

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12805**

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In the Matter of

Evergreen Investment	:	
Management Company, LLC,	:	
Evergreen Investment Services,	:	PROPOSED PLAN OF DISTRIBUTION
Inc., Evergreen Service	:	
Company, LLC and Wachovia	:	
Securities, LLC	:	
	:	
Respondents.	:	

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**1 Introduction**

1.1 On September 19, 2007, the Securities and Exchange Commission ("Commission") entered an order in this proceeding ("Order"). *In the Matter of Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC, and Wachovia Securities, LLC*, Admin. Proc. File No. 3-12805, Exchange Act Release No. 56462 (September 19, 2007). This Distribution Plan sets forth the procedures by which to distribute to investors, for the period spanning September 1998 through June 2004, their proportionate share of the fund established to compensate such investors for the harm caused by the conduct described in the Order. The fund is not intended to compensate investors for losses they incurred because of fluctuations in securities markets.

**2 The Engagement**

2.1 Kenneth Lehn, Ph.D., has been engaged as the Independent Distribution Consultant ("IDC") in the captioned matter.<sup>1</sup> In that capacity, Dr. Lehn is to develop a plan to distribute a fund collected by the Commission pursuant to the Order related to the Commission's findings that (i) Evergreen Investment Management Company, LLC ("EIMCO"), Evergreen Investment Services, Inc. ("EIS"), and Evergreen Service

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<sup>1</sup> Dr. Lehn is the Samuel A. McCullough Professor of Business Administration at the University of Pittsburgh.

Company, LLC (“ESC”), all of which were, at the time, wholly owned subsidiaries of Wachovia Securities, LLC (“Wachovia”),<sup>2</sup> created and/or implemented two market timing<sup>3</sup> arrangements that allowed registered representatives to make frequent trades in certain Evergreen mutual funds (“Evergreen Funds”)<sup>4</sup> during the period of January 1999 through March 2003, on behalf of various customers, that violated exchange limits disclosed in the funds’ prospectuses and (ii) EIMCO failed to adequately enforce the exchange limits described in the funds’ prospectuses, thereby resulting in a large amount of frequent trading in certain Evergreen funds beginning September 1998, with most of the harm associated with this trading occurring between September 1998 through December 1999.

- 2.2 The Order required the Respondents to pay \$32.5 million into a Fair Fund<sup>5</sup> to be distributed to investors in the Evergreen funds who incurred losses due to the market timing subject to the Order. In a separate order, former Evergreen chief executive William Ennis (“Ennis”) was ordered to pay \$1 in disgorgement and a civil penalty of \$150,000, which was to be added to the Fair Fund. *In the Matter of William M. Ennis*, Admin. Proc. File No. 3-12806, Exchange Act Release No. 56464 (September 19, 2007). The \$32.5 million payment by the Respondents includes \$28.5 million in disgorgement and \$4 million in civil penalties. All of this money currently is deposited at the United States Department of the Treasury, Bureau of Public Debt (“Treasury”) earning interest through investment in short-term U.S. Treasury securities. All interest earned will inure to the benefit of investors, except as otherwise provided in the Order or herein. Other than interest from these investments, it is not anticipated that the Fair Fund will receive additional funds.
- 2.3 As the IDC, Dr. Lehn has been asked to develop a Distribution Plan for the distribution of the Fair Fund according to a methodology developed in consultation with the Respondents and not unacceptable to the staff of the Commission (the “Distribution Plan”) and to a majority of the independent trustees of the Evergreen

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<sup>2</sup> EIMCO, EIS, ESC, and Wachovia also are referred to as “the Respondents” in this Distribution Plan.

<sup>3</sup> The Order defines market timing as including “(a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing.” Order at ¶ 1. For purposes of this Distribution Plan, “market timing” refers to any trading in violation of the limits set forth in the fund prospectus.

<sup>4</sup> The term “Evergreen Funds” includes only those Evergreen funds that incurred aggregate dilution losses of at least \$100,000 because of the alleged market timing. In the Independent Distribution Consultant’s judgment, it is not cost effective to make distributions for losses incurred by investors in Evergreen Funds that incurred aggregate dilution losses of less than \$100,000, given that the distributions that would be made to investors in these funds would be small compared with the administrative and data storage costs of including these funds. The method for determining losses in the Evergreen funds is described in Section 5.

<sup>5</sup> “Fair Fund” as defined in Section 308(a) of the Sarbanes-Oxley Act of 2002.

funds. The IDC will be compensated for his time and expenses by EIMCO in accordance with the terms set forth in the Order.<sup>6</sup>

- 2.4 The Distribution Plan relies on the findings in the Order. The estimated dilution losses associated with market timing in the Evergreen Funds calculated by the IDC are not intended to be, nor should they be interpreted to be, an estimate of damages associated with illegal market timing in the Evergreen Funds. The estimated dilution losses were calculated as a means to allocate to investors, as compensation for losses suffered by the Evergreen Funds, a proportionate share of the fixed settlement payment made by the Respondents and Ennis, together with accrued interest.
- 2.5 Although other reasonable methodologies could be employed to develop the Distribution Plan, it is the view of the IDC that the methodology described herein constitutes a fair and reasonable allocation of the Fair Fund in the context of the captioned matter.

### **3 Representations of the IDC**

- 3.1 To the best of his knowledge, the IDC has received full cooperation from the Respondents, including access to data and individuals as requested.
- 3.2 Several people at Cornerstone Research, an economics consulting firm, have assisted the IDC in developing the Distribution Plan, including John Gould, Anu Bharadwaj, Garrett Trombly, and Eric Post. All work in this matter has been done under the IDC's direction.
- 3.3 Dr. Lehn has never been employed by the Respondents. Under the terms of the Order, Dr. Lehn agrees that, for the period of this engagement and for a period of two years from completion of this engagement, he will not "enter into any employment, consultant, attorney-client, auditing or other professional relationship with EIMCO, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity[.]"<sup>7</sup>
- 3.4 Pursuant to the terms of the Order, Cornerstone Research and/or its representatives set forth above will not, without prior written consent of a majority of the independent trustees of each Evergreen fund and the Commission's staff, "enter into any employment, consultant, attorney-client, auditing or other professional relationship with EIMCO, or any of their present or former affiliates, directors,

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<sup>6</sup> Order at ¶ 32.

