

EATON VANCE CORP
Form 8-K
November 03, 2008

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): October 30, 2008

EATON VANCE CORP.
(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction
of incorporation)

1-8100
(Commission File Number)

04-2718215
(IRS Employer Identification
No.)

255 State Street, Boston, Massachusetts
(Address of principal executive offices)

02109
(Zip Code)

Registrant's telephone number, including area code (617) 482-8260

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

INFORMATION INCLUDED IN THE REPORT

Item 5.02 **Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

Effective October 30, 2008, Registrant's Board of Directors and Voting Shareholders approved the 2008 Omnibus Incentive Plan, a copy of which is filed herewith as Exhibit 10.1. The 2008 Omnibus Incentive Plan provides for the grant of stock-based incentives to employees of the Company, including its Officers, as well as annual formula grants to certain members of the Company's Board of Directors who qualify as non-employee directors. This description of the 2008 Omnibus Incentive Plan is qualified in its entirety by the actual plan document, which is filed as an Exhibit to this Current Report on Form 8-K.

Item 9.01 **Financial Statements and Exhibits**

Exhibit No.

Document

10.1

Eaton Vance Corp. 2008 Omnibus Incentive Plan

Edgar Filing: EATON VANCE CORP - Form 8-K

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

EATON VANCE CORP.

(Registrant)

Date:

November 3, 2008

/s/ Robert J.

Whelan

Robert J. Whelan, Chief Financial Officer

Page 3 of 32

EXHIBIT INDEX

Each exhibit is listed in this index according to the number assigned to it in the exhibit table set forth in Item 601 of Regulation S-K. The following exhibit is filed as part of this Report:

<u>Exhibit No.</u>	<u>Description</u>
10.1	Eaton Vance Corp. 2008 Omnibus Incentive Plan

EATON VANCE

2008 OMNIBUS INCENTIVE PLAN

(Effective as of October 30, 2008)

ARTICLE I

PURPOSE

The purpose of this Plan is to enhance the profitability and value of the Company for the benefit of its stockholders by enabling the Company to offer Eligible Employees and Non-Employee Directors stock-based incentives in the Company to attract, retain and reward such individuals and strengthen the mutuality of interests between such individuals and the Company's stockholders.

The effective date of Plan is October 30, 2008, the date it was approved by the voting stockholders of the Company (Voting Stockholders).

ARTICLE II

DEFINITIONS

For purposes of this Plan, the following terms shall have the following meanings:

2.1 Award means an award under this Plan of any Stock Option, Restricted Stock or Phantom Stock. All Awards shall be confirmed by, and subject to the terms of, a written Award Agreement.

2.2 Award Agreement means a Notice and Award Agreement provided to the Participant, setting forth the terms and conditions of an Award. A Participant's acceptance (and non-revocation) of an Award hereunder will be deemed to constitute his or her acceptance of all terms of the Plan and the Award Agreement. Award Agreements for Option Awards may be also referred to herein as Option Agreements. Award Agreements for Restricted Stock Awards may be also referred to herein as Restricted Stock Agreements. Award Agreements for Phantom Stock may be also referred to as Phantom Stock Agreements.

2.3 Board means the Board of Directors of the Company.

2.4 Cause means, with respect to any employee of the Company or Subsidiary, (i) such employee's failure to perform and discharge his or her duties and responsibilities for any reason other than disability, (ii) such employee engages or has engaged in an action or course of conduct that in the reasonable judgment of the Committee (A) constitutes fraud, embezzlement or theft, (B) violates the Company's Code of Business Conduct or Code of Ethics as then in effect, (C) constitutes a crime, (D) violates any rule, regulation or law to which the Company or Subsidiary is subject, (E) is negligent, or (F) harms the Company or Subsidiary or either's reputation, (iii) such employee is sanctioned or censured by any regulatory or administrative body (including without limitation federal, foreign, state and local), or (iv) such employee fails to maintain any license or registration required for the employee to perform the functions of the

employee's position. With respect to a Participant's Termination of Directorship, cause means an act or failure to act that constitutes cause for removal of a director under the Certificate of Incorporation and By-Laws of the Company or applicable law.

2.5 Change in Control Unless otherwise determined by the Committee, a Change in Control shall be deemed to occur following any transaction if:

(a) The acquisition, other than from the Company or with the Company's interest, by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a Person) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of the combined voting power of the then outstanding Company Voting Stock; provided, that any acquisition by the Company or any of its Subsidiaries, or any employee benefit plan (or related trust) sponsored or maintained by the Company or any of its Subsidiaries shall not constitute a Change in Control.

(b) Approval by the Voting Stockholders of the Company of a reorganization, merger or consolidation (a Business Combination), in each case with respect to which all or substantially all of the individuals and entities who are the respective beneficial owners of the Company Voting Stock immediately prior to such Business Combination will not, following such Business Combination, beneficially own, directly or indirectly, more than 50% of, respectively, the then combined voting power of the then outstanding Company Voting Stock entitled to vote generally in the election of directors of the Company or other entity resulting from the Business Combination in substantially the same proportion as their ownership immediately prior to such Business Combination; or

(c) Approval by the holders of the Company Voting Stock of (i) a complete liquidation or dissolution of the Company, (ii) a sale or other disposition of all or substantially all of the assets of the Company, (iii) a sale or disposition of Eaton Vance Management (or any successor thereto) or of all or substantially all of the assets of Eaton Vance Management (or any successor thereto), or (iv) an assignment by any direct or indirect investment adviser Subsidiary of the Company of investment advisory agreements pertaining to more than 50% of the aggregate assets under management of all such Subsidiaries of the Company, in the case of (ii), (iii) or (iv) other than to a corporation or other entity with respect to which, following such sale or disposition or assignment, more than 50% of the outstanding combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors of the corporation or other entity is then owned beneficially, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the Company Voting Stock immediately prior to such sale, disposition or assignment in substantially the same proportion as their ownership of the Company Voting Stock immediately prior to such sale, disposition or assignment.

