

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 60059 / June 8, 2009**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2888 / June 8, 2009**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 28759 / June 8, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13507**

<p><b>In the Matter of</b></p> <p><b>EVERGREEN INVESTMENT MANAGEMENT COMPANY, LLC and EVERGREEN INVESTMENT SERVICES, INC.,</b></p> <p><b>Respondents.</b></p>	<p><b>ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b)(4) and 21C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(e) and 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTIONS 9(b) and 9(f) OF THE INVESTMENT COMPANY ACT OF 1940, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER</b></p>
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**I.**

The United States Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against Evergreen Investment Management Company, LLC and Evergreen Investment Services, Inc. (collectively, "Respondents").

**II.**

In anticipation of the institution of these proceedings, the Respondents have submitted an Offer of Settlement (the "Offer") that the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of

the Commission or in which the Commission is a party, and without admitting or denying the findings, except those findings pertaining to the jurisdiction of the Commission over Respondents and the subject matter of these proceedings, which are admitted, the Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") as set forth below. The Order is instituted as to Evergreen Investment Management Company, LLC pursuant to Sections 203(e) and 203(k) of the Advisers Act and Sections 9(b) and 9(f) of the Investment Company Act. The Order is instituted as to Evergreen Investment Services, Inc. pursuant to Section 15(b)(4) and 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. The Evergreen Ultra Short Opportunities Fund (the "Ultra Fund" or the "Fund") was a mutual fund that invested primarily in mortgage-backed securities. The Fund's investment adviser was Evergreen Investment Management Company, LLC (the "Evergreen Adviser"). From February 2007 through its closing on June 18, 2008, the Ultra Fund overstated its per share net asset value ("NAV") by as much as 17%. The Fund's NAV was overstated because the Evergreen Adviser, through the Fund's portfolio management team, did not properly take into account various readily-available information when recommending valuations to the Evergreen Valuation Committee (whose responsibility it was to value such securities) for certain residential mortgage-backed securities held by the Fund. For example, beginning at least in February 2007, the media widely reported that a benchmark asset-backed derivative index had substantially weakened, with the portion of the index based on subprime mortgages hitting record levels. This was a significant change in the market for securities held by the Ultra Fund, yet the Evergreen Adviser did not take this change into account when valuing mortgage-backed securities. Moreover, at certain times, the Fund's portfolio management team withheld relevant negative information about certain residential mortgage-backed securities the Fund held from the Evergreen Valuation Committee. As a result, certain shareholders redeemed their shares at prices higher than they should have received – to the detriment of remaining shareholders – and certain shareholders purchased shares at higher prices than they should have paid. Moreover, due to its overstated NAV, the Ultra Fund appeared to be performing better than it actually was from February 2007 to June 2008 as compared to similar mutual funds. In terms of performance, the Ultra Fund was consistently ranked as one of the top five to ten funds of the 40-50 funds in its category during this period. If the Ultra Fund's NAV had been accurately reported, its performance would have ranked at or near the bottom of its fund category. Consequently, by causing the Ultra Fund to overstate

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<sup>1</sup> The findings herein are made pursuant to the Respondents' Offer and are not binding on any other person or entity in this or any other proceeding.

its NAV from February 2007 to June 2008, the Evergreen Adviser denied the investors who owned Ultra Fund shares during this period and those investors considering purchasing Fund shares the opportunity to consider accurate information about the Fund's performance when deciding whether to retain, redeem, or purchase those shares.

2. The Ultra Fund's Board of Trustees decided to liquidate the Fund in June 2008 after a three-week period during which the Ultra Fund reduced the prices at which it valued numerous securities it held. Many of these re-pricings resulted not from market-related events but rather from a change in the way the Ultra Fund valued the securities it held. The re-pricings had a substantial negative impact on the Ultra Fund's reported NAV, causing the Fund's reported NAV to decline from \$9.20 per share on May 23, 2008, to \$7.48 per share on June 18, 2008, the date the Fund's board decided to liquidate the Fund (the "liquidation date"). After substantial reductions in the Fund's NAV on June 10 and 11, 2008, the Evergreen Adviser and its affiliated broker-dealer, Evergreen Investment Services, Inc. (the "Evergreen Distributor"), disclosed to select Ultra Fund shareholders or their financial intermediaries that the decreased NAV was the result of the re-pricings and that the re-pricings may continue. More specifically, the Evergreen Adviser provided information concerning the re-pricings to one of its clients, which promptly sold its position in the Ultra Fund. In addition, the Evergreen Distributor, with the knowledge of the Evergreen Adviser, directed its wholesalers to provide the information concerning the re-pricings that it had obtained from the Evergreen Adviser to: (a) those shareholders, registered representatives and broker-dealers who made incoming calls to the Evergreen Distributor about the recent decreases in the NAV; and (b) each registered representative of another broker-dealer affiliated with the Evergreen Adviser and the Evergreen Distributor who had customers who had invested in the Fund. The Evergreen Distributor also directed its wholesalers to provide this information to the representatives of certain other financial services providers. By limiting the dissemination of this important information, Respondents improperly gave some Ultra Fund shareholders, including customers of one of their own affiliates, an unfair advantage over other shareholders of the Fund. The shareholders who were provided the material nonpublic information were then able to use it in deciding whether to redeem their shares before further potential re-pricings of the securities held by the Fund. In fact, many of the shareholders who received this information then redeemed their shares in the Ultra Fund prior to the liquidation date – and at a higher price than those shareholders who held their shares in the Fund until the liquidation date. At no point during the three week period leading up to the liquidation date did the Respondents disseminate any press release or statement conveying this material, nonpublic information to the general investing public in a manner designed to reach all Ultra Fund shareholders and prospective shareholders. The significant decline in the Ultra Fund's NAV resulting from the re-pricing of securities, combined with the large number of redemption requests that could force the Fund to sell its illiquid securities, ultimately led the Fund's Board of Trustees to decide to liquidate the Fund and make a liquidating distribution to shareholders on June 18.

3. In addition, from as early as January 2008, the Evergreen Adviser caused the Fund to engage in prohibited securities transactions with other mutual funds in the Evergreen family of mutual funds. Finally, the Evergreen Distributor failed to preserve certain business-related electronic communications as required by federal securities laws and in violation of a Commission Order entered against it on September 19, 2007, in a separate enforcement action.

## Respondents

4. **Evergreen Investment Management Company, LLC**, is registered with the Commission as an investment adviser (SEC File No. 801-8327), with its principal place of business in Boston, Massachusetts. The Evergreen Adviser is the registered investment adviser for the Evergreen family of mutual funds, including the Ultra Fund, and received payment of advisory fees based on the NAV of each fund. As of December 31, 2008, the Evergreen Adviser had more than \$175 billion in assets under management. During the relevant period, the Evergreen Adviser was a wholly-owned subsidiary of Wachovia Corporation and currently is a wholly-owned subsidiary of Wells Fargo & Company, a San Francisco, California-based company whose common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange.

