

PATENT ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Gary L. Gastineau	11/19/2010
Todd J. Broms	11/19/2010
RECEIVING PARTY DATA	
Name:	EV ETFs LLC
Street Address:	Two International Place
City:	Boston
State/Country:	MASSACHUSETTS
Postal Code:	02110
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	12425044
CORRESPONDENCE DATA	
Fax Number:	(617)557-0077
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	617-557-2900
Email:	rsampson@sampsonlaw.com
Correspondent Name:	Richard L. Sampson
Address Line 1:	50 Congress Street
Address Line 2:	Suite 519
Address Line 4:	Boston, MASSACHUSETTS 02109
ATTORNEY DOCKET NUMBER:	1216,016
NAME OF SUBMITTER:	Richard L. Sampson

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Total Attachments: 15
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ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS

This Assignment of Intellectual Property Rights ("**Assignment Agreement**"), dated as of November 19, 2010 is by and among EV ETFs LLC, a Delaware limited liability company ("**Assignee**") and Gary L. Gastineau ("**Mr. Gastineau**") and Todd J. Broms ("**Mr. Broms**", and together with Mr. Gastineau, "**Assignors**"). Assignee and Assignors are referred to collectively herein as the "**Parties**" and each individually as a "**Party.**"

RECITALS

A. Assignors and Assignee, together with Managed ETFs LLC ("**Seller**") and Eaton Vance Management, have entered into that certain Asset Purchase Agreement (the "**Purchase Agreement**"), dated as of November 19, 2010.

B. Pursuant to the terms of the Purchase Agreement, Seller has agreed to sell, assign, transfer, convey and deliver to Assignee the Purchased Assets (as defined in the Purchase Agreement) for the consideration specified in the Purchase Agreement.

C. Pursuant to the terms of the Purchase Agreement, Assignors have agreed to execute this Assignment Agreement to give effect to the transactions contemplated by the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties made herein and of the mutual benefits to be derived herefrom the parties hereto agree as follows:

1. **Definitions.**

Capitalized terms used but not otherwise defined in this Assignment Agreement shall have the meanings set forth in the Purchase Agreement.

2. **Assignment of Intellectual Property Rights.**

For good and valuable consideration, and subject to the terms of this Assignment Agreement, the receipt of which is hereby acknowledged, Assignors and Assignee agree as follows:

(a) Assignors hereby sell, assign, transfer, convey and deliver unto Assignee, or its designees, all worldwide rights, title and interest they may have, to the extent not previously assigned to Seller, in all Seller Intellectual Property, Post-Closing Intellectual Property and any other Intellectual Property developed, derived from or invented by Assignors prior to or after (for so long as Seller or Assignors receive or are entitled to receive payments pursuant to Sections 1.4(b), (c), (d) or (e) of the Purchase Agreement or pursuant to a Consulting Agreement) the date hereof related to the business of Seller or developed by Assignors in the fields of use of (i) the structure or operation of actively managed or non-transparent ETFs or (ii) net asset value (NAV)-based or other secondary market trading that permits settlement of transactions in

financial instruments for which net asset values or other values are periodically calculated at prices contingent on a specified value calculation, including, but not limited to those described by the following specific provisions and accompanying Schedules 1-4 of this Assignment Agreement (collectively, the “Assigned Intellectual Property”).

(b) Assignors hereby sell, assign, transfer, convey and deliver unto Assignee, to the extent not previously assigned to Seller, the right to sue for enforcement or infringement of the Assigned Intellectual Property, the right to damages for past infringement or unfair competition of such Assigned Intellectual Property, the right to register, renew or otherwise apply for protection of the Assigned Intellectual Property, and the right to license, sublicense, sell and transfer or otherwise convey any of the above to others.

3. Patents.

For good and valuable consideration, the receipt of which is hereby acknowledged, Assignors do hereby sell, assign, transfer, and convey unto Assignee, or its designees, all of their right, title, and interest in and to any and all of the following, to the extent not previously assigned to Seller:

(a) the patents, patent applications, and provisional patent applications, as listed in **Schedule 1** (the “Patents”);

(b) all patents and patent applications (i) to which any of the Patents directly or indirectly claims priority, and/or (ii) for which any of the Patents directly or indirectly forms a basis for priority including the right to sue for past infringement;

(c) all reissues, reexaminations, extensions, continuations, continuations in part, continuing prosecution applications, requests for continuing examinations, divisions, registrations of any item in any of the foregoing categories (a) and (b);

(d) all foreign patents, patent applications, and counterparts relating to any item in any of the foregoing categories (a) through (c), including, without limitation, certificates of invention, utility models, industrial design protection, design patent protection, and other governmental grants or issuances;

(e) all items in any of the foregoing in categories (b) through (d), whether or not expressly listed as Patents and whether or not claims in any of the foregoing have been rejected, withdrawn, cancelled, or the like;