Notwithstanding the foregoing, the following events shall not cause, or be deemed to cause, and shall not constitute, or be deemed to constitute, a Change of Control:

(1) The acquisition, holding or disposition of Company Voting Stock deposited under the Voting Trust Agreement dated as of October 30, 1997, as amended, of the voting trust receipts issued therefore, any change in the persons who are voting trustees thereunder, or the acquisition, holding or disposition of Company Voting Stock deposited under any subsequent replacement voting trust agreement or of the voting trust

receipts issued therefore, or any change in the persons who are voting trustees under any such subsequent replacement voting trust agreement; provided, that any such acquisition, disposition or change shall have resulted solely by reason of the death, incapacity, retirement, resignation, election or replacement of one or more voting trustees.

(2) Any termination or expiration of a voting trust agreement under which Company Voting Securities have been deposited or the withdrawal therefrom of any Company Voting Securities deposited thereunder, if all Company Voting Securities and/or the voting trust receipts issued therefore continue to be held thereafter by the same persons in the same amounts.

(3) The approval by the holders of the Company Voting Stock of a reorganization of the Company into different operating groups, business entities or other reorganization after which the voting power of the Company is maintained as substantially the same as before the reorganization by the holders of the Company Voting Stock.

A Change in Control shall not occur for purposes of the Plan unless it constitutes a change in control for purposes of Section 409A of the Code if the Award is subject to Section 409A of the Code.

2.6 Code means the Internal Revenue Code of 1986, as amended. Any reference to any section of the Code shall also be a reference to any successor provision and any Treasury Regulation promulgated thereunder, and, in all instances, as further defined or described under any formal guidance issued by the Internal Revenue Service or United States Treasury.

2.7 Committee means the Committee the Board may appoint to administer this Plan; provided that, performance based awards of Restricted Stock may be made only by a committee or subcommittee of the Board which shall consist of two or more Non-Employee Directors, each of whom shall be to the extent required by Section 162(m) of the Code, an outside director as defined in Section 162(m) of the Code. With respect to the application of this Plan to Non-Employee Directors, the Committee shall be (i) the Board or (ii) a committee or subcommittee (which may differ from the committee or subcommittee established for the grant of Awards to employees) comprised of two or more Non-Employee directors each of whom qualify as an independent director as defined under Section 303A.02 of the NYSE Listed Company Manual. Initially, without further action of the Board, the Compensation Committee of the Board will administer the Plan. To the extent that no Committee exists that has the authority to administer this Plan, the functions of the Committee shall be exercised by the Board; provided, however, that in all cases the Board may take actions pursuant to the Plan to the extent it deems it advisable and as may be consistent with applicable law. If for any reason the appointed Committee does not meet the requirements of Rule 16b-3 or Section 162(m) of the Code, such noncompliance shall not affect the validity of Awards, grants, interpretations or other actions of the Committee.

2.8 Company Non-Voting Stock means the then outstanding shares of Company stock not entitled to vote in the election of directors.

2.9 Company Voting Stock means the then outstanding shares of the Company stock entitled to vote generally in the election of directors.

2.10 Company means Eaton Vance Corp., a Maryland corporation, and its successors by operation of law.

2.11 Covered Employee means an employee subject to the Code Section 162(m) provisions governing deductibility of certain compensation to such employees.

2.12 Detrimental Activity means: (a) the disclosure to anyone outside the Company or Subsidiaries, or the use in any manner other than in the furtherance of the Company's or its Subsidiaries' business, without written authorization from the Company, of any confidential information or proprietary information, relating to the business of the Company or its Subsidiaries that is acquired by a Participant prior to or after the Participant's Termination; (b) activity while employed or performing services that results, or if known could result, in the Participant's Termination that is classified by the Company as a termination for Cause; (c) the Participant's disparagement, or inducement of others to do so, of the Company or its Subsidiaries or their past and present officers, directors, employees, products or partners; or (d) material breach of any agreement between the Participant and the Company or a Subsidiary (including, without limitation, any employment agreement or non-competition or non-solicitation agreement). For purposes of subsections (a), (c) and (d) above, the Chief Executive Officer and the Chief Legal Officer of the Company shall each have authority to provide the Participant with written authorization to engage in the activities contemplated thereby and no other person shall have authority to provide the Participant with such authorization.

2.13 Director Option means an option granted to a Non-Employee Director in accordance with Section 9.2.

2.14 Disability means with respect to a Participant's Termination, a permanent and total disability as defined in Section 22(e)(3) of the Code. A Disability shall only be deemed to occur at the time of the determination by the Committee of the Disability. Notwithstanding the foregoing, for Awards that are subject to Section 409A of the Code, Disability shall mean that a Participant is disabled under Section 409A(a)(2)(C)(i) or (ii) of the Code.