5. **Evergreen Investment Services, Inc.** (the "Evergreen Distributor") is the Evergreen Adviser's affiliated broker-dealer that is registered with the Commission (SEC File No. 8-395), with its principal place of business in Boston, Massachusetts. The Evergreen Distributor is the principal underwriter of the Evergreen family of mutual funds, including the Ultra Fund, utilizing employees known as wholesalers to interact with broker-dealers who sell shares of the various mutual funds directly to customers. During the relevant period, the Evergreen Distributor was a wholly-owned subsidiary of Wachovia Corporation and currently is a wholly-owned subsidiary of Wells Fargo & Company

## Related Parties

6. **Evergreen Ultra Short Opportunities Fund** is a series of the Evergreen Fixed Income Trust, an open-end management investment company (*i.e.*, a mutual fund) registered with the Commission (SEC File No. 811-07246). The Ultra Fund invested primarily in commercial and residential fixed and variable rate mortgages-backed securities, including collateralized mortgage obligations, collateralized debt obligations, and other mortgage-related investments.

7. **Wachovia Securities, LLC** is a broker-dealer registered with the Commission (SEC File No. 8-37180), with its principal place of business in St. Louis, Missouri. During the relevant period, Wachovia Securities was a subsidiary of Wachovia Corporation and currently is a majority-owned subsidiary of Wells Fargo & Company.

## Background

8. During the period from at least February 2007 through June 2008 ("the relevant period"), the prospectus for the Ultra Fund stated that the Fund would, as a general rule, value each security it owned at the price at which the security could be sold in the market. The prospectus stated that, for each security for which current market prices were available, the Ultra Fund would value the security in accordance with its market price. The prospectus stated that, for each security for which a market price was not readily available or was deemed unreliable, the Ultra Fund would determine a "fair value" for that security under policies

established by the Fund's Board of Trustees. The valuation policies established by the Ultra Fund's Board of Trustees entrusted the determination of the valuation of fair-valued securities to the Evergreen Valuation Committee. The valuation policies directed that the Valuation Committee's membership include the Evergreen Adviser's chief investment officers for fixed income, equity, high yield and international products, as well as representatives from the Evergreen Adviser's legal, risk management and fund administration departments. The valuation policies further required that the Valuation Committee report on a quarterly basis to the Audit Committee of the Board with respect to the results of the Valuation Committee's determinations regarding fair valued securities. Given the nature of the securities held by the Ultra Fund – primarily residential mortgage-backed securities and collateralized debt obligations backed by such securities – there was no market price readily available for many of the Fund's holdings. Accordingly, the process for fair valuing the Fund's holdings was critical to the proper calculation of the Fund's NAV.

9. During the relevant period, pursuant to procedures established by the Fund's Board of Trustees, the Evergreen Valuation Committee employed a three-tier system in fair valuing securities held by the Ultra Fund. Under the first – and, according to the Valuation Committee, the most preferred – tier, securities were valued in accordance with prices provided by a third-party pricing vendor. Under the second tier, such securities were valued in accordance with prices provided by one or more third-party broker-dealers. Under the third – and, according to the Valuation Committee, least preferred – tier, such securities were valued in accordance with the prices recommended by the Fund's portfolio management team. At least as far back as August 2007, and pursuant to the procedures established by the Fund's Board, the Valuation Committee valued certain securities held by the Ultra Fund in accordance with the prices provided by a single broker-dealer or recommended by the Fund's portfolio management team rather than in accordance with the prices provided by a third-party pricing vendor. The Valuation Committee referred to these types of valuations as "vendor overrides."

### **The Ultra Fund's NAV Was Overstated for at Least 17 Months**

10. Since its inception, the Ultra Fund valued many of the securities it held in accordance with prices provided by a vendor such as Standard & Poor's, PricingDirect, Interactive Data Corporation, and Reuters. In addition, at least as far back as August 2007, the Ultra Fund valued one or more of the securities it held in accordance with prices provided either by a single broker-dealer or the Fund's portfolio management team -- sometimes in the form of a vendor override (when a vendor price was available) and sometimes not (when no vendor price was available). However, as early as February 2007, the Ultra Fund failed to take into account in its valuation of certain vendor-priced, broker-priced and/or portfolio management team-priced residential mortgage-backed securities readily-available negative information concerning the value of those holdings. For example, beginning at least in February 2007, the media widely reported that, due to rising mortgage defaults and delinquencies, an index that served as a benchmark measure of the riskiness of residential mortgage-backed securities had substantially weakened, with the portion of the index based on subprime mortgages hitting record levels. In addition, on multiple occasions, the Fund's portfolio management team did not properly factor readily-available data showing an increase in the default or delinquency rate for the subprime residential mortgages backing a collateralized debt obligation security ("CDO") owned by the Fund into the security's valuation. As a result, the Evergreen Adviser caused the Fund's NAV to

be overstated from February 2007 through June 2008.

11. In addition, from at least July 25, 2007, to June 16, 2008, the Valuation Committee valued one or more of the securities owned by the Ultra Fund in accordance with prices obtained from an individual broker-dealer located in Florida, whose method for determining prices it had not reviewed or approved. On various occasions in 2007 and 2008, third-party pricing vendors reduced prices on securities held by the Ultra Fund, but rather than reducing the prices for purposes of calculating the Fund's NAV, the portfolio management team recommended – and the Valuation Committee approved – vendor overrides, through which the Fund valued the securities in question in accordance with prices provided by the Florida broker-dealer rather than in accordance with the prices provided by the vendor. By the middle of May 2008, the Evergreen Valuation Committee learned that: (1) despite its expectation that broker-dealers would only be used to price a security on an exception basis, the Ultra Fund's portfolio management team was using the Florida broker-dealer to price a significant portion of the Fund's holdings; and (2) far less due diligence was being conducted on the Florida broker-dealer than was being conducted on other pricing sources. Fifteen of the sixteen securities valued based on prices provided by the Florida broker-dealer were re-priced downward in June 2008, eight by more than 90%. Ten of these fifteen securities were overvalued from at least as far back as September 2007.

12. Moreover, at certain times from March 2008 to June 2008, the Ultra Fund's portfolio management team caused the Ultra Fund to overstate its NAV by withholding relevant negative information about one or more of the Fund's fair valued securities from the Evergreen Valuation Committee. For example, the Fund owned an interest in a CDO backed by subprime residential mortgage-backed securities issued by a company that shall be referred to herein as "Company A." The Ultra Fund's portfolio management team learned by at least March 27, 2008, that the tranche of this CDO owned by the Ultra Fund would not receive any more cash flow until the senior tranche had been repaid in full. The Fund's portfolio management team failed to disclose this information to the Valuation Committee. On June 10, 2008, the Valuation Committee finally became aware of this information and, based at least in part on this information, the Valuation Committee lowered the valuation on this security from \$53.72 (down from an issued value of \$100) to \$0. The Valuation Committee's decision to lower the value of the Company A security to \$0 decreased the Ultra Fund's NAV by nearly \$0.10 per share to \$8.95 per share. Because day-to-day volatility in the Fund's NAV was very low (for most of the prior year, the Ultra Fund's NAV had consistently been in a range of \$9.20-\$9.73 per share), this NAV change was significant.