<sup>7</sup> Order at ¶ 32.e.

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.”<sup>8</sup>

- 3.5 The conclusions the IDC has reached in this matter should be viewed as specific to this engagement and to the facts of this case.

#### **4 Background**

- 4.1 In the Order, the Commission found that various Respondents violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the “Advisers Act”), Section 17(d) of the Investment Company Act of 1940 (“Investment Company Act”) and Rule 17d-1 thereunder, Section 34(b) of the Investment Company Act, and Section 17(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17a-4(b)(4) thereunder. None of the Respondents admitted or denied any of the Commission’s findings in the Order.
- 4.2 As stated above, the Respondents agreed to make a total settlement payment of \$32.5 million, including \$28.5 million in disgorgement and \$4 million in civil penalties, and Ennis agreed to make a total settlement payment of \$150,001, including \$1 in disgorgement and \$150,000 in civil penalties. Pursuant to the Order, Dr. Lehn was retained by the Respondents in December 2007 to develop a plan for distributing these payments to investors in the Evergreen Funds who were affected by the alleged market timing as described in the Order.
- 4.3 Investors purchased shares in the Evergreen Funds through various distribution channels.<sup>9</sup> Each distribution channel presents unique challenges to the Distribution Plan, and the manner of distribution to each channel is described herein.
- 4.3.1 Direct Purchase Accounts – Certain investors bought their shares directly through the distributor for the Evergreen Funds by submitting an application with payment to the Evergreen Funds’ transfer agent, Evergreen Service Company, LLC.
- 4.3.2 Disclosed Accounts – Certain investors bought shares in the Evergreen Funds through Financial Intermediaries<sup>10</sup> who established accounts with the Evergreen Funds’ transfer agent, which disclosed the investor’s

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<sup>8</sup> Order at ¶ 32.e.

<sup>9</sup> A single investor may have purchased shares in multiple accounts. Hereafter, the term “acountholder” refers to the name in which an individual account is held.

<sup>10</sup> For purposes of the plan, a “Financial Intermediary” means a person, including a bank or broker, that in the ordinary course of business maintains securities accounts for others and acted in that capacity. For purposes of this definition, interests in a trust, profit sharing plan or retirement plan are not “securities accounts.”

identity, contact information, purchases and redemptions. Investors are the record holders of shares in Disclosed Accounts.

4.3.3 Omnibus Accounts – Other investors bought their shares through Financial Intermediaries that functioned as the accountholder of record. Under this structure, the Financial Intermediary provided to the Evergreen Funds’ transfer agent, on a daily basis, customer transaction data concerning the number of shares purchased and sold by all customers on an aggregate basis. Specific information, such as a tax identification number for each customer or account, was not provided to the transfer agent.

4.3.4 Non-Disclosed Accounts – Other investors bought their shares through Financial Intermediaries who provided a unique identifier for each account to the Evergreen Funds’ transfer agent. The Financial Intermediary did not provide the investor’s identity or contact information to the transfer agent. The Financial Intermediary acts as the record owner of shares in Non-Disclosed Accounts, but, unlike in Omnibus Accounts, holds the shares exclusively for the beneficial owner who corresponds to the unique identifier.

4.4 The IDC sets forth below the methodology used to develop the plan for calculating and distributing the Fair Fund to investors in the Evergreen Funds during the relevant times.

## **5 Methodology Used to Develop Distribution Plan**

### **5.1 Data**

5.1.1 To estimate the effect of the relevant market timing transactions on investors in the Evergreen Funds, the IDC requested the following data from the Respondents for the period from January 1998 through June 2004 for all Evergreen funds: (a) trading records for all accountholders; (b) daily closing net asset values (“NAVs”) and dividends; (c) data on daily securities purchases and sales made by the funds; and (d) daily investor flows (subscriptions and redemptions).

5.1.2 The Respondents provided the IDC and Cornerstone with the requested data. They also informed the IDC and Cornerstone that Ernst & Young LLP (“E&Y”) had constructed a data set of exchanges based on the transactions in the Evergreen funds by all accountholders to determine exchanges that were in violation of the exchange limits set forth in the prospectuses of the Evergreen funds over the period of January 1998 through June 2004. The IDC requested that the Respondents also provide Cornerstone with the E&Y exchanges database, which they did.

- 5.1.3 The IDC and Cornerstone used the data to identify market timing transactions. Cornerstone created a dataset of trading pairs or “round trips” using a “last in, first out” (“LIFO”) methodology. For example, assume a given trader purchased 100 shares of a given Evergreen fund on January 15, bought an additional 50 shares on January 20, sold 100 shares on January 22, and sold the remaining 50 shares on January 25. The LIFO methodology results in a 50 share trade pair with a buy date of January 20 and a sell date of January 22, a second trade pair of 50 shares with a buy date of January 15 and sell date of January 22, and a third trade pair of 50 shares with a buy date of January 15 and a sell date of January 25.
- 5.1.4 The IDC based his analysis of the harm associated with market timing of the Evergreen Funds on the transactions identified by E&Y as exchanges. The IDC identified all accounts in each Evergreen fund that made at least one “short-term” round trip of an amount greater than or equal to \$50,000 that included an exchange in violation of the exchange limits as set forth in the prospectuses of the Evergreen funds, where a short-term round trip is a round trip for which the time difference between the sale and purchase transactions comprising the round trip is less than or equal to 30 calendar days. Hereafter, these identified accountholders are referred to as “market timers.”
- 5.1.5 Table 1A shows the number of market timers, the number of round trips by the market timers, and the dollar amount of market timing in the Evergreen Funds for the period from September 1998 to June 2004. The table shows that the fund with the largest number of market timing round trips during this period was the Evergreen Fund in which 368 account holders made 9,200 round trips for a total transaction amount exceeding \$4 billion.
- 5.1.6 Table 1B shows the same information by year. Table 1B shows that most of the market timing appears to have occurred prior to year 2000. For example, for the fund with the largest number of market timing round trips, the Evergreen Fund, the majority of the timing trades occurred in the years 1998 and 1999.

