration may be recorded, appears to be a Trustee hereunder, certifying to: (a) the number or identity of Trustees or Holders, (b) the due authorization of the execution of any instrument or writing, (c) the form of any vote passed at a meeting of Trustees or Holders, (d) the fact that the number of Trustees or Holders present at any meeting or executing any written instrument satisfies the requirements of this Declaration, (e) the form of any By-Laws adopted by or the identity of any officer elected by the Trustees, or (f) the existence of any fact or facts which in any manner relate to the affairs of the Trust, shall be conclusive evidence as to the matters so certified in favor of any Person dealing with the Trustees.

11.4. Provisions in Conflict With Law or Regulations.

(a) The provisions of this Declaration are severable, and if the Trustees shall determine, with the advice of counsel, that any of such provisions is in conflict with the 1940 Act, or with other applicable law and regulations, the conflicting provision shall be deemed never to have constituted a part of this Declaration; provided, however, that such determination shall not affect any of the remaining provisions of this Declaration or render invalid or improper any action taken or omitted prior to such determination.

(b) If any provision of this Declaration shall be held invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall attach only to such provision in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction or any other provision of this Declaration in any jurisdiction.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

Scott E. Eston

Ronald A. Pearlman

Benjamin C. Esty

Helen Frame Peters

Thomas E. Faust Jr.

Lynn A. Stout

Allen R. Freedman

Harriett Tee Taggart

William H. Park

Ralph F. Verni

The names and addresses of all the Trustees of the Trust are as follows:

Scott E. Eston
8 Shoal Hope Drive
PO Box 297
West Harwich, MA 02671

Ronald A. Pearlman
3944 Highwood Court, NW
Washington, DC 2007

Benjamin C. Esty
4 Ballard Terrace
Lexington, MA 02420

Helen Frame Peters
133 South Street
Needham, MA 02492

Thomas E. Faust Jr.
199 Winding River Road
Wellesley, MA 02482

Lynn A. Stout
10541 Strathmore Dr.
Los Angeles, CA 90024

Allen R. Freedman
535 Park Avenue
Apt. 7 A/B
New York, NY 10065

Harriett Tee Taggart
93 Larch Road
Cambridge, MA 02138

William H. Park
3 Fort Sewall Terrace
Marblehead, MA 01945

Ralph F. Verni
2 Battery Wharf - Unit 2310
Boston, MA 02109

Trust Address:
Two International Place
Boston, MA 02110

020_0488

SMID-CAP PORTFOLIO

—

AMENDED AND RESTATED
BY-LAWS

As Adopted April 23, 2012

TABLE OF CONTENTS

	<u>PAGE</u>
ARTICLE I - <u>Meetings of Holders</u>	1
Section 1.1 Meetings of Holders	1
Section 1.2 Notice of Meetings	1
Section 1.3 Record Date for Meetings, Distributions, etc.	1
Section 1.4 Proxies, etc.	2
Section 1.5 Holder Action by Written Consent	2
Section 1.6 Notices	2
ARTICLE II - <u>Officers</u>	3
Section 2.1 Officers of the Trust	3
Section 2.2 Election and Tenure	3
Section 2.3 Removal of Officers	3
Section 2.4 Bonds and Surety	3
Section 2.5 Chairman, President and Vice Presidents	3
Section 2.6 Secretary	4
Section 2.7 Treasurer	4
Section 2.8 Other Officers and Duties	4
ARTICLE III - <u>Miscellaneous</u>	5
Section 3.1 Depositories	5
Section 3.2 Signatures	5
Section 3.3 Seal	5
Section 3.4 Indemnification	5
Section 3.5 Distribution Disbursing Agents and the Like	5
	6
ARTICLE IV - <u>Regulations; Amendment of By-Laws</u>	6
Section 4.1 Regulations	6
Section 4.2 Amendment and Repeal of By-Laws	6

AMENDED AND RESTATED
BY-LAWS

OF

SMID-CAP PORTFOLIO

—

These Amended and Restated By-Laws are made and adopted pursuant to Section 2.7 of the Declaration of Trust establishing SMID-CAP PORTFOLIO (the “Trust”), dated April 23, 2012 as from time to time amended (the “Declaration”). All words and terms capitalized in these By-Laws shall have the meaning or meanings set forth for such words or terms in the Declaration.