13. In addition, after the close of trading on May 23, 2008, a different Evergreen mutual fund purchased a CDO backed by subprime residential mortgages issued by a company that shall be referred to herein as "Company B" for \$9.50 (down from an issued value of \$100). At that time, the Ultra Fund owned the same security and was valuing it at \$98.93. After learning of this transaction, the Ultra Fund's portfolio management team contacted the selling broker-dealer to determine whether the sale was "distressed" (and thus could potentially be disregarded for purposes of determining the fair value of the security). On May 28, 2008, the broker-dealer responded that the security was "not coming from a distressed seller, just one that wanted to get out." Notwithstanding this response, the Ultra Fund's portfolio management team informed the Valuation Committee that they believed the sale was distressed and did not disclose

the broker-dealer's statement to the Valuation Committee. Based at least in part on the assertion by the portfolio management team that the \$9.50 sale was distressed, the Ultra Fund failed to lower the value of this security to \$9.50 until June 2, 2008. The June 2, 2008, decision to lower the value of the Company B security to \$9.50 decreased the Ultra Fund's NAV by \$0.025 per share, which, for the Ultra Fund, was significant.

14. Because its NAV was overstated from February 2007 to June 2008 by as much as 17%, Ultra Fund shareholders who redeemed their Fund shares during this period received more money per share than they should have -- to the detriment of the remaining shareholders -- and those investors who purchased shares during this period paid more per share than they should have. Moreover, due to its overstated NAV, the Ultra Fund appeared to be performing better than it actually was from February 2007 to June 2008. In terms of performance, the Ultra Fund was consistently ranked by a national ranking firm as one of the top five to ten funds of the 40-50 funds in its category during this period based upon its reported NAV. If the Ultra Fund's NAV had been accurately reported, however, its performance would have ranked at or near the bottom of its fund category. Consequently, by causing the Ultra Fund to overstate its NAV from February 2007 through June 2008 (and by at least 10% from February 8, 2008, through June 13, 2008), the Evergreen Adviser denied the investors who owned Ultra Fund shares during this period and those investors considering purchasing Fund shares the opportunity to consider accurate information about the Fund's performance when deciding whether to retain, redeem, or purchase those shares. In addition, as a result of the overstated NAV, the Evergreen Adviser received higher advisory fees than it would have had the NAV been accurately reported.

#### **Selective Disclosure of Material, Nonpublic Information**

15. On June 11, 2008, the day after it decided to reprice the Company A security at \$0, the Evergreen Valuation Committee decided to stop using vendor overrides for securities held by the Ultra Fund due, in part, to growing concerns about the accuracy of valuations provided by the Fund's portfolio management team. (From August 2007 to June 4, 2008, the Company A security had been valued in accordance with prices provided by the Florida broker-dealer and from June 4, 2008, through June 9, 2008, it was valued in accordance with prices provided by the Fund's portfolio management team.) On June 11, 2008, the Valuation Committee re-valued approximately 11 securities owned by the Ultra Fund. The 11 securities had previously been valued either in accordance with the prices provided by the Florida broker-dealer or in accordance with prices provided by the Fund's portfolio management team. The Valuation Committee re-priced these securities in accordance with the prices provided by a third-party pricing vendor, almost all of which were lower than the previous valuations. This action resulted in a decrease of the Ultra Fund's NAV by \$0.12, reducing it to \$8.83 per share.

16. By June 12, 2008, the Evergreen Distributor determined that the decreases in the Ultra Fund's NAV might prompt inquiries from the Fund's shareholders as well as from broker-dealers whose customers owned Ultra Fund shares. There had been no public announcement, via a press release or otherwise, regarding the reasons for the Fund's NAV decreases. Consequently, the Evergreen Distributor began to gather from the Evergreen Adviser information about the reasons for the decreasing NAV. On June 12-13, 2008, the Evergreen Distributor prepared "talking points" consisting of material, nonpublic information it received from the Evergreen Adviser to enable its wholesalers to provide information in response to any inquiries about the

NAV from shareholders or broker-dealers. The talking points indicated that the recent declines in the Ultra Fund's NAV were the result of a process of re-pricing of securities rather than market events and that the re-pricings may continue.

17. Specifically, on June 12, 2008, the Evergreen Distributor prepared talking points outlining the Evergreen Valuation Committee's decision on June 10, 2008 to re-price downward the security issued by Company A, the Valuation Committee's June 11 decision to re-price 11 additional securities, and the NAV declines associated with these decisions. The talking points further stated, "We continue to review pricing and will revalue securities as prudently as appropriate in this unique market environment. It is difficult to quantify to what extent we may reprice additional holdings."

18. On June 13, 2008, the Evergreen Distributor prepared a second set of talking points for use in responding to inquiries from shareholders or registered representatives, which stated:

For the third day in a row, Ultra Short experienced a significant NAV decline. Yesterday's decline of \$0.21 or 2.4% has been the largest so far. This NAV drop was the result of 3 additional securities being repriced; the [vendor] provided values are significantly below those at which we had been carrying the positions based on internal estimates of fair value. Over the last three days we have repriced 15 positions in total. As was previously mentioned it is difficult to assess how many additional positions will be subject to repricing. We continue to follow the situation closely and will share information with you as it becomes available.

19. The talking points provided insight into a process that was ongoing. A reasonable investor hearing the talking points would view this information as important in making the decision whether to redeem Ultra Fund shares. Consequently, the information concerning the Fund's process of re-pricing of securities constituted material, nonpublic information.

20. A senior officer of the Evergreen Distributor emailed both the June 12 and the June 13 talking points to most Evergreen Distributor wholesalers for use in responding to incoming telephone calls from shareholders or registered representatives concerning the Ultra Fund's recent NAV drops. Senior officers of the Evergreen Distributor explicitly informed a significant number of the wholesalers that they could convey to registered representatives of broker-dealers and shareholders who called all of the information included in the talking points. On the morning of June 13, 2008, a senior officer of the Evergreen Adviser received a copy of both sets of talking points and understood that the content of these talking points was intended to be shared with any Ultra Fund shareholder or registered representative who made an incoming call to any of the Evergreen Distributor's wholesalers to discuss the Fund's recent NAV decreases. In addition, this senior officer of the Evergreen Adviser forwarded both sets of talking points to an employee of the Evergreen Adviser who served as the client manager for a client of the Evergreen Adviser. The client manager conveyed the content of the talking points to the client, which promptly sold its position in the Ultra Fund.