## 5.2 Estimation of Dilution Losses

- 5.2.1 Transactions by market timers impose losses on other shareholders in a mutual fund if the returns earned by the market timers exceed the returns that the fund generates on the cash flows invested in the fund by the market timers. These losses are referred to as “dilution losses.” The amount of dilution losses associated with market timing is related to how the fund manager invests the cash flows invested by market timers in the fund. The IDC considered three approaches to estimating dilution losses

in this matter – (i) the next day NAV approach, (ii) the realized profits approach, and (iii) the hybrid approach.

- 5.2.2 *Next Day NAV Approach.* If the fund manager fully invests the net cash flows in securities (or derivatives related to the securities) the day after a market timer invests in the fund, and liquidates the securities investment the day after the market timer exits the fund, then the “next day NAV” approach is an appropriate way to estimate dilution losses associated with market timing. Under this approach, dilution losses are equal to the sum of the market timer’s first day profits plus avoided loss on the day the market timer exits the fund.
- 5.2.3 *Realized Profits Approach.* Alternatively, if the fund manager holds all of the market timer’s net cash flows as cash (i.e., if the fund manager does not invest any of the market timer’s cash flows in securities or derivatives), then the “realized profits” approach is an appropriate way to estimate dilution losses associated with market timing. Under the realized profits approach, dilution losses are equal to the market timer’s holding period profits (i.e., the difference between the proceeds the market timer realizes upon redemption and the amount of the initial investment).
- 5.2.4 *Hybrid Approach.* A third possibility is that the fund manager gradually invests the market timer’s cash flows in securities or derivatives over a period of time greater than one day and holds a portion of the cash flows in cash until it is fully invested. In this case, dilution losses will tend to lie between the dilution losses estimated under the next day NAV approach and the realized profits approach.

### 5.3 Estimating Dilution Losses for the Evergreen Funds

5.3.1 The IDC used regression analysis to estimate the extent to which the portfolio managers of the Evergreen Funds used the net cash flows invested in the Evergreen Funds by market timers to invest in securities. Based on this analysis, the IDC determined it was appropriate to use the following approaches to estimate dilution losses for the Evergreen Funds.

5.3.1.1 The regression analysis indicated that there was a statistically significant relation between investor flows and net securities purchases by funds for four of the Evergreen Funds, including Evergreen Fund, International Growth Fund (renamed International Equity Fund in June 2003), Global Opportunities Fund, and Aggressive Growth Fund.

5.3.1.2 For two of the four funds – the International Growth Fund (renamed International Equity Fund in June 2003) and the

Aggressive Growth Fund – the regression results suggested that the portfolio managers of these funds invested almost all investor flows in securities and derivatives on the day after investors purchased shares in the funds. Hence, the next day NAV approach is appropriate for these two funds. The next day NAV calculation for purchases is computed as the NAV on the day after the purchase less the NAV on the purchase date, multiplied by the number of shares purchased. This measures the benefit from trading on the purchase date versus the following day. For sales, the calculation is the NAV on the sale date less the NAV on the following date, multiplied by the number of shares. This measures the loss avoided by transacting on the sale date versus the following day.

5.3.1.3 For the other two funds – the Evergreen Fund and the Global Opportunities Fund – the regression analysis revealed that not all of the investor flows were invested in securities. Hence, the hybrid approach is appropriate for these funds. In the hybrid approach, for each LIFO trading pair, the fund's incremental investment in securities is estimated assuming that a constant fraction of a market timer's funds is invested in securities each day until either the market timer's funds are fully invested or the market timer's shares are redeemed. When the market timer's shares are redeemed, the portfolio manager is assumed to sell securities at the same rate to fund the redemption

5.3.1.4 To illustrate, take the case where a market timer buys 10 fund shares at \$10 per share for a total of \$100 on day 1, sells those 10 shares on day 4 for a total of \$110, and the estimated daily average investment rate is 10 percent per day. The model assumes the portfolio manager invests \$10 per day in securities on days 2 through 4 in response to the market timer's investment. Consequently, before the redemption on day 4, the fund holds \$30 of the market timer's funds in securities and \$70 in cash; and immediately after the redemption on day 4, the fund holds \$30 of the market timer's funds in securities and has a cash deficit of \$40 (= \$70 - \$110). On days 5 through 14, the portfolio manager is assumed to sell \$40 of securities at the rate of \$4 per day to offset the cash deficit and return the fund to its previous cash level.

To estimate the effect of the incremental investment, the fund's profits and losses on the incremental investment are estimated for each day, and the total effect is the sum of the daily profits and losses due to the incremental investment. The effect of the incremental investment each day is estimated as the fund's return

that day multiplied by the incremental investment in securities that day. For example (continuing the previous illustration), the fund's investment in securities is \$20 higher on day 3 than it would have been absent the market timing activity. If the fund's return on day 3 was 1 percent, then the investment of the market timer's funds benefited the fund's shareholders that day by \$0.20 ( $= \$20 * .01$ ). If the fund's return on day 3 was -2 percent, then the market timing activity diluted the fund's assets that day by \$0.40 ( $= \$20 * .02$ ).

Finally, the effects of all incremental investments are added to or subtracted from the total net profits made by the market timers (\$10 in this example) to arrive at an estimate of the total dilution from the market timing activity.

5.3.1.5 The regression analysis for the remaining ten funds for which data were available to perform such analysis suggested that none of the timer flows were invested in securities. Accordingly, the IDC determined that the realized profits approach is appropriate for these funds. The realized profits calculation is the difference between the market timer's sales proceeds and cost of purchases. In addition, the realized profits approach was used for the International Equity fund for the period prior to its merger with the International Growth fund in October 23, 1998, as the data to perform a regression analysis were unavailable.

## **6 Transaction Costs**

- 6.1 To the extent that market timing investments and disinvestments resulted in excess portfolio purchases and sales, funds may have incurred transaction costs that reduced their NAVs. Such transaction costs can be estimated by comparing estimated transaction costs due to the funds' actual inflows and outflows to the estimated transaction costs that would have occurred had there been no market timing activity. The IDC took the difference between the two estimates of transaction costs as the incremental transaction cost attributable to the market timing activity.
- 6.2 The IDC modeled incremental transactions in response to a given inflow or outflow by assuming that the portfolio manager invests (or disinvests) in securities at the estimated daily average investment rate until the flow is completely invested (or disinvested). For each inflow or outflow, this produces a series of daily investments or disinvestments. To calculate net investment or disinvestment on any given day, all investments and disinvestments on that day due to all previous inflows and outflows are summed. In other words, on any given day, where there is investment due to previous inflows and disinvestment due to previous outflows,

the investments and disinvestments are netted against each other. (Investments and disinvestments are not netted against each other across days.)