2.15 Effective Date means October 30, 2008, the date the Voting Stockholders approved this Plan.

2.16 Eligible Employees means each employee of the Company or a Subsidiary.

2.17 Exchange Act means the Securities Exchange Act of 1934, as amended. Any references to any section of the Exchange Act shall also be a reference to any successor provision.

2.18 Fair Market Value means, unless otherwise required by any applicable provision of the Code or any regulations issued thereunder, as of any date and except as provided below, the last sales price reported for the shares of the Company on the applicable date as reported on the principal national securities exchange in the United States on which it is then traded. For purposes of the grant of any Award, the applicable date shall be the trading day on which the Award is granted. In the event that an award is granted on a day on which the applicable market is not open or after close of the applicable market, Fair Market Value shall be determined on the next day that it is open. For purposes of the exercise of any Award, the date a notice of exercise is received by the Company or, if not a day on which the applicable market is open, the next day that it is open.

2.19 Family Member means family member as defined in Section A.1.(5) of the general instructions of Form S-8, as may be amended from time to time.

2.20 Grant Date means the actual date an Award contemplated hereunder is actually made to a Participant.

2.21 Unforeseeable Emergency means a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant and determined to be an unforeseeable emergency for purposes of Section 409A of the Code.

2.22 Incentive Stock Option means any Stock Option awarded to an Eligible Employee of the Company or its Subsidiaries under this Plan intended to be and designated as an Incentive Stock Option within the meaning of Section 422 of the Code.

2.23 Non-Employee Director means a director of the Company who is not an active employee of the Company or a Subsidiary and includes a non-employee director within the meaning of Rule 16b-3.

2.24 Non-Qualified Stock Option means any Stock Option awarded under this Plan that is not an Incentive Stock Option.

2.25 Participant means an Eligible Employee or Non-Employee Director to whom an Award has been granted pursuant to this Plan.

2.26 Performance Period means the period of performance applicable to Performance Award of Restricted Stock granted under Section 7.4.

2.27 Performance Award means an Award made pursuant to Article 7.4 of this Plan of the right to receive an allocation of Company Non-Voting Stock at the end of a specified Performance Period, which the Committee shall have designated at grant as intended to provide performance-based compensation within the meaning of Code Section 162(m) or which, although not so designated, the Committee believes provides performance-based compensation as so defined and was granted to a person who is or the Committee determines is reasonably likely to become a Covered Employee.

2.28 Person means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, incorporated organization, governmental or regulatory or other entity.

2.29 Phantom Stock means a notional award made to a Non-Employee Director under Section 9.3. Each single unit of Phantom Stock is equal to the Fair Market Value of a share of Company Non-Voting Stock.

2.30 Plan means this Eaton Vance Corp. 2008 Omnibus Incentive Plan, as amended from time to time.

2.31 Qualified Member means a member of the Committee who is a Non-Employee Director and an outside director within the meaning of Treasury Regulation §1.162-27(e)(3) under Code Section 162(m).

2.32 Restricted Stock means an Award of shares of Company Non-Voting Stock under this Plan that is subject to Article VII.

2.33 Restriction Period means the period of time during which any grant or sale of Restricted Stock, or portion thereof, remains subject to a Risk of Forfeiture, as described in Article VII and any Restricted Stock Agreement.

2.34 Retirement means with respect to any employee of the Company or a Subsidiary the employee's Termination of Employment under circumstances deemed to be a retirement under the Company's or a Subsidiary's policies, practices or procedures, or that the Company's management committee or similar body considers to qualify for treatment as retirement. Retirement with respect to a member of the Board shall be determined in accordance with the Company's then current policy for members of the Board.

2.35 Risk of Forfeiture means a limitation on the right of the Participant to retain an Award of Restricted Stock, including a right in the Company to retain the shares of Company Non-Voting Stock subject to a Restricted Stock Agreement arising because of the occurrence or non-occurrence of specified events or conditions.

2.36 Rule 16b-3 means Rule 16b-3 under Section 16(b) of the Exchange Act as then in effect or any successor provision.

2.37 Section 409A of the Code means the nonqualified deferred compensation rules under Section 409A of the Code.

2.38 Securities Act means the Securities Act of 1933, as amended and all rules and regulations promulgated thereunder. Any reference to any section of the Securities Act shall also be a reference to any successor provision.

2.39 Stock Option or Option means any option to purchase shares of Company Non-Voting Stock pursuant to Article VI or Article IX, as applicable.

2.40 Subsidiary means any subsidiary entity of the Company within the meaning of Section 424(f) of the Code.

2.41 Termination means a Termination of Employment or Termination of Directorship, as applicable.

2.42 Termination of Directorship means that the Non-Employee Director has ceased to be a director of the Company.

2.43 Termination of Employment means: (a) a termination of employment (for reasons other than a military or personal leave of absence granted by the Company) of a Participant from the Company and its Subsidiaries; or (b) when an entity which is employing a Participant ceases to be a Subsidiary, unless the Participant otherwise is, or thereupon becomes, employed by the Company or a Subsidiary at the time the entity ceases to be a Subsidiary. In the event that an Eligible Employee becomes a Non-Employee Director upon the termination of his

or her employment, unless otherwise determined by the Committee, in its sole discretion, no Termination of Employment shall be deemed to occur until such time as such Eligible Employee is no longer an Eligible Employee or a Non-Employee Director. Notwithstanding the foregoing, the Committee may, in its sole discretion, otherwise define Termination of Employment in the Award Agreement or, if no rights of a Participant are reduced, may otherwise define Termination of Employment thereafter.