21. In the early morning of June 13, 2008, citing "last evening's third significant decline in NAV," the Evergreen Distributor instructed its wholesalers assigned to the

Wachovia Securities broker-dealer distribution channel to call each Wachovia Securities registered representative who had any customers who were shareholders of the Ultra Fund. Wachovia Securities was at the time an affiliate of the Evergreen Distributor and the Evergreen Adviser. From June 13 through June 17, 2008, the Evergreen Distributor's wholesalers initiated hundreds of telephone calls to Wachovia Securities registered representatives and relayed the June 12 and June 13 talking points concerning the recent drops in the Ultra Fund's NAV. Multiple wholesalers making these calls told registered representatives that their customers could transfer their Ultra Fund holdings to other Evergreen mutual funds that, according to the wholesalers, did not hold any of the same securities held by the Ultra Fund. From June 13 through June 17, many of the customers of the Wachovia Securities registered representatives who received the information in the talking points redeemed their Ultra Fund shares at an NAV that exceeded the Fund's liquidating per-share NAV of \$7.48 per share on June 18. On June 13 alone, approximately 20% of the Ultra Fund shares purchased through the Wachovia Securities channel were redeemed at a price of \$8.55, accounting for approximately 53% of all Fund shares redeemed that day. At some point between June 13 and midday on June 17, a senior officer of the Evergreen Distributor informed one or more senior officers of the Evergreen Adviser about the calls made to registered representatives of Wachovia Securities. In addition, starting on June 13, the Evergreen Distributor directed the wholesalers in certain of its other distribution channels to initiate similar outgoing calls to representatives of certain other financial services providers concerning the recent drops in the Ultra Fund's NAV. However, the Evergreen Distributor did not direct the wholesalers in all of its distribution channels to initiate such calls to all financial services providers. Moreover, the Evergreen Distributor failed to make calls to many of the Wachovia Securities registered representatives prior to the Ultra Fund's liquidation date.

22. During the three-week period leading up to the closure of the Ultra Fund on June 18, 2008 (during which time the re-pricing was occurring and the Fund's NAV was dropping from \$9.20 per share to \$7.48 per share), Respondents never disseminated any press release or statement conveying the material, nonpublic information contained in the talking points to the general investing public in a manner designed to reach all Ultra Fund shareholders and prospective shareholders. Instead, the Evergreen Adviser and the Evergreen Distributor, with the knowledge of the Evergreen Adviser, provided information about the recent decreases in the Fund's NAV to select shareholders or their financial intermediaries. By limiting the dissemination of this important information, Respondents improperly gave some Ultra Fund shareholders, including customers of one of their own affiliates, an unfair advantage over other shareholders of the Fund. The shareholders who were provided the material nonpublic information were then able to use it in deciding whether to redeem their shares before further potential re-pricings of the securities held by the Fund. In fact, many of the shareholders who received this information then redeemed their shares in the Ultra Fund and received a higher price than other shareholders -- including those who did not receive the information -- who held their shares until the Fund's liquidation date on June 18. Because these redemptions were made before the Fund had completed the process of re-pricing securities, the redeeming shareholders received a higher NAV than they should have. Consequently, these redemptions diluted the Ultra Fund's assets and thus harmed the Fund and its remaining shareholders. The significant decline in the Ultra Fund's NAV resulting from the re-pricing of securities, combined with the large number of

redemption requests that could force the Fund to sell its illiquid securities, ultimately led the Fund's Board of Trustees to liquidate the Fund and make a liquidating distribution to shareholders on June 18.

23. During this period, neither the Evergreen Adviser nor the Evergreen Distributor established, maintained, or enforced written policies and procedures reasonably designed to prevent this type of misuse of material, non-public information by persons associated with them – *i.e.*, the disclosure of material, non-public information about a fund they advised or distributed to select shareholders.

### **Prohibited Securities Transactions**

24. Beginning at least on January 23, 2008, the Evergreen Adviser caused other Evergreen mutual funds to purchase securities from the Ultra Fund. These funds were also managed by the Ultra Fund's portfolio management team. In order to make such trades, the Fund was required to follow specific procedures to ensure the transactions did not benefit another Evergreen mutual fund at the expense of the Ultra Fund. Rule 17a-7 under the Investment Company Act allows certain affiliated cross trades despite the general prohibition against affiliated transactions contained in Section 17(a) of the Investment Company Act. Among other things, affiliated cross trades must be executed at a price equal to the average of the highest current independent bid to purchase that security and the lowest current independent offer to sell that security (for securities other than NMS stocks, exchange-traded securities, or securities quoted on the NASDAQ system). Despite this requirement, the Evergreen Adviser caused other Evergreen mutual funds to purchase securities from the Ultra Fund at a price other than that average. In at least some instances, the Fund's portfolio management team did not even obtain the necessary price information to calculate the required average. In addition, these cross trades were made through one or more broker-dealers who received remuneration in connection with these transactions, thus precluding reliance on Rule 17a-7.

25. Moreover, on June 12, 2008, a trader for the Fund's portfolio management team received an indication from a broker-dealer that the broker-dealer would consider paying a higher price for a security held by the Ultra Fund if the broker-dealer would be allowed to re-sell that security to a third party rather than selling it back to another Evergreen mutual fund managed by the portfolio management team. In breach of the Evergreen Adviser's fiduciary duty to the Fund, the trader for the Fund's portfolio management team refused to discuss a higher price and, as a result, the Ultra Fund received less money for this security than it may have if this prospect for a higher offer had been pursued.

### **Evergreen Distributor Failed to Preserve Text and Instant Messages**

26. On September 19, 2007, in a different enforcement action, the Commission issued an order: (a) finding that the Evergreen Distributor had willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder by failing to preserve certain communications related to its business as such, including e-mails, for a period of three years; and (b) ordering the Evergreen Distributor to cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-4

thereunder. However, from at least September 19, 2007 to August 2008, the Evergreen Distributor issued to approximately 177 of its employees personal digital assistant devices that permitted these employees to send text messages and instant messages related to the Evergreen Distributor's business as such over certain messaging systems that the Evergreen Distributor had not configured for retention within its electronic communications archival system. Consequently, throughout this period, the Evergreen Distributor failed to preserve certain electronic communications in the form of text messages and instant messages related to its business as such.

### **Violations**

27. As a result of the conduct described above, the Evergreen Adviser willfully<sup>2</sup> violated Sections 206(2) of the Advisers Act in that it engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. The Evergreen Adviser and the Evergreen Distributor, with the knowledge and acquiescence of the Evergreen Adviser, disclosed the information about the process of repricing of Ultra Fund holdings to select Ultra Fund shareholders or their financial intermediaries, specifically including shareholders who were customers of an affiliated broker-dealer, and failed to inform the Ultra Fund Board about these disclosures. The Evergreen Adviser knew or should have known that the selective disclosures would lead to substantial redemptions by shareholders at an inaccurately high NAV, which would dilute the Fund, and as a result, this conduct operated as a fraud or deceit upon the Fund.