ARTICLE I

Meetings of Holders

Section 1.1. Meetings of Holders. Meetings of Holders may be called at any time by a majority of the Trustees and shall be called upon written request of Holders holding, in the aggregate, not less than 10% of the Shares, such request specifying the purpose or purposes for which such meeting is to be called. Any such meeting shall be held within or without the Commonwealth of Massachusetts and within or without the United States of America on such day and at such time as the Trustees shall designate. Holders of one-third of the Shares, present in person or by proxy, shall constitute a quorum for the transaction of any business, except as may otherwise be required by the 1940 Act, other applicable law, the Declaration or these By-Laws. If a quorum is present at a meeting, an affirmative vote of the Holders present, in person or by proxy, holding more than 50% of the total Shares of the Holders present, either in person or by proxy, at such meeting constitutes the action of the Holders, unless a greater number of affirmative votes is required by the 1940 Act, other applicable law, the Declaration or these By-Laws. All or any one of more Holders may participate in a meeting of Holders by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting by means of such communications equipment shall constitute presence in person at such meeting. The Trustees may, but shall not be required to, call an annual meeting of Holders.

Section 1.2. Notice of Meetings. Notice of each meeting of Holders, stating the time, place and purposes of the meeting, shall be given by the Trustees by mail to each Holder, at its registered address, mailed at least 10 days and not more than 60 days before the meeting. Notice of any meeting may be waived in writing by any Holder either before or after such meeting. The attendance of a Holder at a meeting shall constitute a waiver of notice of such meeting except in the situation in which a Holder attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened. At any meeting, any business properly before the meeting may be considered whether or not stated in the notice of the meeting. Any adjourned meeting may be held as adjourned without further notice.

Section 1.3. Record Date for Meetings, Distributions, etc. For the purpose of determining the Holders who are entitled to notice of and to vote or act at any meeting, including any adjournment thereof, or to participate in any distribution, or for the purpose of any other action, the Trustees may from time to time fix a date, not more than 90 days prior to the date of any meeting of Holders or the

payment of any distribution or the taking of any other action, as the case may be, as a record date for the determination of the Persons to be treated as Holders for such purpose. If the Trustees do not, prior to any meeting of the Holders, so fix a record date, then the date of mailing notice of the meeting shall be the record date.

Section 1.4. Proxies, etc. At any meeting of Holders, any Holder entitled to vote thereat may vote by proxy, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the Secretary, or with such other officer or agent of the Trust as the Secretary may direct, for verification prior to the time at which such vote is to be taken. A proxy may be revoked by a Holder at any time before it has been exercised by placing on file with the Secretary, or with such other officer or agent of the Trust as the Secretary may direct, a later dated proxy or written revocation. Pursuant to a resolution of a majority of the Trustees, proxies may be solicited in the name of the Trust or of one or more Trustees or of one or more officers of the Trust. Only Holders on the record date shall be entitled to vote. Each such Holder shall be entitled to a vote according to its Share. When a Share is held jointly by several Persons, any one of them may vote at any meeting in person or by proxy in respect of such Share, but if more than one of them is present at such meeting in person or by proxy, and such joint owners or their proxies so present disagree as to any vote to be cast, such vote shall not be received in respect of such Share. A proxy purporting to be executed by or on behalf of a Holder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger. No proxy shall be valid after one year from the date of execution, unless a longer period is expressly stated in such proxy. The Trust may also permit a Holder to authorize and empower individuals named as proxies on any form of proxy solicited by the Trustees to vote that Holder's Share on any matter by recording his voting instructions on any recording device maintained for that purpose by the Trust or its agent, provided the Holder complies with such procedures as the Trustees may designate to be necessary or appropriate to determine the authenticity of the voting instructions so recorded; such instructions shall be deemed to constitute a written proxy signed by the Holder and delivered to the Trust and shall be deemed to be dated as of the date such instructions were transmitted, and the Holder shall be deemed to have approved and ratified all actions taken by such proxies in accordance with the voting instructions so recorded.