ARTICLE III

ADMINISTRATION

3.1 The Committee. The Plan shall be administered and interpreted by the Committee.

3.2 Grants of Awards. The Committee shall have full authority to grant, pursuant to the terms of this Plan, Awards under this Plan. In particular, the Committee's authority shall include the authority to:

- (a) select the Eligible Employees to whom Awards may from time to time be granted hereunder;
- (b) determine the number of shares of Company Non-Voting Stock to be covered by each Award granted hereunder;
- (c) determine the terms and conditions, not inconsistent with the terms of this Plan, of any Award granted hereunder (including, but not limited to, the exercise or purchase price (if any), any restriction or limitation, any vesting schedule or acceleration thereof, or any forfeiture restrictions or waiver thereof, regarding any Award and the shares of Company Non-Voting Stock relating thereto, based on such factors, if any, as the Committee shall determine, in its sole discretion);
- (d) determine whether, to what extent, and under what circumstances an Award may be settled in cash, Company Non-Voting Stock or other property;
- (e) determine whether, to what extent and under what circumstances Company Non-Voting Stock and other amounts payable with respect to an Award under this Plan shall be deferred either automatically or at the election of the Participant in any case, in a manner intended to comply with Section 409A of the Code;
- (f) determine whether a Stock Option is an Incentive Stock Option or Non-Qualified Stock Option;
- (g) prescribe the form of each Award Agreement;
- (h) determine whether to require a Participant, as a condition of the granting of any Award, to not sell or otherwise dispose of shares acquired pursuant to the exercise of an Award for a period of time as determined by the

Committee, in its sole discretion, following the date of the acquisition of such Award; and

- (i) make all other decisions regarding grants of Awards hereunder.

Other provisions of the Plan notwithstanding, the Board may perform any function of the Committee under the Plan, including for the purpose of ensuring that transactions under the Plan by Participants who are then subject to Section 16 of the Exchange Act in respect of the Company are exempt under Rule 16b-3. In any case in which the Board is performing a function of the Committee under the Plan, each reference to the Committee herein shall be deemed to refer to the Board, except where the context otherwise requires.

3.3 Manner of Exercise of Committee Authority. At any time that a member of the Committee is not a Qualified Member, any action of the Committee relating to an Award to be granted to an employee who is then subject to Section 16 of the Exchange Act in respect of the Company, or relating to a Restricted Stock Performance Award, may be taken either (i) by a subcommittee composed solely of two or more Qualified Members, or (ii) by the Committee but with each such member who is not a Qualified Member abstaining or recusing himself or herself from such action, provided that, upon such abstention or recusal, the Committee remains composed solely of two or more Qualified Members. Such action, authorized by such a subcommittee or by the Committee upon the abstention or recusal of such non-Qualified Member(s), shall be the action of the Committee for purposes of the Plan. Any action of the Committee with respect to the Plan shall be final, conclusive, and binding on all persons, including the Company, Subsidiaries, Participants, any person claiming any rights under the Plan from or through any Participant, and stockholders of the Company. The express grant of any specific power to the Committee, and the taking of any action by the Committee, shall not be construed as limiting any power or authority of the Committee. The Committee may delegate to officers or managers of the Company, including the Company's management committee, the authority, subject to such terms as the Committee shall determine, to perform administrative functions and the vesting and timing of the exercise of Awards either at the time of grant or thereafter, and such other functions as the Committee may determine, to the extent permitted under applicable law and, with respect to any Participant who is then subject to Section 16 of the Exchange Act in respect of the Company, to the extent performance of such function will not result in a subsequent transaction failing to be exempt under Rule 16b-3(d) or a performance award meeting the exception for performance compensation under Section 162(m) of the Code; provided that, in no event shall the authority to grant awards be delegated to officers or managers of the Company.

3.4 Limitation of Liability. Each member of the Committee shall be entitled in good faith to rely or act upon any report or other information furnished to him or her by any officer or other employee of the Company or any Subsidiary, the Company's independent certified public accountants, or other professional retained by the Company to assist in the administration of the Plan. No member of the Committee, nor any officer or employee of the Company acting on behalf of the Committee, shall be personally liable for any action, determination, or interpretation taken or made in good faith with respect to the Plan, and all members of the Committee and any officer or employee of the Company acting on their behalf shall, to the extent permitted by law, be fully indemnified and protected by the Company with respect to any such action, determination, or interpretation.

3.5 Decisions Final. Any decision, interpretation or other action made or taken in good faith by or at the direction of the Company, the Board, the Committee (or any of the

members thereof) or its delegees arising out of or in connection with this Plan shall be within the absolute discretion of all and each of them, as the case may be, and shall be final, binding and conclusive on the Company and all employees and Participants and their respective heirs, executors, administrators, successors and assigns.