28. As a result of the conduct described above, the Evergreen Distributor willfully aided and abetted and caused the Evergreen Adviser's violations of Section 206(2) of the Advisers Act in that it knowingly provided the Evergreen Adviser with substantial assistance by making the selective disclosure to certain shareholders of the Ultra Fund.

29. As a result of the conduct described above, the Evergreen Adviser willfully violated Sections 206(2) of the Advisers Act in that it engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Specifically, by providing an overstated NAV to the Fund (through its failure to factor readily-available negative information into its recommended valuations of certain securities and its recommending valuations for a significant portion of the Ultra Fund's holdings based on prices provided by the Florida broker-dealer), which in turn generated higher advisory fees paid by the Fund, the Evergreen Adviser breached its fiduciary duty to and defrauded the Ultra Fund.

30. As a result of the conduct described above, the Evergreen Adviser willfully violated Section 204A of the Advisers Act in that it failed to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent the misuse of material, nonpublic information by it or any person affiliated with it. Specifically, the Evergreen Adviser disclosed material, non-public

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<sup>2</sup> A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

information about the Ultra Fund to one of its clients, which owned shares in the Fund. In addition, the Evergreen Adviser disclosed material, nonpublic information about the Ultra Fund to an affiliate, the Evergreen Distributor, without taking any steps to ensure that the Evergreen Distributor did not further disclose such information. The Evergreen Adviser's procedures were not reasonably designed to prevent the misuse of material, nonpublic information about the Ultra Fund through the disclosure of this information to, among others, registered representatives of an affiliated broker-dealer for the purpose of further disclosing such information to certain Ultra Fund shareholders.

31. As a result of the conduct described above, the Evergreen Distributor willfully violated Section 15(f) of the Exchange Act in that it failed to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of its business, to prevent the misuse of material, nonpublic information by it or any person with it. Specifically, the Evergreen Distributor's procedures were not reasonably designed to prevent the misuse of material, nonpublic information about the Ultra Fund through the disclosure of this information to, among others, registered representatives of an affiliated broker-dealer for the purpose of further disclosing such information to certain Ultra Fund shareholders.

32. As a result of the conduct described above, the Ultra Fund violated Rule 22c-1(a) promulgated pursuant to Section 22(c) of the Investment Company Act, and the Evergreen Adviser willfully aided and abetted and caused such violation. Specifically, by improperly pricing certain securities held by the Fund, the Evergreen Adviser caused the Ultra Fund to: (a) materially overstate its NAV from as early as February 1, 2007, through June 18, 2008; and (b) sell and redeem its shares at a price other than its current net asset value.

33. As a result of the conduct described above, the Evergreen Distributor willfully violated Rule 22c-1(a) promulgated pursuant to Section 22(c) of the Investment Company Act in that, while acting as Ultra Fund's principal underwriter, it sold and redeemed shares of the Ultra Fund from at least June 13, 2008, through June 18, 2008, at a price that was not based on the current NAV of those shares in light of the Fund's overstated NAV.

34. As a result of the conduct described above, the Evergreen Adviser also willfully violated Section 206(2) of the Advisers Act in that it engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon clients or prospective clients. Specifically, by rejecting the prospect of an offer from a broker-dealer to pay a higher price for a particular security held by the Ultra Fund on the condition that the broker-dealer would be allowed to purchase the security outright rather than being required to immediately re-sell the security to another Evergreen mutual fund advised by the Evergreen Adviser, the Evergreen Adviser failed to seek to obtain best execution of the trade for the Ultra Fund and favored another client over the Ultra Fund in breach of its fiduciary duty.

35. As a result of the conduct described above, one or more Evergreen funds violated Section 17(a)(2) of the Investment Company Act, and the Evergreen Adviser willfully aided and abetted and caused such violations by causing such funds, acting as principal, to knowingly purchase securities from the Ultra Fund (other than NMS stocks, exchange-traded securities, or securities quoted on the NASDAQ system). The transactions

were not exempt from the prohibition by virtue of Rule 17a-7 because the trades were not executed at a price equal to the average of the highest current independent bid to purchase that security and the lowest current independent offer to sell that security and that were made through one or more broker-dealers who received remuneration in connection these transactions.

36. As a result of the conduct described above, the Evergreen Adviser willfully violated Section 34(b) of the Investment Company Act because it was responsible for the inclusion of untrue statements of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein, any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. Specifically, in reviewing and approving the registration statements filed with the Commission by the Evergreen Distributor and the Fund prospectus incorporated therein, the Evergreen Adviser misrepresented the Fund's performance and NAV beginning on at least February 1, 2007.

37. The Evergreen Distributor willfully violated Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, because it failed to preserve for three years certain communications related to its business as such, including text messages and instant messages.

### **Undertakings**

38. **Independent Compliance Consultant.**

- a. The Evergreen Adviser and Evergreen Distributor shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Commission or to a majority of the independent Trustees of any Evergreen fund. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by the Evergreen Adviser or its affiliates. The Evergreen Adviser and Evergreen Distributor shall require the Independent Compliance Consultant to conduct a comprehensive review of: (1) the Evergreen Adviser's procedures for valuing portfolio securities and the enforcement of same; (2) the Evergreen Adviser's and the Evergreen Distributor's policies and procedures for preventing the misuse of material, nonpublic information and the enforcement of same; and (3) the Evergreen Adviser's policies and procedures for preventing prohibited cross trades of its registered investment company clients and the enforcement of same. The Evergreen Adviser and Evergreen Distributor shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to files, books, records, and personnel as reasonably requested for the review.
- b. The Evergreen Adviser and Evergreen Distributor shall require that, at the conclusion of the review, which in no event shall be more than 180 days after the date of entry of the Order, the Independent Compliance Consultant shall submit a Report to it, the Trustees of each Evergreen fund, and the staff of the

Commission. The Report shall address the issues described in the subparagraph set forth above, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of the Evergreen Adviser, the Evergreen Distributor and each Evergreen fund, and a procedure for implementing the recommended changes in or improvements to those policies and procedures.