(f) inventions, invention disclosures, and discoveries described in any of the Patents and/or any item in the foregoing categories (b) through (e) that (i) are included in any claim in any of the Patents and/or any item in the foregoing categories (b) through (e), (ii) are subject matter capable of being reduced to a patent claim in a reissue or reexamination proceedings brought on any of the Patents and/or any item in the foregoing categories (b) through (e), and/or (iii) could have been included as a claim in any of the Patents and/or any item in the foregoing categories (b) through (e);

(g) with respect to the inventions owned by Assignors transferred pursuant to this Assignment Agreement and the Patents, all rights of priority resulting from the filing any of the Patents, all goodwill associated with the use of or symbolized by any of the Patents, and all other rights relating to any of the Patents, including common law rights, to the extent such rights exist;

(h) all rights to apply in any or all countries of the world for patents, certificates of invention, utility models, industrial design protections, design patent protections, or other governmental grants or issuances of any type related to any item in any of the foregoing categories (a) through (f), including, without limitation, under the Paris Convention for the Protection of Industrial Property, the International Patent Cooperation Treaty, or any other convention, treaty, agreement, or understanding;

(i) all causes of action (whether known or unknown or whether currently pending, filed, or otherwise) and other enforcement rights under, or on account of, any of the Patents and/or any item in any of the foregoing categories (b) through (h), including, without limitation, all causes of action and other enforcement rights for

- (i) damages,
- (ii) injunctive relief, and
- (iii) any other remedies of any kind

for past, current, and future infringement;

(j) the Supplemental Intellectual Property as defined in the Purchase Agreement;

(k) all rights to collect royalties and other payments under or on account of any of the Patents and/or any item in any of the foregoing categories (b) through (j); and

(l) all rights to inventions developed, derived from or conceived by Assignors or applications filed by Assignors prior to or after (for so long as Seller or Assignors receive or are entitled to receive payments pursuant to Sections 1.4(b), (c), (d) or (e) of the Purchase Agreement or pursuant to a Consulting Agreement) the date hereof related to the business of Seller or developed by Assignors in the fields of use of (i) the structure or operation of actively managed or non-transparent ETFs or (ii) net asset value (NAV)-based or other secondary market trading that permits settlement of transactions in financial instruments for which net asset values or other values are periodically calculated at prices contingent on a specified value calculation.

4. 





5. [Redacted]



6. [REDACTED]

7. [REDACTED]

8. Execution of Recordable Assignment.

The Parties agree this assignment shall be recordable at Assignee's sole discretion.

9. General.

(a) Interpretation. This Assignment Agreement is executed and delivered in connection with the transactions contemplated by the Purchase Agreement, and the Parties acknowledge that terms of this Assignment Agreement will be interpreted and construed in accordance with the Purchase Agreement.

(b) Governing Law. This Assignment Agreement shall be governed by, and construed in accordance with, the Laws of the Commonwealth of Massachusetts applicable to contracts executed in and to be performed in that state. All actions arising out of or relating to this Assignment Agreement (each, an "Action") shall be heard and determined exclusively in the Massachusetts District Court sitting in the City of Boston; provided, however, that if such federal court does not have jurisdiction over such Action, such Action shall be heard and determined exclusively in any Commonwealth of Massachusetts state court sitting in the City of Boston. Consistent with the preceding sentence, the Parties hereto hereby (i) submit to the exclusive jurisdiction of any federal or state court sitting in the City of Boston for the purpose of any Action brought by any Party and (ii) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such Action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the Action is brought in an inconvenient forum, that the venue of

the Action is improper, or that this Assignment Agreement may not be enforced in or by any of the above-named courts.

(c) WAIVER OF JURY TRIAL. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS ASSIGNMENT AGREEMENT.

(e) Severability. If any provision of this Assignment Agreement or the application of any such provision to any Person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the legality, validity or enforceability of any other provision hereof. If any provision of this Assignment Agreement, or the application thereof to any Person or any circumstance, is found by a court or other Governmental Authority of competent jurisdiction to be invalid or unenforceable, (i) a suitable and equitable provision will be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (ii) the remainder of this Assignment Agreement and the application of such provision to other Persons or circumstances will not be affected by such invalidity or unenforceability, nor will such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

(f) Waiver. Waiver of any term or condition of this Assignment Agreement by any Party shall be effective if in writing and shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other term of this Assignment Agreement. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(h) Amendment and Modification. This Assignment Agreement may not be amended except by an instrument or instruments in writing signed and delivered on behalf of each of the Parties hereto.

(i) Entire Agreement. This Assignment Agreement, together with the schedules thereto, the Purchase Agreement, the Schedules to the Purchase Agreement and the Ancillary Agreements, contain the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, negotiations, correspondence, undertakings and understandings, oral or written, relating to such subject matter.

(j) Counterparts; Facsimile. This Assignment Agreement may be executed in any number of counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more such counterparts have been signed by each Party and delivered to the other Party. Signatures of the Parties transmitted by facsimile or other electronic communication means shall be binding and effective for all purposes. Such Party shall subsequently deliver to the other Party an original, executed copy of this Assignment Agreement;

provided, however, that a failure to deliver such original shall not invalidate a facsimile or other electronic signature.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement as of the date first written above.