3.6 Designation of Consultants/Liability.

- (a) The Committee may, in its sole discretion, designate employees of the Company and professional advisors to assist the Committee in the administration of this Plan.
- (b) The Committee may, in its sole discretion, employ such legal counsel, consultants and agents as it may deem desirable for the administration of this Plan and may rely upon any opinion received from any such counsel or consultant and any computation received from any such consultant or agent. Expenses incurred by the Committee or the Board in the engagement of any such counsel, consultant or agent shall be paid by the Company. The Committee, its members and any person designated pursuant to subsection (a) above shall not be liable for any action or determination made in good faith with respect to this Plan. To the maximum extent permitted by applicable law, no officer of the Company or member or former member of the Committee or of the Board shall be liable for any action or determination made in good faith with respect to this Plan or any Award granted under it.

3.7 Indemnification. To the maximum extent permitted by applicable law and the Certificate of Incorporation and By-Laws of the Company and to the extent not covered by insurance directly insuring such person, each officer or employee of the Company or any Subsidiary and member or former member of the Committee or the Board shall be indemnified and held harmless by the Company against any cost or expense (including reasonable fees of counsel reasonably acceptable to the Committee) or liability (including any sum paid in settlement of a claim with the approval of the Committee), and advanced amounts necessary to pay the foregoing at the earliest time and to the fullest extent permitted, arising out of any act or omission to act in connection with the administration of this Plan, except to the extent arising out of such officer's, employee's, member's or former member's fraud. Such indemnification shall be in addition to any rights of indemnification the officers, employees, directors or members or former officers, directors or members may have under applicable law or under the Certificate of Incorporation or By-Laws of the Company or any Subsidiary. Notwithstanding anything else herein, this indemnification will not apply to the actions or determinations made by an individual with regard to Awards granted to him or her under this Plan.

ARTICLE IV

SHARE LIMITATION

4.1 Shares. The aggregate number of shares of Company Non-Voting Stock that may be issued or used for reference purposes or with respect to which Awards may be granted under this Plan shall not exceed six (6) million (subject to any increase or decrease pursuant to Section 4.2) which may be either authorized and un-issued Company Non-Voting Stock or Company Non-Voting Stock held in or acquired for the treasury of the Company, or both.

4.2 Counting Shares; Adjustments.

- (a) **Manner of Counting Shares.** If any shares of Company Non-Voting Stock subject to an Award expire, are forfeited, canceled, exchanged, or surrendered or such Award is settled in cash or otherwise terminates without the Participant's retention of the shares of Company Non-Voting Stock covered by the Award, including (i) the number of shares of Company Non-Voting Stock withheld in payment of any tax obligation relating to the grant of such Award and (ii) the number of shares of Company Non-Voting Stock equal to the number surrendered in payment of any tax obligation relating to the lapse of the Restriction Period applicable to a Restricted Stock Award, such number of shares of Company Non-Voting Stock will again be available for Awards under the Plan. The Committee may make determinations and adopt regulations for the counting of shares of Company Non-Voting Stock relating to any Award to ensure appropriate counting, avoid double counting (in the case of a substitute Award), and provide for adjustments in any case in which the number of shares of Company Non-Voting Stock actually distributed differs from the number of shares of Company Non-Voting Stock previously counted in connection with such Award.
- (b) **Type of Shares Distributable.** Any shares of Company Non-Voting Stock delivered with respect to any Award may consist, in whole or in part, of authorized and un-issued shares of Company Non-Voting Stock or shares of Company Non-Voting Stock reacquired by the Company through purchase in the open market or in private transactions.
- (c) **Adjustments.** In the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, shares of Company Non-Voting Stock, or other property) which is unusual and non-recurring, or any recapitalization, stock split, reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase or share exchange, or other similar corporate transaction or event affects the shares, then the Committee shall make such equitable changes or adjustments as it deems appropriate and, in such manner as it may deem equitable, adjust (i) any or all of the number of shares of Company Non-Voting Stock which may be thereafter issued in connection with Awards, (ii) the number of shares of Company Non-Voting Stock issued or issuable in respect of outstanding Options or, if deemed appropriate, make provisions for

payment of cash or other property with respect to any outstanding Option,
(iii) the exercise price relating to any Option, and (iv) the number and kind

of shares of Company Non-Voting Stock set forth in Section 6.2 as the per-person limitation for any three calendar years for Option awards; provided, however, in each case that, with respect to Incentive Options, such adjustment shall be made in accordance with Section 424 of the Code, unless the Committee determines otherwise. In addition, the Committee is authorized to make adjustments in the terms and conditions of, and any criteria and performance objectives or goals included in, Awards in recognition of unusual or non-recurring events (including events described in the preceding sentence, as well as acquisitions and dispositions of assets or all or part of businesses) affecting the Company or any Subsidiary or any business unit, or the financial statements thereof, or in response to changes in applicable laws, regulations, accounting principles, tax rates and regulations, or business conditions or in view of the Committee's assessment of the business strategy of the Company, a Subsidiary, or business unit thereof, performance of comparable organizations, economic and business conditions, personal performance of a Participant, and any other circumstances deemed relevant; provided that, unless otherwise determined by the Committee, no such adjustment shall be made in respect of a Restricted Stock Performance Award if and to the extent that such adjustment would cause such Restricted Stock Performance Award to provide other than performance-based compensation within the meaning of Code Section 162(m).

ARTICLE V

ELIGIBILITY; GENERAL REQUIREMENTS FOR AWARDS

5.1 General Eligibility. All Eligible Employees and Non-Employee Directors are eligible to be granted Awards under the Plan, subject to the terms and conditions of this Plan. Except as expressly provided herein, eligibility for the grant of Awards and actual participation in this Plan shall be determined by the Committee in its sole discretion.