- 6.3 Transaction costs are estimated from the daily series of net investments by multiplying the net investment or disinvestment on each day by the transaction cost per dollar of investment or disinvestment. Total transaction costs are the sum of the daily transaction costs over the entire period.
- 6.4 Transaction costs vary by fund type and by time period. All funds for which transactions costs were calculated were U.S. large-cap, U.S. small-cap, and international funds for which the IDC obtained data from the Plexus Group<sup>11</sup>, which provides transaction costs in the category of “commissions” and “impact costs.”<sup>12</sup>

## **7 Adjustment for Interest**

- 7.1 The IDC adjusted the losses for accumulation of interest. For this calculation, the IDC applied the federal short-term interest rate as determined by the IRS (Section 6621 of the Internal Revenue Code). Interest on the losses was calculated from the day of the loss through June 30, 2004.<sup>13</sup>

## **8 Calculation of Distribution Amounts for Individual Investors**

- 8.1 Investors in each affected Evergreen Fund will receive a prorated share of the Fair Fund based on the percentage of total losses incurred by the investors (“the Distribution Amount”). For the purpose of this calculation, total losses are defined as the sum of dilution losses, transaction costs, and accumulation of interest incurred by all investors in Evergreen Funds that incurred losses of more than \$100,000 (i.e., the Evergreen Funds). The prorated share is to be calculated as the percentage of the value of the fund held by an investor on a given day times the total losses incurred by the fund on that day.
- 8.2 For example, suppose an investor owned 0.1% of an affected Evergreen Fund on a day when the Fund incurred total losses of \$1 million. Under the Distribution Plan, the investor’s total loss on this day would be \$1,000 (i.e., 0.001 times \$1 million).

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<sup>11</sup> Plexus Group specializes in the evaluation of execution efficiency and the costs of trading. In 2006, Plexus Group was acquired by the Investment Technology Group.

<sup>12</sup> “Impact costs” refer to the effect that a transaction has on the purchase or sale price of the underlying security.

<sup>13</sup> The calculation of interest is intended to reflect differences across investors as to when they incurred dilution losses. As such, it is only necessary to add interest through June 30, 2004 the last date of the market timing. Beyond this date, additional interest would accrue to all investors equally (on a percentage basis) and hence would not affect the final distribution across investors.

- 8.3 Each investor's total losses are aggregated across all relevant days, with any gains from market timing being offset against the losses. For each investor, the IDC will calculate the total losses incurred by the investor as a percentage of the total losses incurred by all investors in the affected Evergreen Funds. The Distribution Amount for each investor is then calculated as this percentage times the amount in the Fair Fund.
- 8.4 Investors who: (a) prior to distribution under the Distribution Plan, are subject to order(s) of the Commission, a court, or other authority, by settlement or otherwise, of which the IDC has notice, finding them responsible for losses suffered by the Evergreen Funds in connection with market timing of the Evergreen Funds during the relevant periods; or (b) were market timers (as set forth in Section 5.1.4 above) will, in accordance with Section 9.16, not be eligible for a distribution under the Distribution Plan (the "Excluded Investors").
- 8.5 Only investors with an aggregate prorated share of at least \$10 (including accounts that have negative aggregate losses) across all funds and days are eligible to receive a distribution from the Fair Fund. The decision to adopt a \$10 de minimis requirement is based on the conclusion that it is not cost effective to attempt to distribute amounts of less than \$10 to individual investors. The Distribution Amount per investor will be prorated so that the total amount sent to investors equals the amount available in the Fair Fund.
- 8.6 Any monies not distributed to investors shall be distributed to the Evergreen Funds in which the respective investors held their accounts.

## **9 Distribution of Funds**

- 9.1 Fund Administrator. Rust Consulting ("Rust") is proposed to serve as the administrator of the Fair Fund ("Fund Administrator"). Rust, founded in 1976, is a service provider of technology for the legal industry and offers claims administration services. Rust has extensive experience in both the settlement administration industry (over 20 years) and has been the settlement administrator for other SEC settlements in mutual fund market-timing matters. Rust will be compensated for its time and expenses by the Respondents in accordance with the terms set forth in the Order.<sup>14</sup> In cooperation with the IDC, Rust will perform the duties and obligations set forth herein, including overseeing the administration of the Fair Fund; distributing funds from the Fair Fund to investors in accordance with the Distribution Plan; preparing and submitting to the staff in accordance with Rule 1105(f) periodic accountings of all monies earned or received and all monies spent in connection with the administration of the Distribution Plan; and, with the IDC, submitting a final accounting for approval by the Commission.

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<sup>14</sup> Order at ¶ 32.d.

9.2 Limitation on Liability. The IDC and the Fund Administrator, and/or each of their designees, agents and assigns, shall be entitled to rely on any Orders issued in this proceeding by the Commission, the Secretary by delegated authority, or an Administrative Law Judge, and may not be held liable to any person other than the Commission or the Fair Fund for any act or omission in the course of administering the Fair Fund, except upon a finding that such act or omission is caused by such party's gross negligence, bad faith or willful misconduct, reckless disregard of duty, or reckless failure to comply with the terms of the Distribution Plan. This paragraph is an expression of the current state of the law and is not intended, nor should it be deemed to be, a representation to or an indemnification of the IDC or the Fund Administrator or their designees, agents and assigns by the Commission or the Fair Fund, nor should this paragraph preclude the Commission or the Fair Fund from seeking redress for any act or omission in the course of administering the Fair Fund or from seeking redress from any insurance or bond provided as set forth in this Plan.

9.3 Custody of the Fair Fund and Other Security Issues.

9.3.1 The Fair Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

9.3.2 The assets of the Fair Fund are subject to the continuing jurisdiction and control of the Commission. The Fair Fund is currently deposited at the Treasury.