Section 1.5. Holder Action by Written Consent. Any action which may be taken by Holders may be taken without a meeting if Holders holding more than 50% of all Shares entitled to vote (or such larger proportion thereof as shall be required by any express provision of the Declaration) consent to the action in writing and the written consents are filed with the records of the meetings of Holders. Such consents shall be treated for all purposes as a vote taken at a meeting of Holders. Each such written consent shall be executed by or on behalf of the Holder delivering such consent and shall bear the date of such execution. No such written consent shall be effective to take the action referred to therein unless, within one year of the earliest dated consent, written consents executed by a sufficient number of Holders to take such action are filed with the records of the meetings of Holders.

Section 1.6. Notices. Any and all communications, including any and all notices to which any Holder may be entitled, shall be deemed duly served or given if mailed, postage prepaid, addressed to a Holder at its last known address as recorded on the register of the Trust.

ARTICLE II

Officers

Section 2.1. Officers of the Trust. The officers of the Trust shall consist of a President, a Secretary, a Treasurer and such other officers or assistant officers, including Vice Presidents, as may be elected by the Trustees. Any two or more of the offices may be held by the same individual. The Trustees may designate a Vice President as an Executive Vice President and may designate the order in which the other Vice Presidents may act. No officer of the Trust, including the President, need be a Trustee.

Section 2.2. Election and Tenure. At the initial organization meeting and from time to time thereafter, the Trustees shall elect the President, the Secretary, the Treasurer and such other officers as the Trustees shall deem necessary or appropriate in order to carry out the business of the Trust. Such officers shall hold office until their successors have been duly elected and qualified (except in the event of their earlier resignation or removal pursuant to Section 2.3). The Trustees may fill any vacancy in office or add any additional officer at any time.

Section 2.3. Resignation and Removal of Officers. Any officer may be removed at any time, with or without cause, by action of a majority of the Trustees. This provision shall not prevent the making of a contract of employment for a definite term with any officer and shall have no effect upon any cause of action which any officer may have as a result of removal in breach of a contract of employment. Any officer may resign at any time by notice in writing signed by such officer and delivered or mailed to the Chairman, if any, the President or the Secretary, and such resignation shall take effect immediately, or at a later date according to the terms of such notice in writing.

Section 2.4. Bonds and Surety. Any officer may be required by the Trustees to be bonded for the faithful performance of his duties in such amount and with such sureties as the Trustees may determine.

Section 2.5. Chairman, President and Vice Presidents.

a. Chairman. The Trustees may appoint from among their number a Chairman. The Chairman shall preside at meetings of the Trustees and may call meetings of the Trustees and of any committee thereof whenever he deems it necessary or desirable to do so. The Chairman may in his discretion preside at any meeting of the Holders, and may delegate such authority to another Trustee or officer of the Trust. The Chairman shall exercise and perform such additional powers and duties as from time to time may be assigned to him by the Trustees, and shall have the resources and authority appropriate to discharge the responsibilities of the office. A Trustee elected or appointed as Chairman shall not be considered an officer of the Trust by virtue of such election or appointment.

b. President and Vice Presidents. Subject to such supervisory powers, if any, as may be given by the Trustees to the Chairman, the President shall be the chief executive officer of the Trust and, subject to the control of the Trustees, shall have general supervision, direction and control of the business of the Trust and of its employees and shall exercise such general powers of management as are usually vested in the office of President of a corporation. In the event that the Chairman does not preside at a meeting of the Holders or delegate such power and authority to another Trustee or officer of the Trust, the President or his designee shall preside at such meeting.