ARTICLE VI

STOCK OPTIONS

6.1 Options. Stock Options may be granted alone or in addition to other Awards granted under this Plan. Each Stock Option granted under this Plan shall be of one of two types: (a) an Incentive Stock Option or (b) a Non-Qualified Stock Option.

6.2 Limitation on Number of Shares to be Granted to Each Participant. Each Option Agreement shall specify the number of shares of Company Non-Voting Stock to which it pertains. No Participant may receive, during any three calendar year period, Options to purchase more than 7,200,000 shares of Company Non-Voting Stock. If any Option granted to an employee is canceled, the canceled Option continues to be counted against the maximum number of shares for which Options may be granted to that Participant under the Plan. The preceding sentence applies only to calculating the maximum number of shares of Company Non-Voting Stock available to a Participant during any three calendar year periods, and shall not apply to or affect the manner of counting shares pursuant to Section 4.2.

6.3 Grants. The Committee shall, in its sole discretion, have the authority to grant to any Eligible Employee Incentive Stock Options or Non-Qualified Stock Options. To the extent that any Stock Option does not qualify as an Incentive Stock Option (whether because of its provisions or the time or manner of its exercise or otherwise), such Stock Option or the portion thereof which does not qualify shall constitute a separate Non-Qualified Stock Option.

6.4 Terms of Options. Except as expressly provided in this Section, Options granted under this Plan shall be subject to the following terms and conditions and shall be in such form and contain such additional terms and conditions, not inconsistent with the terms of this Plan, as the Committee, in its sole discretion, shall deem desirable:

- (a) **Exercise Price.** The exercise price per share of Company Non-Voting Stock subject to a Stock Option shall be determined by the Committee at the time of grant, provided that the per share exercise price of a Stock Option shall not be less than 100% (or, in the case of an Incentive Stock Option granted to a Ten Percent Stockholder (determined in accordance with Code Section 422(b)(6)), 110%) of the Fair Market Value of the Company Non-Voting Stock at the date of grant.
- (b) **Stock Option Term.** The term of each Stock Option shall be fixed by the Committee, provided that no Stock Option shall be exercisable more than ten (10) years after the date the Option is granted; and provided further that the term of an Incentive Stock Option granted to a Ten Percent Stockholder shall not exceed five (5) years.
- (c) **Exercisability.** Stock Options shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Committee at grant. If the Committee provides, in its discretion, that any Stock Option is exercisable subject to certain limitations (including, without limitation, that such Stock Option is exercisable only in installments or within certain time periods), the Committee may waive such limitations on the exercisability at any time at, or after, grant, in whole or in part (including, without limitation, waiver of the installment exercise provisions or acceleration of the time at which such Stock Option may be exercised), based on such factors, if any, as the Committee shall determine, in its sole discretion.
- (d) **Notice of Exercise and Payment.** An Option shall be exercisable only by delivery of a written notice to the Company's Treasurer or any other officer of the Company designated by the Committee to accept such notices on its behalf, specifying the number of shares of Company Non-Voting Stock for which it is exercised. If the shares are not at that time effectively registered under the Securities Act of 1933, as amended, the Participant shall include with such notice a letter, in form and substance satisfactory to the Company, confirming that the shares are being purchased for the Participant's own account for investment and not with a view to distribution. Payment shall be made in full at the time the Option is exercised. Payment shall be made by (i) cash or check, (ii) delivery and assignment to the Company of shares of Company Non-Voting Stock having been owned by the Participant for such period as the Company's

Treasurer may determine and having a Market Value as of the date of

exercise equal to the exercise price, (iii) if approved by the Committee, delivery of the Participant's promissory note for the exercise price (but not if the Participant is a director or executive officer of the Company), or (iv) solely to the extent permitted by applicable law, if the Company Non-Voting Stock is traded on a national securities exchange or quoted on a national quotation system sponsored by the Financial Industry Regulatory Authority, and the Committee authorizes, through a procedure whereby the Participant delivers irrevocable instructions to a broker reasonably acceptable to the Committee to deliver promptly to the Company an amount equal to the purchase price, and (v) any combination of (i) (iv) above or any other means the Committee deems acceptable and that are permitted by applicable law.

- (e) Non-Transferability of Options. Except as expressly provided in an Option Agreement, no Stock Option shall be transferable by the Participant otherwise than by will or by the laws of descent and distribution, and all Stock Options shall be exercisable, during the Participant's lifetime, only by the Participant. Notwithstanding the foregoing, the Committee may determine, in its sole discretion, at the time of grant or thereafter that a Non-Qualified Stock Option that is otherwise not transferable pursuant to this Section is transferable to a Family Member in whole or in part and in such circumstances, and under such conditions, as determined by the Committee, in its sole discretion. A Non-Qualified Stock Option that is transferred to a Family Member pursuant to the preceding sentence (i) may not be subsequently transferred otherwise than by will or by the laws of descent and distribution and (ii) remains subject to the terms of this Plan and the applicable Award Agreement. Any shares of Company Non-Voting Stock acquired upon the exercise of a Non-Qualified Stock Option by a permissible transferee of a Non-Qualified Stock Option or a permissible transferee pursuant to a transfer after the exercise of the Non-Qualified Stock Option shall be subject to the terms of this Plan and the applicable Award Agreement.
- (f) No Rights to Options; No Stockholder Rights. No employee shall have any claim to be granted an Option under the Plan, and there is no obligation for uniformity of treatment of employees. No Option shall confer upon a Participant any rights as a stockholder or any claim to dividends paid with respect to any shares of Company Non-Voting Stock to which the Option relates unless and until such shares of Company Non-Voting Stock are duly issued to him or her in accordance with the terms of the Option Agreement.
- (g) Cancellation and Rescission of Options. Unless otherwise determined by the Committee at grant, each Option Agreement shall provide that a Participant engages or has engaged in Detrimental Activity after the Grant Date of any Option, all vested and unvested Options held by the Participant shall thereupon terminate and expire, and any amounts of cash, shares of Company Non-Voting Stock or other property received by the Participant upon exercise or settlement of such Option or in connection