9.3.2.1 Upon approval of the Distribution Plan by the Commission, the IDC, the Fund Administrator, and Deutsche Bank Trust Company Americas (the "Bank") shall establish an escrow account at the Bank in the name of and bearing the employer identification number of the Fair Fund (the "Escrow Account") as custodian for the distributees of the Distribution Plan. The name of the account shall be in the following form: [name of QSF], EIN No., as custodian for the benefit of investors allocated a distribution from the Evergreen Investment Management Company, LLC, et al. Plan of Distribution. The escrow agreement (the "Escrow Agreement") must not be unacceptable to the Commission staff.

9.3.2.2 Upon approval of the Distribution Plan by the Commission, the IDC and the Fund Administrator shall further establish a controlled disbursement account in the name of and bearing the employer identification number of the Fair Fund (the "Distribution Account").

- 9.3.2.3 Following approval of the Plan, and submission by the IDC of a validated list of payees and amounts to the Commission staff and all information necessary to make disbursement to each distributee, and unless otherwise directed by the Commission, the Commission staff will seek an Order Directing Disbursement that releases funds to the Escrow Account based upon the validated list.
- 9.3.2.4 All funds will remain in the Escrow Account pursuant to the Escrow Agreement until needed to satisfy a presented check or wire instruction. At that time, and subject to the controls set forth below, the amount needed to satisfy any presented check will be transferred to the Distribution Account and immediately paid out, subject to any adjustments resulting from stop payments or the Positive Pay System and other controls described below. For any payment to be made by wire instruction, and subject to the controls set forth below, funds will be paid by the Bank from the Escrow Account in accordance with written instructions provided to the Bank by parties authorized by the Escrow Agreement.
- 9.3.2.5 The Fund Administrator shall be the signer on the Distribution Account, subject to coordination with the IDC and subject to the continuing jurisdiction and control of the Commission. The Fund Administrator shall authorize the Bank to provide information on the Escrow Account and the Distribution Account to the Tax Administrator (defined in ¶ 10.12.1, below). In coordination with the IDC, and at the direction of the Fund Administrator, the Bank shall use the assets and earnings of the Escrow Account to provide payments to eligible investors. Once the Fair Fund assets are transferred from the Treasury to the Bank, they shall be placed in the Escrow Account, which shall invest and reinvest the escrow property in short-term U.S. Treasury securities and obligations, all backed by the full faith and credit of the U.S. Government; provided however, that investments in short-term U.S. Treasury securities will not be made through repurchase agreements or other derivative products.
- 9.3.2.6 The Bank has provided the IDC with an attestation that all funds in the Escrow Account and the Distribution Account will be held for this Distribution Plan and that the Bank will not place any lien or encumbrance of any kind upon the funds. All interest earned on the monies will inure to the benefit of investors except as otherwise provided in the Order or herein. All costs associated with the Escrow Account and the Distribution Account will be borne exclusively by the Respondents, in accordance with the

Order. Upon the Bank's receipt of funds from the Treasury, the Bank shall promptly deposit the funds into the Escrow Account. .

- 9.3.3 A waiver of the bond required for the Fund Administrator by Rule 1105(c) is requested. Good cause for waiver exists for the reasons that follow: (1) the Fund Administrator will have no custody, and only limited control, of the Fund. The Fund Administrator will provide a list of payments including names, addresses and payment amounts to the IDC who will in turn oversee the validation of these payments and provide a listing to the SEC for approval; (2) the Fund will be held by Treasury until immediately before transmittal of checks or electronic transfers to eligible investors. Funds will be held by the Treasury and transferred to the Escrow account on an agreed upon date within five days of the agreed date for distribution of payments by check or wire; (3) upon transfer from Treasury, funds will be held in an escrow account, separate from Bank assets, until presentation of a check or electronic transfer, at which time funds will be transferred to a controlled distribution account. All funds transferred from the Treasury will be deposited in the Escrow account. Only the exact amounts needed to pay the checks presented on a daily basis will be transferred to the controlled disbursement account after those checks have cleared the positive pay features used to validate that the checks are valid; (4) presented checks or electronic transfers will be subject to "positive pay" controls before being honored by the Bank. The Fund administrator will provide the Bank with the list of checks being paid to be used to match when those checks are presented for payment to the Bank; and (5) both the Bank and the Fund Administrator will maintain, throughout this process, insurance and/or a financial institution bond that covers errors and omissions, misfeasance, and fraud.
- 9.3.4 The Fund Administrator maintains and will continue to maintain until termination of the Fair Fund, errors and omissions insurance coverage ("E&O insurance"). The primary insurer, Illinois Union Insurance Company, is a company which, as of the most recent renewal of the coverage, was rated "A+r XV" by A.M. Best. The Fund Administrator maintains, and will continue to maintain until termination of the Fair Fund, E&O insurance in the amount of \$10,000,000. It has a policy limit of \$10,000,000 per occurrence and an overall limit of \$10,000,000 during the life of the policy. The Fund Administrator also maintains an additional \$10,000,000 in excess E&O insurance through Lloyds of London underwriters who have an "A s XV" rating by A.M Best. In addition, the Fund Administrator maintains a crime policy in the amount of \$5,000,000 per occurrence through Zurich American Insurance Company (whose A.M. Best rating is "A g XV"), which provides protection against employee dishonesty, forgery or fraudulent alteration of securities, and electronic and computer crime exposures, which include losses due to transfer, payment or delivery of funds as a result of

fraudulent input, preparation or modification of computer instructions, data or fraudulent electronic transmissions or communications. Documentation of coverage has been provided to the assigned Commission staff for review and that coverage has been deemed “not unacceptable.”

9.3.5 The Bank maintains, among other insurance, a Financial Institution Blanket Bond in the amount of \$125,000,000 Euros through the Chubb Group of Insurance Companies, which has a Standard & Poors credit rating of "AA/Stable", and errors and omissions insurance coverage in the amount of \$210,000,000 Euros through American International Group, Inc., which has a Standard & Poors credit rating of "A+/Stable". The Bank annually assesses the adequacy of its policy limits through extensive analysis of historical loss data, exposure to loss and internal company controls. The Bank’s limits are reviewed annually by its Board of Directors. Documentation of coverage has been provided to the assigned Commission staff for review and that coverage has been deemed “not unacceptable.”

9.3.6 Once the Fair Fund has been transferred from the Treasury to the Bank, the Fund Administrator will file an accounting during the first ten days of each calendar quarter on a standardized accounting form provided by the staff of the Commission, and will submit a final accounting for approval of the Commission prior to termination of the Fair Fund and discharge of the IDC and/or Fund Administrator.