- c. The Evergreen Adviser and Evergreen Distributor shall adopt all recommendations contained in the Report of the Independent Compliance Consultant; provided, however, that, within 210 days after the date of entry of the Order, the Evergreen Adviser and shall, in writing, advise the Independent Compliance Consultant, the Trustees of each Evergreen fund and the staff of the Commission of any recommendations that one or the other of them considers to be unnecessary or inappropriate. With respect to any such recommendation, neither the Evergreen Adviser nor the Evergreen Distributor need adopt that recommendation at that time but shall propose, in writing, an alternative policy, procedure or system designed to achieve the same objective or purpose.
- d. As to any recommendation with respect to the Evergreen Adviser or the Evergreen Distributor's policies and procedures on which the Evergreen Adviser or the Evergreen Distributor and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 240 days of the date of entry of the Order. In the event the Evergreen Adviser or the Evergreen Distributor and the Independent Compliance Consultant are unable to agree on an alternative proposal, the Evergreen Adviser and Evergreen Distributor will abide by the determinations of the Independent Compliance Consultant.
- e. Neither the Evergreen Adviser nor the Evergreen Distributor, either acting alone or in concert, (i) shall have the authority to terminate the Independent Compliance Consultant, without the prior written approval of the majority of the independent Trustees of each Evergreen fund and the staff of the Commission. The Evergreen Adviser shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates. Neither the Evergreen Adviser nor the Evergreen Distributor shall be in or have an attorney-client relationship with the Independent Compliance Consultant and neither the Evergreen Adviser nor the Evergreen Distributor shall seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Trustees or to the Commission.
- f. The Evergreen Adviser and Evergreen Distributor shall require that the Independent Compliance Consultant, for the period of the engagement and for

a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Evergreen Adviser, the Evergreen Distributor or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The Evergreen Adviser and Evergreen Distributor shall require that any firm with which the Independent Compliance Consultant is affiliated in the performance of his or her duties under the Order shall not, without prior written consent of the independent Trustees and the staff of the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Evergreen Adviser, the Evergreen Distributor or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

39. The Evergreen Adviser and the Evergreen Distributor have undertaken to make, within 10 business days of the entry of this Order, a payment, jointly and severally, to the Fair Fund established pursuant to this Order in the amount of \$33,000,000 to compensate shareholders for harm caused by the conduct set forth in this Order. This amount shall be deposited into the same account to be opened in the name of the Ultra Short Opportunities Fund Qualified Settlement Fund pursuant to Paragraphs IV.H. and IV.I. below.

40. The Evergreen Adviser has undertaken to review other Evergreen investment companies that held either the same securities as the Ultra Fund or securities for which the Ultra Fund portfolio management team was responsible for recommending valuations to determine the extent of any errors in the calculations of such investment companies' NAVs. To the extent the NAV of such funds was materially overstated as a result of errors in the valuations of such securities, the Evergreen Adviser has undertaken to compensate shareholders for any harm caused in the same manner in which it will compensate Ultra Fund shareholders for the harm caused by the mispricing of that fund as set forth in this Order in a manner subject to the review and approval of the Commission staff. To the extent that the NAV of such funds was not materially overstated as a result of such errors, the Evergreen Adviser has undertaken to compensate the funds for any harm caused by processing transactions at an erroneous NAV. The Evergreen Adviser has also undertaken to report to the Commission staff the results of the review referred to above and any remedial steps taken in response thereto within 90 days of the entry of this Order.

41. The Evergreen Adviser has undertaken to review any cross trades that occurred during the relevant period between the Ultra Fund and any other Evergreen fund to determine whether they violate Section 17 of the Investment Company Act and, to the extent that such violations caused harm to any Evergreen fund, to compensate such fund or its shareholders for such harm in a manner subject to the review and approval of the Commission staff. The Evergreen Adviser has also undertaken to report to the Commission staff the results of the review referred to above and any remedial steps taken in response thereto within 90 days of the entry of this Order.

42. Distribution of Funds.

- a. Respondents shall be responsible for self administering the distribution of sums ordered as disgorgement, prejudgment interest and civil penalty in Paragraphs IV.H. and IV.I. below, as well as the payment Respondents have undertaken to make to the Fair Fund established pursuant to this Order referenced in Paragraph III.39. above (collectively, the "Settlement Funds").
- b. Respondents shall identify and make distributions to the Ultra Fund shareholders using the Ultra Fund's records and those of its transfer agent to identify all direct investors, whether in direct purchase accounts, disclosed accounts, or non-disclosed accounts. Respondents will also identify and make distributions to the beneficial owners of Ultra Fund shares held in omnibus accounts. To that end, Respondents will use their best efforts to identify omnibus accounts that are reflected on the Ultra Fund's records and those of its transfer agent, determine the shares traded by each such omnibus account and estimate the total amount of money to be allocated to each such omnibus account using the methodology set forth in this Order. The Respondents will conduct an "Outreach Process" by which they will contact the intermediary associated with each omnibus account with provisional distributions of \$1,000 or more and request records for each account underlying the omnibus account, including, but not limited to, the closing share balance on January 31, 2007, any trades thereafter until the fund was liquidated, and the underlying account holder's name, address and tax identification number(s). In the event that, after receiving such data, Respondents become aware that an account underlying an omnibus account is itself an omnibus account, Respondents will use reasonable efforts to obtain the foregoing data through an Outreach Process, as described above, with respect to the intermediary associated with that underlying omnibus account. Respondents are not required to contact the intermediaries associated with (i) omnibus accounts with provisional distributions of less than \$1,000; or (ii) omnibus accounts that are held by an omnibus account within an omnibus account (*i.e.*, no more than a second level omnibus account). As an alternative to providing Respondents with underlying account identifying information, omnibus account intermediaries may provide the relevant account activity data to Respondents pursuant to this paragraph by using unique identification numbers for underlying accounts. Respondents will apply the distribution methodologies described below to that underlying account data and shall provide the results to the intermediary sufficient for the intermediary to allocate distribution amounts to the individual underlying accounts consistent with the methodologies. Upon receipt by the Respondents of a certification by the account intermediary that it will distribute the funds consistent with the results provided, Respondent will make the appropriate distribution to the intermediary which shall then distribute the amounts to the underlying accounts within 45 days. Such intermediaries shall also certify that they will return any undistributed amounts to the Respondents within 90 days of disbursement of such amounts by the Respondents. Any such undistributed amounts returned to Respondents will be returned to the Settlement Funds. Under this paragraph, omnibus account intermediaries shall have 10 calendar days after being contacted by Respondents

to notify Respondents as to whether they intend to produce the requested information pursuant to this paragraph and shall have 60 calendar days thereafter to provide the requested data to Respondents. Respondents will pay the reasonable administrative costs incurred by omnibus account intermediaries for providing data pursuant to this paragraph, and such costs will not be paid from the Settlement Funds. Requests for reimbursement from omnibus account intermediaries shall be made to Respondents within 60 days of submission of all requested records to Respondents. Any omnibus account intermediary which elects to make the distribution to its underlying account holders pursuant to this paragraph shall bear all costs and expenses associated with that distribution.