ASSIGNOR:

Gary L. Gastineau

Gary L. Gastineau
(Signature *MUST* be notarized)

STATE OF NEW JERSEY
COUNTY OF UNION) ss.

On NOV. 19, 2010, before me, BARBARA K. KEITEL
Notary Public in and for said State, personally appeared GARY L. GASTINEAU
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person whose name is subscribed to the within instrument and acknowledged to me that
he/she executed the same in his/her authorized capacity, and that by his/her signature on
the instrument the person, or the entity upon behalf of which the person acted, executed
the instrument.

WITNESS my hand and official seal.

Signature Barbara K. Keitel (Seal)

BARBARA K. KEITEL
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 9/12/2012

ASSIGNEE:

EV ETFS LLC



By: _____
Name: **Thomas E. Faust Jr.**
Title: **President**

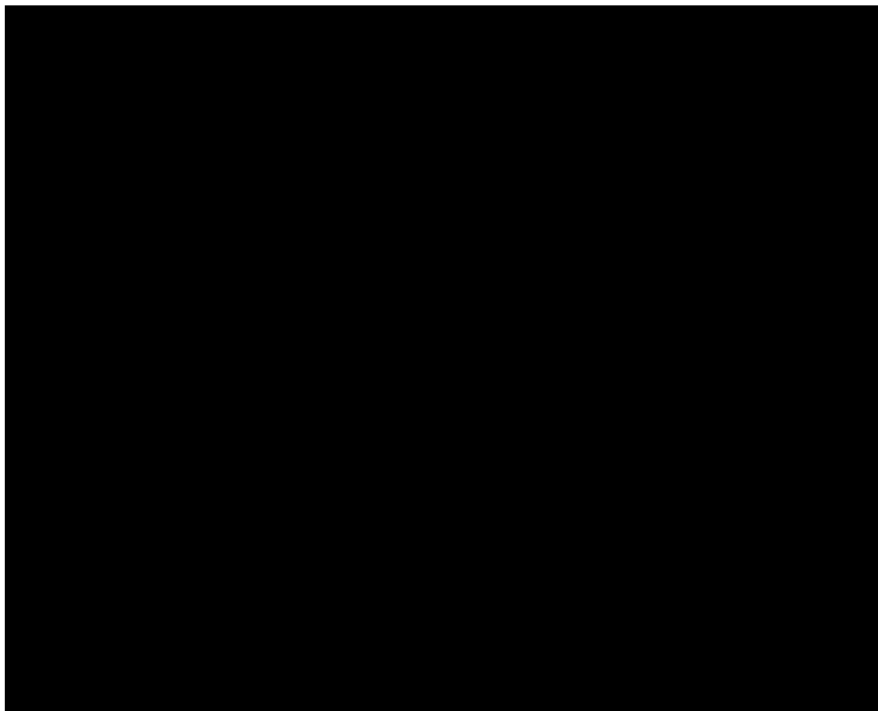
**Schedule 1
"Patents"**

<u>No.</u>	<u>Filing Date</u>	<u>Title</u>
7,689,501	03/07/2007	Methods, Systems, and Computer Program Products for Managing Multiple Investment Funds and Accounts Using a Common Investment Process
7,496,531	03/07/2007	Methods, Systems, and Computer Program Products for Trading Financial Instruments on an Exchange
7,444,300	05/31/2005	Method and System for Improved Fund Investment and Trading Processes
12/425,044	04/16/2009	Methods, Systems, and Computer Program Products for Obtaining Best Execution of Orders to Buy or Sell a Financial Instrument for Which a Net Asset Value Is Periodically Calculated
12/056,980	03/27/2008	Methods, Systems, and Computer Program Products for Providing Risk Management Information and Tools to Traders in Fund Shares
12/056,958	03/27/2008	Methods, Systems and Computer Program Products for Automated Incorporation of Traded Fund Shares in Qualified Retirement Plans
11/714,921	03/07/2007	Methods, Systems, and Computer Program Products for Trading Financial Instruments on an Exchange
61/045,683	04/17/2008	Obtaining Best Execution of Orders to Buy or Sell a Financial Instrument for Which a Net Asset Value Is Periodically Calculated
60/907,283	03/27/2007	Methods, Systems, and Computer Program Products for Providing Risk Management Information and Tools to Traders in Fund Shares
60/907,246	03/27/2007	Methods, Systems and Computer

Schedule 1
"Patents"

<u>No.</u>	<u>Filing Date</u>	<u>Title</u>
		Program Products for Automated Incorporation of Traded Fund Shares in Qualified Retirement Plans
60/779,904	03/07/2006	Method and Process for Trading Financial Instruments on an Exchange
60/779,812	03/07/2006	A Method and System for Multiple Investment Funds and Accounts Using a Common Investment Process
60/635,670	12/13/2004	Method and System for Improved Investment and Trading Fund

Schedule 2



Schedule 3



Schedule 4