9.4 Additional Distribution Controls. Following approval of the Distribution Plan, and in order to maximize the security of the Fair Fund, the following procedures will be followed in connection with the Fair Fund:

9.4.1 In order to distribute funds, the IDC will submit a validated list of payees and the payment amounts to the assigned Commission staff, who will obtain authorization from the Commission to disburse pursuant to SEC Rule 1101(b)(6). The payees and amounts will be validated at the IDC’s direction by the Fund Administrator. The validation will state that the list was compiled in accordance with the Distribution Plan and provides all information necessary to make a disbursement to each distributee. Unless otherwise directed by the Commission, the Commission staff will obtain an Order Directing Disbursement that releases funds to the bank account established by the Fund Administrator based upon the validated list and representation by the Fund Administrator that the checks or electronic transfers will be issued within the next five business days. The Fund Administrator will provide to the IDC a list identifying eligible investors through multiple identifiers, including name, address, and the payment amounts (the “Issue List”). The Issue List will be validated by the Fund Administrator at the IDC’s direction through the performance of

procedures and methodologies chosen by the IDC. The validation will state that the Issue List was compiled in accordance with the Distribution Plan and provides all currently known information necessary to make distribution to each eligible investor. At the IDC's direction, the Fund Administrator will provide the validated Issue List to the Bank. The validated Issue List will be used in connection with the Positive Pay System and other controls described below.

- 9.4.2 The IDC will provide a copy of the validated Issue List to the Commission staff. Upon receipt of the Issue List, the Commission staff will, as appropriate, obtain authorization from the Commission or its delegate to disburse pursuant to Rule 1101(b)(6).
- 9.4.3 Upon authorization by the Commission, the Commission staff will direct the release of the Fair Fund from Treasury to the Escrow Account for distribution as provided herein.
- 9.4.4 The IDC, Commission staff, and the Fund Administrator will establish a set "Mailing" date, or date on which the Fund Administrator will transmit all checks or wires to eligible investors intended to be funded with the released funds.
- 9.4.5 The Commission staff will direct that the funds be released to the Escrow Account on the day before the agreed-upon mailing date. The staff's direction will be based upon the Issue List and the representation by the Fund Administrator that all amounts intended to be funded with the released funds will be transmitted to eligible investors by check or wire on the mailing date. The Fund Administrator will use its best efforts to mail and/or transmit distribution checks or wire transfers within one business day of the Escrow Account's receipt of the funds. All efforts will be coordinated to keep the time between the receipt of the funds and the transmittal process at a minimum.
- 9.4.6 Upon presentation of an outstanding check, and subject to the controls set forth below, the exact amount needed to satisfy the presented obligation will be transferred from the Escrow Account to the Distribution Account and immediately paid out, subject to any adjustments resulting from stop payments or the Positive Pay System and other controls described below. All checks shall bear a stale date of 90 days. Checks that are not negotiated within the stale date shall be voided, and the Fund Administrator shall instruct the Bank to stop payment on those checks.
- 9.4.7 As stated in ¶ 9.3.2.4, above, for any payment to be made by wire instruction, funds will be distributed by the Bank from the Escrow

Account in accordance with written instructions provided to the Bank by parties authorized by the Escrow Agreement.

9.4.8 A Positive Pay System will be used to control distributions from the Distribution Account, requiring, among other things, confirmation by the Bank that all checks presented for payment match the identifiers and amounts on the validated Issue List prior to payment of the presented obligation.

9.4.9 The Bank will report the aggregate amounts of transfers in and out of the Escrow Account and the Distribution Account on a daily basis to the Fund Administrator and the IDC. The Fund Administrator, on a daily basis and using electronic “view functions” provided by the Bank, will confirm that: the Escrow Account and the Distribution Account reconcile; and, with respect to each instrument presented, that the proper amounts were released from the appropriate account. The Fund Administrator will regularly update the IDC as to the reconciliation of the Escrow Account and Distribution Account and will alert the IDC and the staff of the Commission as soon as possible under the circumstances upon the detection of any irregularity that is not resolved in the ordinary course of business. As appropriate, the Fund Administrator will monitor outstanding large dollar checks and contact the eligible investor to determine if the Fund Administrator can provide any assistance to speed the presentment for payment of the outstanding check(s).

9.5 Oversight and Costs. The Fund Administrator, in coordination with the IDC, will administer this Distribution Plan. The IDC will work with the Fund Administrator in the conduct of its duties with respect to this engagement, and the Fund Administrator will keep the IDC informed as to work on this engagement. EIMCO is responsible for all costs associated with the administration of the Distribution Plan.

9.6 Procedures for Identifying and Distributing to Eligible Investors. The Fund Administrator will identify and make distributions to eligible investors in several ways, depending on the distribution channel through which the investor purchased the shares. The manner in which the investors will be identified and paid is as follows:

9.6.1 Direct Purchase Accounts and Disclosed Accounts: The Fund Administrator will use records provided by EIMCO and its transfer agent to identify each investor in Disclosed Accounts and Direct Purchase Accounts and determine the shares held by each investor on a daily basis. The Fund Administrator will then, in accordance with the Distribution Plan and in coordination with the IDC, determine the Distribution Amount payable to each eligible investor.

9.6.2 Omnibus Accounts: In coordination with the IDC, the Fund Administrator will identify and determine the Distribution Amount for these investors as follows:

9.6.2.1 The Fund Administrator will use transfer agent records and other Evergreen resources to identify Omnibus Accounts.

9.6.2.2 The Fund Administrator will, in accordance with the Distribution Plan, determine net shares held in each Omnibus Account on a daily basis.

9.6.2.3 In coordination with the IDC, the Fund Administrator will calculate the total amount due to each Omnibus Account using the methodology set forth in the Distribution Plan.

9.6.2.4 The Fund Administrator will engage in an “Outreach Process” by which the Fund Administrator will contact each “Omnibus Account Intermediary” with provisional distributions of \$1,000 or more and request investor records (i.e., shares held by each investor on each day). The individual accountholder’s name and address, as well as the tax identification number, for each account within the Omnibus Account, will be requested from the Omnibus Account Intermediary that sold the Evergreen Funds in this manner. The accounts that are directly underlying the Omnibus Account will be referred to as “Tier 1”.