The President shall have the power, in the name and on behalf of the Trust, to execute any and all loan documents, contracts, agreements, deeds, mortgages and other instruments in writing, and to employ and discharge employees and agents of the Trust. Unless otherwise directed by the Trustees, the President shall have full authority and power to attend, to act and to vote, on behalf of the Trust, at any meeting of any business organization in which the Trust holds an interest, or to confer such powers upon any other person, by executing any proxies duly authorizing such person. The President shall have such further authorities and duties as the Trustees shall from time to time determine. In the absence or disability of the President, the Vice Presidents in order of their rank or the Vice President designated by the Trustees, shall perform all of the duties of the President, and when so acting shall have all the powers of and be subject to all of the restrictions upon the President. Subject to the direction of the President, each Vice President shall have the power in the name and on behalf of the Trust to execute any and all loan documents, contracts, agreements, deeds, mortgages and other instruments in writing, and, in addition, shall have such other duties and powers as shall be designated from time to time by the Trustees or by the President.

Section 2.6. Secretary. The Secretary shall keep the minutes of all meetings of, and record all votes of, Holders, Trustees and the Executive Committee, if any. The results of all actions taken at a meeting of the Trustees, or by written consent of the Trustees, shall be recorded by the Secretary. The Secretary shall be custodian of the seal of the Trust, if any, and have such other authorities and duties as the Trustees shall from time to time determine.

Section 2.7. Treasurer. Except as otherwise directed by the Trustees, the Treasurer shall have the general supervision of the monies, funds, securities, notes receivable and other valuable papers and documents of the Trust, and shall have and exercise under the supervision of the Trustees and of the President all powers and duties normally incident to his office. The Treasurer may endorse for deposit or collection all notes, checks and other instruments payable to the Trust or to its order and shall deposit all funds of the Trust as may be ordered by the Trustees or the President. The Treasurer shall keep accurate account of the books of the Trust's transactions which shall be the property of the Trust, and which together with all other property of the Trust in his possession, shall be subject at all times to the inspection and control of the Trustees. Unless the Trustees shall otherwise determine, the Treasurer shall be the principal accounting officer of the Trust and shall also be the principal financial officer of the Trust. The Treasurer shall have such other duties and authorities as the Trustees shall from time to time determine. Notwithstanding anything to the contrary herein contained, the Trustees may authorize the Investment Adviser or the Administrator to maintain bank accounts and deposit and disburse funds on behalf of the Trust.

Section 2.8. Other Officers and Duties. The Trustees may elect such other officers and assistant officers as they shall from time to time determine to be necessary or desirable in order to conduct the business of the Trust. Assistant officers shall act generally in the absence of the officer whom they assist and shall assist that officer in the duties of his office. Each officer and assistant officer shall have the power in the name and on behalf of the Trust to execute any and all loan documents, contracts, agreements, deeds, mortgages and other instruments in writing. Each officer, employee and agent of the Trust shall have such other duties and authorities as may be conferred upon him by the Trustees or delegated to him by the President.

ARTICLE III

Miscellaneous

Section 3.1. Depositories. The funds of the Trust shall be deposited in such depositories as the Trustees shall designate and shall be drawn out on checks, drafts or other orders signed by such officer, officers, agent or agents (including the Investment Adviser or the Administrator) as the Trustees may from time to time authorize.

Section 3.2. Signatures. All contracts and other instruments shall be executed on behalf of the Trust by such officer, officers, agent or agents as provided in these By-Laws or as the Trustees may from time to time by resolution or through agreement provide.

Section 3.3. Seal. The Trustees may adopt a seal of the Trust which shall be in such form and shall have such inscription thereon as the Trustees may from time to time prescribe.