- c. With respect to direct accounts for which Respondents have transactional data, but do not have the complete account holder's name, address, and tax identification number ("non-disclosed accounts"), Respondents will conduct an Outreach Process by which they will contact the intermediary associated with each non-disclosed account for which a payment of funds is required under the methodology below and request such information for each account. When the Respondents receive such information, they will make the distribution to each account. As an alternative to providing Respondents with the account holder identifying information, a non-disclosed account intermediary may provide Respondents with a certification that it will distribute the funds from Respondents to the account holder and that they will return any undistributed amounts to the Respondents. If a certification is received, Respondents will make the appropriate distribution pursuant to this Order to the non-disclosed account intermediary which shall then distribute the amounts to the account holder within 45 days. Such intermediaries shall also certify that they will return any undistributed amounts to the Respondents within 90 days of disbursement of such amounts by the Respondents. Any undistributed amounts returned to Respondents by an intermediary will be returned to the Settlement Funds. Under this paragraph, non-disclosed account intermediaries shall have 10 calendar days after being contacted by Respondents to notify Respondents as to whether they intend to produce the requested information pursuant to this paragraph and shall have 30 calendar days thereafter to provide the requested data to Respondents. Respondents will pay the reasonable administrative costs incurred by non-disclosed account intermediaries for providing data pursuant to this paragraph, and such costs will not be paid from the Settlement Funds. Requests for reimbursement from non-disclosed account intermediaries shall be made to Respondents within 60 days of submission of all requested records to Respondents. Any non-disclosed account intermediary which elects not to provide account data and elects to make the distribution to its account holders pursuant to this paragraph shall bear the costs and expenses associated with that distribution.
- d. The Respondents will keep records of each contact attempt for information from an omnibus account and non-disclosed account, each response received, if any, and the reason for not providing the requested information, if any. The Respondents will provide the Commission staff with information relating to each

omnibus or non-disclosed account intermediary that does not provide the requested information under Paragraph III.42.b. and/or 42.c. This information will be provided to the staff within 5 business days after Respondents receive notice from any account intermediary that it will not provide the requested information under Paragraph III.42.b. and/or 42.c. or if no response is received, within 5 business days after the 10 day period provided for such response under Paragraph III.42.b. and/or 42.c. elapses.

- e. For each omnibus account with a provisional distribution less than \$1,000 for which Respondents do not obtain records for the underlying accounts, the amount of Settlement Funds allocated to that omnibus account will remain in the Settlement Funds. In each instance where the Respondents' Outreach Process to an omnibus or non-disclosed account intermediary does not yield the data necessary to make a distribution to the investors who held Ultra Fund shares in the associated omnibus or non-disclosed account within 70 days of the request for such data (or such later date agreed to between Respondents and the omnibus account intermediary), the Respondents shall have the discretion, with the approval of the Commission staff, to consider and implement other means of distribution to the underlying shareholders. If the Commission staff and Respondents are unable to agree on an alternative means of distribution for any such omnibus account within 250 days of the entry of the Order, the amount of Settlement Funds allocated to the associated omnibus or non-disclosed account will remain in the Settlement Funds.

- f. Retirement Plans:

“Retirement Plan” as used in this Order means an employee benefit plan, as such plans are defined in section 3(3) of ERISA, 29 U.S.C. § 1002(3), which is not an Individual Retirement Account (IRA), whether or not the plan is subject to Title I of ERISA.

Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. Plan fiduciaries and intermediaries, as defined in Department of Labor Field Assistance Bulletin No. 2006-01, April 19, 2006 (the “Field Assistance Bulletin”), of Retirement Plans are to distribute the monies received in accordance with their legal, fiduciary, and contractual obligations and consistent with guidance issued by the Department of Labor, including, but not limited to, the Field Assistance Bulletin.

For the purposes of this Order, each Retirement Plan itself (and not the individual plan participants) shall be treated as the shareholder to receive the distribution, if any, of the Settlement Funds from Respondents.

The fiduciary of a Retirement Plan receiving a distribution may distribute it pursuant to one of the following four alternatives: (1) Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology referenced in paragraphs Paragraphs III.42.g. and

III.42.h. of this Order. Respondents will provide a description of the methodology to Retirement Plan fiduciaries that wish to utilize this option; (2) Retirement Plan fiduciaries may allocate the distribution pro rata (based on total account balance) among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees); (3) Retirement Plan fiduciaries may allocate the distribution per capita among the accounts of all persons who are currently participants in the Retirement Plan (whether or not they are currently employees); (4) To the extent that none of the three preceding alternatives is administratively feasible because the costs of effecting the allocation exceed the amount of the distribution, Retirement Plan fiduciaries may, to the extent permitted by the Retirement Plan, use the distribution amount to pay the reasonable expenses of administering the plan.

In view of, among other things, alternative methodologies available to Retirement Plans, plan fiduciaries and/or intermediaries will not be reimbursed the costs and expenses associated with administering the distribution received pursuant to this Order.

- g. Within 270 days of the date of this Order, Respondents shall cause the distribution of the portion of the Settlement Funds that is necessary to compensate those Ultra Fund shareholders who were harmed as a result of the mispricing of the Ultra Fund's NAV from February 2007 through June 18, 2008, utilizing the methodology that has been reviewed and approved by the Commission staff. However, any material changes, additions or adjustments to that methodology must be reviewed and approved by the staff.
- h. Within 280 days of the date of this Order, Respondents shall cause any remaining amount of the Settlement Funds to be distributed according to the following methodology: (1) all Ultra Fund shareholders who redeemed their shares on June 18, 2008, shall receive a pro rata share of the remaining amount of the Settlement Funds up to an amount equal to \$0.17 per share; and, if Settlement Funds remain, (2) all Ultra Fund shareholders who redeemed their shares on June 17, 2008 or June 18, 2008, shall receive a pro rata share of the remaining amount of the Settlement Funds up to an amount equal to \$0.29 per share; and, if Settlement Funds remain, (3) all Ultra Fund shareholders who redeemed their shares on June 16, 2008, June 17, 2008 or June 18, 2008, shall receive a pro rata share of the remaining amount of the Settlement Funds. Respondents shall not be required to make any disbursement to any Ultra Fund shareholder if that shareholder is due less than \$10 pursuant to the method approved by the Commission staff. Furthermore, Respondents shall not pay any Ultra Fund shareholder pursuant to this methodology any amount in excess of the difference between the Fund's reported NAV on June 13, 2008 and the actual NAV at which the shareholder redeemed his or her shares.
- i. Respondents shall not be required to make any disbursement to any Ultra Fund shareholder if that shareholder is due less than \$10 in the aggregate under Paragraphs III.42.g. and III.42.h. above. In order to implement this de minimis

distribution amount, Respondents will apply the Gross-Up Formula. The Gross-Up Formula requires that the distributions be ranked in descending order of the size of the provisional distribution. Respondents will then calculate the total amount of the distributions that were calculated to be less than \$10 (the “de minimis distribution”). Respondent will then redistribute the de minimis distribution in sequence to the accounts with the largest distributions less than \$10, sequentially assigning a distribution of \$10 to each account until the de minimis distribution is depleted.