9.6.2.5 The Fund Administrator shall maintain in confidence shareholder identifying information and any other information relating to sub-account holders obtained from any Omnibus Accountholder pursuant to this Distribution Plan, and shall not share such information with the Respondent. The Fund Administrator, however, may share such information with its service providers or other persons to the extent necessary to perform its duties under this Distribution Plan, and shall require that such service providers and other persons maintain such information in confidence.

9.6.2.6 Upon receipt of the individual accountholder records from each Omnibus Account Intermediary, the Fund Administrator will, in accordance with the methodology set forth in the Distribution Plan, calculate the amount due each Tier 1 account as provided in Section 9, above.

9.6.2.7 If Omnibus Account Intermediaries do not, within a reasonable time, respond to the Fund Administrator’s Outreach Process or do

not provide the Fund Administrator with the requested individual accountholder records, the Fund Administrator will proceed as follows: the Fund Administrator will ask the Omnibus Account Intermediary to certify that the Omnibus Account Intermediary will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties, as applicable, to make the distribution to its Tier 1 accounts in accordance with the methodology and the deadlines set forth in this Distribution Plan, and that the Omnibus Account Intermediary will return any undistributed money to an account that has been established to hold otherwise undistributed funds for ultimate disposition in accordance with this Distribution Plan. After the Omnibus Account intermediary has distributed funds in this fashion, the Omnibus Account intermediary will be required to provide the Fund Administrator and IDC with a certification that it has complied with these terms and conditions.

9.6.2.7.1 After each such Omnibus Account Intermediary has provided its certification to the IDC, which Fund Administrator will make commercially reasonable efforts to obtain under the direction of the IDC, the IDC will instruct the Bank to disburse the portion of the Fair fund allocated to the Omnibus Account Intermediary so that it can make the distribution to its Tier 1 accounts.

9.6.2.7.2 If such certification is not provided, the amount of Fair Fund allocated to such Omnibus Account Intermediary shall be treated as “undistributed” for purposes of the Distribution Plan, and processed pursuant to ¶ 9.18, below.

9.6.2.7.3 The Fund Administrator will maintain records of each attempt to contact an Omnibus Account Intermediary to provide a certification, and each response received, if any. The records concerning those Omnibus Account Intermediaries who do not provide a certification as required by ¶ 9.6.2.7 will be given to Commission staff at least 45 days before the scheduled distribution is to be made.

9.6.3 Non-Disclosed Accounts: In cooperation with the IDC, the Fund Administrator will determine the Distribution Amount for these investors as follows:

9.6.3.1 The Fund Administrator will use transfer agent records and other Evergreen resources to identify Non-Disclosed Accounts.

9.6.3.2 In cooperation with the IDC, the Fund Administrator will calculate the total amount due to the Non-Disclosed Accounts using the methodology set forth in the Distribution Plan.

9.6.3.3 The Fund Administrator will contact each Financial Intermediary that maintains Non-Disclosed Accounts and request individual accountholder identification information. The investor name and address, as well as the tax identification number, typically the individual's social security number, will be requested for each of these accounts. This information will be requested from the Financial Intermediaries identified in the records of the Evergreen Funds as having sold the Evergreen Funds in this manner.

9.6.3.4 The Fund Administrator will make commercially reasonable efforts to protect the privacy and confidentiality of the data, including accountholder data, in any and all communications with Evergreen, by using unique account identifiers.

9.6.3.5 Upon receipt of the individual accountholder records from each Financial Intermediary, the Fund Administrator will, in accordance with the methodology set forth in the Distribution Plan, calculate the amount due each Tier 1 account as provided in Section 9, above.

9.6.3.6 The Fund Administrator will maintain records of efforts made to obtain the cooperation of the Financial Intermediary and of the responses to these efforts. In the event the Fund Administrator cannot obtain from the Financial Intermediary the requested individual accountholder records, or the Financial Intermediary fails to provide to the Fund Administrator the requested records within a reasonable time, the Fund Administrator will ask the Financial Intermediary to certify that the Financial Intermediary will make commercially reasonable efforts consistent with its legal, fiduciary, and contractual duties, as applicable, to make the distribution to its Non-Disclosed Accountholders in accordance with the methodology provided by the IDC and the deadlines set forth in the Distribution Plan, and that the Financial Intermediary

will return any undistributed money to an account that has been established to hold otherwise undistributed funds for ultimate disposition in accordance with the Distribution Plan. After the Financial Intermediary has distributed funds in this fashion, the Financial Intermediary will be required to provide the Fund Administrator and IDC with a certification that it has complied with these terms and conditions.

9.6.3.7 Upon receipt of the certification, the Fund Administrator will deliver to such Financial Intermediary one check or wire transfer representing the aggregate of all Distribution Amounts to which the Financial Intermediary's Non-Disclosed Accounts are entitled under the Distribution Plan. Upon receipt of funds representing a Non-Disclosed Account's Distribution Amount, the Financial Intermediary shall promptly distribute the funds to investors in accordance with a payment schedule prepared by the Fund Administrator identifying each accountholder by broker identification number. The payment schedule prepared by the Fund Administrator shall not provide for distributions to investors if each such distribution is less than the de minimis amount of \$10.

9.6.3.8 The Fund Administrator will maintain records of each attempt to contact a Financial Intermediary regarding its Non-Disclosed Accounts, each response received, if any, and the reason given for not providing the certification required. The records of those Financial Intermediaries who do not provide a certification as required by ¶ 9.6.3.6 will be given to Commission staff at least 45 days before the scheduled distribution is to be made. In such cases, the amount of Fair Fund allocated to such Financial Intermediary's Non-Disclosed Accounts shall be treated as "undistributed" for purposes of the Distribution Plan, and processed pursuant to ¶ 9.18, below.

#### 9.6.4 Retirement Plans

9.6.4.1 "Retirement Plan" as used in this Distribution Plan 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. Under this Distribution Plan, non-IRA retirement plans are treated as Omnibus Accounts, and distributions to non-IRAs will be made in accordance with ¶ 9.6.2 of this Plan.

9.6.4.2 Assets of Retirement Plans are held in trust by a trustee, and the trust is the legal owner of the assets. This Distribution Plan

requires the 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 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.