Section 3.4. Indemnification. Subject to the exceptions and limitations contained in this section, every person who is, or has been, a Trustee or officer of the Trust or, at the Trust's request, serves, or has served, as a director, trustee or officer of another organization in which the Trust has an interest as a shareholder, creditor or otherwise (hereinafter referred to as a "Covered Person"), shall be indemnified by the Trust to the fullest extent permitted by applicable law, as in effect from time to time ("Applicable Law"), against any and all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or settlement, or as fines and penalties, and counsel fees, incurred by or for such Covered Person in connection with the preparation for, defense or disposition of, any claim, demand, action, suit, investigation, inquiry or proceeding of any and every kind, whether actual or threatened (collectively, a "Claim"), in which such Covered Person becomes involved as a party or otherwise by virtue of being or having been a Covered Person.

No indemnification shall be provided hereunder to a Covered Person to the extent such indemnification is prohibited by Applicable Law. In no event shall the Trust be obligated to indemnify a Covered Person against liabilities to the Trust or any Holder to which such Covered Person would otherwise be subject by reason of the willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of such Covered Person's office (collectively, "Disabling Conduct").

The rights of indemnification herein provided may be insured against by policies maintained by the Trust, shall be severable, shall not affect any other rights to which any Covered Person may now or hereafter be entitled and shall inure to the benefit of the heirs, executors and administrators of such Covered Person.

To the maximum extent permitted by Applicable Law, the Trust shall make advances for the payment of expenses reasonably incurred by or for a Covered Person in connection with any Claim for which the Covered Person is entitled to indemnification by the Trust prior to final disposition thereof upon receipt of an undertaking by or on behalf of the Covered Person to repay such amount if it is ultimately determined that such Covered Person is not entitled to indemnification by the Trust.

The obligation of the Trust to indemnify a Covered Person and/or make advances for the payment of expenses incurred by or for such Covered Person under this section may be made subject to conditions and procedures as the Trustees determine are necessary or appropriate to protect the Trust from the risk that a Covered Person will ultimately be determined to be not entitled to indemnification hereunder. Except as otherwise provided in such conditions and procedures, the Covered Person shall be entitled to the benefit of a rebuttable presumption that the Covered Person has not engaged in Disabling Conduct and that the Covered Person is entitled to indemnification hereunder.

Nothing contained in this section shall affect any rights to indemnification to which any Covered Person or other person may be entitled by contract or otherwise under law or prevent the Trust from entering into any contract to provide indemnification to any Covered Person or other person. Without limiting the foregoing, the Trust may, in connection with the acquisition of assets subject to liabilities or a merger or consolidation, assume the obligation to indemnify any person including a Covered Person or otherwise contract to provide such indemnification, and such indemnification shall not be subject to the terms of this section.

Section 3.5. Distribution Disbursing Agents and the Like. The Trustees shall have the power to employ and compensate such distribution disbursing agents, warrant agents and agents for the reinvestment of distributions as they shall deem necessary or desirable. Any of such agents shall have such power and authority as is delegated to any of them by the Trustees.

ARTICLE IV

Regulations; Amendment of By-Laws

Section 4.1. Regulations. The Trustees may make such additional rules and regulations, not inconsistent with these By-Laws, as they may deem expedient concerning the sale and purchase of interests of the Trust.

Section 4.2. Amendment and Repeal of By-Laws. In accordance with Section 2.7 of the Declaration, the Trustees shall have the power to alter, amend or repeal the By-Laws or adopt new By-Laws at any time. Action by the Trustees with respect to the By-Laws shall be taken by an affirmative vote of a majority of the Trustees. The Trustees shall in no event adopt By-Laws which are in conflict with the Declaration.

The Declaration refers to the Trustees as Trustees, but not as individuals or personally; and no Trustee, officer, employee or agent of the Trust shall be held to any personal liability, nor shall resort be had to their private property for the satisfaction of any obligation or claim or otherwise in connection with the affairs of the Trust.

* * *