- j. All distribution checks shall bear a stale date of 90 days and shall be voided thereafter.
- k. Any excess amounts, and any amounts Respondents are unable, due to factors beyond their control, to pay to any affected Ultra Fund shareholder, and any sums that are not paid to any Ultra Fund shareholder who is due less than \$10, shall be transferred to the Securities and Exchange Commission. Such payment shall be made when the final accounting is submitted and shall be: (i) made by United States postal money order, certified check, bank cashier's check or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies the Evergreen Adviser and the Evergreen Distributor as the Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John T. Dugan, Associate Director, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110.
- l. Respondents may pay for any tax liabilities of the Settlement Funds from the Settlements Funds. Respondents agree to be responsible for all tax compliance responsibilities associated with the Settlement Funds and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid out of the Settlement Funds. Respondents shall also retain the services of and be exclusively responsible for the compensation and expenses of an independent third party not unacceptable to the Commission’s staff. The independent third party shall, at least 15 business days prior to the date Respondents make any distribution described in Paragraphs III.42.g. and/or III.42.h. above to the Ultra Fund shareholders who are due \$10 or more, submit for the Commission staff's review an initial accounting and certification of the payments to be made to shareholders pursuant to this Order. The initial accounting and certification shall be in a form not unacceptable to the Commission's staff, and shall include: (i) each payee's name and address; (ii) the amount to be paid to each payee; and (iii) the expected date of each payment.
- m. Within 180 days of the date Respondents effect the distributions described above, Respondents shall submit to the Commission staff for the Commission's approval

a final accounting and certification of the disposition of the monies paid pursuant to and referenced in this Order. The final accounting and certification shall be in a form not unacceptable to the Commission's staff, and shall include: (i) each payee's name and address; (ii) the amount paid to each payee; (iii) the date of each payment; (iv) the check number or other identifier of money transferred; (v) the date and amount of any returned payment; (vi) a description of any effort to locate a prospective payee whose payment was returned, or to whom payment was not made due to factors beyond Respondents' control; (vii) any amounts to be paid to the Commission with respect to any prospective payee who Respondents were unable to pay due to factors beyond their control, or who would be entitled to less than \$10 under the method set forth above; and (viii) a final statement totaling all payments and anticipated payment to the Commission, which shall reconcile with the amounts ordered under Paragraph IV.H. and Paragraph IV.I. below plus the payment referenced in Paragraph III.39. above. Any and all supporting documentation for the accounting and certification shall be provided to the Commission's staff upon request. Respondents shall cooperate with reasonable requests for information in connection with the accounting and certification.

- n. After Respondents have submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send the remaining residual amount to the United States Treasury.

43. Certification. No later than 24 months after the date of entry of the Order, the chief executive officer of Respondents shall each certify to the Commission, in writing, that Respondent has fully adopted and complied in all material respects with the undertakings set forth in this section and with the recommendations of the Independent Compliance Consultant or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance.

44. Recordkeeping. Respondents shall each preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of Respondent's compliance with the undertakings set forth above.

45. Deadlines. For good cause shown, the Commission's staff may extend any of the procedural dates set forth above.

### **Respondents' Cooperation and Remedial Acts**

46. In determining to accept the Respondents' Offer, the Commission considered the cooperation afforded to the Commission staff and the remedial acts undertaken by Respondents. In determining whether to accept the Offer, the Commission has further considered the undertakings set forth in Paragraph III.39., Paragraph III.40., and Paragraph III.41. above.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Respondents' Offer. It is hereby ORDERED that:

- A. Pursuant to Section 203(e) of the Advisers Act, the Evergreen Adviser is hereby censured. Pursuant to Section 15(b)(4) of the Exchange Act, the Evergreen Distributor is hereby censured.
- B. Pursuant to Section 203(k) of the Advisers Act, the Evergreen Adviser shall cease and desist from committing or causing any violations and any future violations of Sections 204A and 206(2) of the Advisers Act.
- C. Pursuant to Section 9(f) of the Investment Company Act, the Evergreen Adviser shall cease and desist from committing or causing any violations and any future violations of Sections 17(a) and 34(b) of the Investment Company Act, and Rule 22c-1 promulgated pursuant to Section 22(c) of the Investment Company Act.
- D. Pursuant to Section 21C of the Exchange Act, the Evergreen Distributor shall cease and desist from committing or causing any violations and any future violations of Sections 15(f) and 17(a) of the Exchange Act and Rule 17a-4 thereunder.
- E. Pursuant to Section 203(k) of the Advisers Act, the Evergreen Distributor shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act.
- F. Pursuant to Section 9(f) of the Investment Company Act, the Evergreen Distributor shall cease and desist from committing or causing any violations and any future violations of Rule 22c-1 promulgated pursuant to Section 22(c) of the Investment Company Act.
- G. The Evergreen Adviser and the Evergreen Distributor shall comply with the undertakings set forth in Paragraph III.38., Paragraph III.42., Paragraph III.43., and Paragraph III.44. above.
- H. IT IS FURTHER ORDERED that Respondent Evergreen Adviser shall, within ten business days of the entry of this Order, pay: (1) disgorgement in the total amount of \$2,860,000 plus prejudgment interest thereon in the amount of \$265,000; and (2) pursuant to Sections 203(e) and 203(i) of the Advisers Act and Sections 9(b) and 9(d) of the Investment Company Act, a civil penalty in the amount of \$2,000,000 into an account opened in the name of the Ultra Short Opportunities Fund Qualified Settlement Fund consistent with the provisions of Paragraph III.42. above.

- I. IT IS FURTHER ORDERED that Respondent Evergreen Distributor shall, within ten business days of the entry of this Order, pay: (1) disgorgement in the amount of \$1; and (2), pursuant to Section 21B(a) of the Exchange Act and Section 203(i) of the Advisers Act, a civil penalty in the amount of \$2,000,000 into the same account opened in the name of the Ultra Short Opportunities Fund Qualified Settlement Fund referenced in Paragraph IV.H. above and consistent with the provisions of Paragraph III.42. above.
- J. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in paragraphs IV.H. and IV.I. Regardless of whether any distribution is made from such Fair Fund, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalties, Respondents Evergreen Adviser and Evergreen Distributor agree that they shall not, after offset or reduction in any Related Investor Action based on the Respondents' payment of disgorgement in this action and the payment described in Paragraph III.39. above, further benefit by offset or reduction of any part of the Evergreen Adviser or the Evergreen Distributor's payment of civil penalties in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, the Evergreen Adviser and the Evergreen Distributor agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalties imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against the Evergreen Adviser, the Evergreen Distributor or their affiliates, or all of them, by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.
- K. The obligations to pay prejudgment interest, disgorgement, and penalty are not fully satisfied until all funds are disbursed and the final accounting is approved by the Commission and any residual has been transferred to the Commission for disbursement to the United States Treasury. In the event the Commission

must enforce these obligations to pay, additional interest shall accrue on the ordered amounts pursuant to Rule 600 of the Commission's Rules of Practice, 17 C.F.R. § 201.600, and/or 31 U.S.C. § 3717 until the obligations are paid in full.

By the Commission.

Elizabeth M. Murphy  
Secretary