Edgar Filing: EATON VANCE CORP - Form 8-K
with such Option shall be forfeited and returned or paid to the Company.

Page 18 of 32

- (h) Options to Participants Outside the United States. The Committee may modify the terms of any Option under the Plan granted to a Participant who is, at the time of grant or during the term of the Option, resident or primarily employed outside of the United States in any manner deemed by the Committee to be necessary or appropriate in order that such Option shall conform to laws, regulations, and customs of the country in which the Participant is then resident or primarily employed, or so that the value and other benefits of the Option to the Participant, as affected by foreign tax laws and other restrictions applicable as a result of the Participant's residence or employment abroad, shall be comparable to the value of such an Option to a Participant who is resident or primarily employed in the United States. An Option may be modified under this subsection in a manner that is inconsistent with the express terms of the Plan, so long as such modifications will not contravene any applicable law or regulation.
- (i) Termination of Options. Each Option shall terminate and may no longer be exercised in accordance with the following provisions:
- (i) if the Participant's employment shall have been terminated by his or her resignation (before Retirement) or by the Company or Subsidiary for Cause, all of the Participant's Options shall terminate immediately upon such termination and may no longer be exercised;
- (ii) if the Participant's employment shall have been terminated by the Company or Subsidiary without Cause (before his or her Retirement, Disability or death), then the Participant may at any time within a period of fifteen (15) months after such Termination exercise his or her Options to the extent that the Options were exercisable (vested) on the date of termination of employment;
- (iii) if the Participant's employment shall have been terminated because of Retirement, then the Option shall not terminate and the Participant may exercise the Option pursuant to the terms of the applicable Option Agreement; provided, however, that if such Participant without the prior written consent of the Company (A) shall become employed by or perform services for any Person or entity in a business in competition with any business of the Company or any Subsidiary, or (B) directly or indirectly solicits any then current employee of the Company or any Subsidiary for employment by a Person or entity in a business in competition with any business of the Company or any Subsidiary, or (C) directly or indirectly solicits or induces any Person for the purpose of causing any investment management client of the Company or any Subsidiary (1) to withdraw any funds for which the Company or Subsidiary provide investment management or advisory services, or (2) not to engage the Company or Subsidiary to provide investment management or advisory services for any funds, then all of the Participant's Options shall immediately terminate on the first date that any of the foregoing shall occur and may no longer be exercised;

(iv) if the Participant's employment shall have been terminated because of his or her Disability, then he or she may at any time within a

period of fifteen (15) months after such termination of employment exercise any or all of his or her Options, all of which shall be exercisable (vested) immediately on the date of Termination; and

(v) if the Participant dies at a time when he or she might have exercised an Option, then his or her estate, personal representative or beneficiary to whom it has been transferred (in accordance with the terms of this Plan) may at any time within a period of fifteen (15) months after the Participant's death exercise any or all of such Options, all of which shall be exercisable (vested) immediately at the time of death;

Provided, however, that the Committee may, at its sole discretion, provide specifically in an Option Agreement for such other period of time (shorter or longer than as set forth above) during which a Participant may exercise an Option after Termination as the Committee may approve, subject to the overriding limitation that no Option may be exercised to any extent by anyone after the date of expiration of the Option.

- (j) Unvested Stock Options. Unless otherwise determined by the Committee, or as otherwise set forth herein including without limitation at Section 6.4(i)(iii), Stock Options that are not vested (either by operation of this Plan or under an agreement or otherwise) as of the date of a Participant's Termination for any reason shall terminate and expire as of the date of such Termination.
- (k) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined as of the time of grant) of the Company Non-Voting Stock with respect to which Incentive Stock Options are exercisable for the first time by an Eligible Employee during any calendar year under this Plan and/or any other stock option plan of the Company or any Subsidiary exceeds \$100,000, such Options shall be treated as Non-Qualified Stock Options. Incentive Stock Options shall be granted to Employees only. Should any provision of this Plan not be necessary in order for the Stock Options to qualify as Incentive Stock Options, or should any additional provisions be required, the Committee may, in its sole discretion, amend this Plan accordingly, without the necessity of obtaining the approval of the Voting Stockholders of the Company.
- (l) Form, Modification, Extension and Renewal of Stock Options. Subject to the terms and conditions and within the limitations of this Plan, Stock Options shall be evidenced by such form of agreement or grant as is approved by the Committee, and the Committee may, in its sole discretion modify, extend or renew outstanding Stock Options granted under this Plan (provided that the rights of a Participant are not reduced without his or her consent and provided further that such action does not subject the Stock Option to Section 409A of the Code). Notwithstanding the foregoing, an outstanding Option may not be modified to reduce the exercise price thereof nor may a new Option at a lower price be substituted for a surrendered Option (other than adjustments or

substitutions in accordance with Section 4.2), unless such action is approved by the Voting Stockholders of the Company.

- (m) Other Terms and Conditions. Stock Options may contain such other provisions, which shall not be inconsistent with any of the terms of this Plan, as the Committee shall, in its sole discretion, deem appropriate.

ARTICLE VII

RESTRICTED STOCK

7.1 Awards of Restricted Stock. Shares of Restricted Stock may be issued either alone or in addition to other Awards granted under the Plan. The Committee shall, in its sole discretion, determine the Eligible Employees to whom, the time or times at which, and the performance conditions (if any) applicable to, grants of Restricted Stock and shall also determine the number of shares of Company Non-Voting Stock to be awarded, the price (if any) to be paid by the Participant, the time or times within which such Awards may be subject to forfeiture, the vesting schedule and rights to acceleration thereof, and all other terms and conditions of the Awards. As it deems necessary or appropriate, including to comply with Code Section 162(m), the Committee may condition receipt of the grant of Restricted Stock upon the attainment of annual performance goals, as described in Section 7.4. In addition, the Committee may condition the vesting of Restricted Stock upon the attainment of specified performance targets or such other factors as the Committee may determine, in its sole discretion, including to comply with the requirements of Section 162(m) of the Code. Unless otherwise determined by the Committee at grant, each Award of Restricted Stock shall provide that in the event the Participant engages in Detrimental Activity after the grant of Restricted Stock, all unvested and vested Restricted Stock shall be immediately forfeited to the Company and the Participant shall pay over to the Company an amount equal to the proceeds realized on the sale of any shares of Restricted Stock previously sold by the Participant.

7.2 [RESERVED]

7.3 Awards and Certificates. Participants selected to receive Restricted Stock Awards shall comply with the applicable terms and conditions of the Restricted Stock Award. Further, all Awards shall be subject to the following:

- (a) Purchase Price. The purchase price, if any, of Restricted Stock shall be fixed by the Committee. The purchase price for shares of Restricted Stock may be zero, to the extent permitted by applicable law, and, to the extent not so permitted, such purchase price may not be less than par value.
- (b) Non-Issuance of Certificates. Participants receiving an Award of Restricted Stock shall be issued neither shares of Company Non-Voting Stock nor certificate in respect of such Award. Rather, each such Award shall be recorded as a book entry in such manner as is administratively expedient and permitted by law. Notwithstanding the foregoing, if the Committee, in its sole discretion, determines to issue a Participant receiving an Award of Restricted Stock a stock certificate in respect of such shares of Restricted Stock, such certificate shall be registered in the name of such Participant, and, if applicable, shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Award substantially in the following form:

The transferability of this certificate and the shares represented by this certificate are subject to the terms and conditions (including, without limitation, the right of Eaton Vance Corp. to repurchase the shares) of the Eaton Vance Corp. 2008 Omnibus Incentive Plan and an Award Agreement entered into by the registered owner and Eaton Vance Corp. Copies of such Plan and Award Agreement are on file in the offices of Eaton Vance Corp.

In such case, the Committee may require that the stock certificates evidencing shares of Restricted Stock be held in custody by a designated escrow agent (which may but need not be the Company) until the restrictions thereon shall have lapsed, and include any restrictions or limitations that the Committee may otherwise deem necessary or appropriate.

- (c) Restrictions and Restriction Period. During the period or periods established by the Committee and set forth in the Restricted Stock Agreement, *i.e.*, the Restriction Period, each Award of Restricted Stock shall be subject to limitations on transferability and a Risk of Forfeiture (which may take the form of a right of the Company to repurchase the Restricted Stock for such consideration, if any, as the Committee shall have determined at grant) arising on the basis of such conditions related to the continuation of employment or the attainment of performance goals or otherwise as the Committee may determine. Any such Risk of Forfeiture may be waived, or the Restriction Period shortened, at any time by the Committee on such basis as it deems appropriate.
- (d) Rights Pending Lapse of Risk of Forfeiture. Except as otherwise provided in the Plan or in an Award Agreement, at all times prior to lapse of the Risk of Forfeiture applicable to, or forfeiture or repurchase of, an Award of Restricted Stock, the Participant shall have all of the rights of, and be subject to the limitations of, a non-Voting Stockholder of the Company as to such shares of Company Non-Voting Stock, including the right to receive any dividends paid with respect to the shares; provided that, no such rights of a shareholder, including rights to receive dividend payments, shall attach to Performance Awards of Restricted Stock that are granted subject to the satisfaction of performance objectives, until such time as the Restricted Stock is actually granted to the Participant after attainment of the performance objectives. The Committee, as determined at the time of an Award, may permit or require the payment of cash dividends to be deferred and, if the Committee so determines, reinvested in additional Restricted Stock to the extent shares of Company Non-Voting Stock are available under Section 4.
- (e) Effect of Termination. Unless otherwise determined by the Committee at or after grant and subject to the applicable provisions of the Restricted Stock Agreement, upon Termination with the Company and its Subsidiaries for any reason during the Restriction Period, all shares of Restricted Stock still subject to Risk of Forfeiture shall be forfeited (or