9.6.4.3 An intermediary to one or more Retirement Plans may allocate the distribution it receives pursuant to this Distribution Plan among eligible Retirement Plans participating in an Omnibus Account administered by such intermediary according to the procedures set forth in Section 8 of this Distribution Plan or according to the average share or dollar balances of the Retirement Plans’ investments in the Evergreen Funds during the relevant period,, provided, however, that for the purposes of such allocation each Retirement Plan itself (and not the individual plan participants) shall be treated as the beneficial owner.

9.6.4.4 The fiduciary of a Retirement Plan receiving a distribution may distribute it pursuant to one of the following four alternatives:

9.6.4.4.1 Retirement Plan fiduciaries may allocate the distribution to current and former participants in the Retirement Plan using the methodology referenced in Section 8 of this Distribution Plan. The IDC will make the methodology available to Retirement Plan fiduciaries.

9.6.4.4.2 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).

9.6.4.4.3 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).

9.6.4.4.4 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.

9.6.4.5 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 Plan.

- 9.7 In accordance with the Order, the Respondents will bear the costs and expenses associated with the administration of the Distribution Plan. Such costs and expenses shall include the fees of, and reasonable administrative costs incurred by the Fund Administrator and Omnibus Account Intermediaries and Financial Intermediaries for identifying individual accountholder records in connection with the Distribution Plan. Requests for reimbursement from Omnibus Account Intermediaries or Financial Intermediaries shall be made within [60] days after notice of the proposed distribution, and will be paid to the extent that such costs are commercially reasonable in light of the amount to be distributed to such firms. All reimbursement requests are subject to review and a final decision by the IDC. The decision by the IDC shall be made within 30 days of receipt of the request for reimbursement.
- 9.8 Data Accuracy. All intermediaries providing information to the Fund Administrator will be required to attest to the IDC that to the best of their knowledge, the information they provide is true and accurate.
- 9.9 Affected Investors. Even though the Distribution Plan does not anticipate soliciting accountholder information directly from affected investors, it can be expected that a limited number of investors will contact the IDC, or others, to request a distribution. If this occurs, the information received will be compared to the data obtained by the IDC during the course of the engagement to (1) ensure accurate account information and (2) avoid any duplication of payment. This information will be forwarded to the Fund Administrator for an appropriate response.
- 9.10 Notice and Investor Communications. The Fund Administrator will provide notification and information services to affected investors. These services will become active at least by the time of the first distribution. The Commission staff retains the right to review and approve any material posted on the various websites.
- 9.10.1 Evergreen Website. After the approval of this Distribution Plan, Evergreen will maintain an Evergreen Funds website ([www.evergreenfairfundsettlement.com](http://www.evergreenfairfundsettlement.com)) that will provide all affected investors of the Evergreen Funds with regular and ongoing updates about the Distribution Plan, including notice of the proposed plan, instructions on how to obtain copies of the proposed plan, and how to submit

comments on the proposed plan to the Commission. The website will provide a link to the Commission's website, which is: <http://www.sec.gov>

9.10.2 Notice of a Proposed Plan and Opportunity for Comment. Notice of this Plan shall be published in the SEC Docket, on the Commission website ([www.sec.gov](http://www.sec.gov)), and on the Respondent's website ([www.evergreenfairfundsettlement.com](http://www.evergreenfairfundsettlement.com)). Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within thirty days of the date of the notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (ii) by using the Commission's Internet comment form ([www.sec.gov/litigation/admin.shtml](http://www.sec.gov/litigation/admin.shtml)); or (iii) by sending an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-12805) in the subject line. Comments received will be available to the public. Commenters should only submit information that they wish to make publicly available.

9.10.3 Final Approved Plan. The Final Approved Plan will be posted on the following free public websites:

**[www.sec.gov](http://www.sec.gov)**

**[www.evergreenfairfundsettlement.com](http://www.evergreenfairfundsettlement.com)**

9.10.4 Additional Communications to Eligible Investors. In addition, the Final Approved Plan and other communications about the distribution will be posted on the following website:

**[www.evergreenfairfundsettlement.com](http://www.evergreenfairfundsettlement.com)**

9.10.5 Investor Call Center. The Fund Administrator will provide a toll-free investor call center. The call center number(s) will be published in the Explanation that accompanies the distribution checks, described in ¶ 9.11.1, below.

9.11 Distribution. Upon the Commission's approval, in coordination with the IDC, the Fund Administrator will implement the Distribution Plan. The Commission retains jurisdiction over the implementation of the Distribution Plan.

9.11.1 All payments shall be preceded or accompanied by a communication (the "Explanation") that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of tax information

reporting required of the QSF and other related tax consequences; (c) a statement that checks will be void after 90 days; and (d) the toll free phone number of the Investor Call Center, to be used in the event of any questions regarding the distribution. Any such information letter or other communication about the Distribution Plan shall be submitted to the assigned Commission staff for review and approval. Distribution checks, on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from a Fair Fund established by the SEC.

9.11.2 All investors will receive the Explanation and their distribution checks.

9.11.3 It is expected that all distribution checks will be mailed, via the United States Postal Service (“USPS”), to the eligible investors’ last known address of record. All checks drawn on the Distribution Account will bear the legend “Void after 90 days.” A wire transfer may be made in lieu of a check payment where efficiencies dictate.

9.11.4 The Fund Administrator has agreed to provide regular updates and reconciliations to the IDC, and will provide a final reconciliation of all undistributed funds to the IDC.

9.12 Tax Issues. The methods for calculating each investor’s share of the Fair Fund are intended to result in a payment to each eligible investor that restores the impaired value of the investor’s investment in the affected Evergreen Funds.

9.12.1 Tax Administrator. The Commission has appointed Damasco & Associates (“Damasco”) as the Tax Administrator of the Fair Fund (“Tax Administrator”). *In the Matter of Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC, and Wachovia Securities, LLC*, Admin. Proc. File No. 3-12805, Exchange Act Release No. 56658 (October 12, 2007). The IDC, the Fund Administrator, and the Respondents will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by the Respondents in accordance with the Order.

9.12.2 Other Tax Obligations. The IDC will consult with the Tax Administrator regarding the Fair Fund’s income tax compliance, reporting and withholding obligations, if any. The IDC shall work with the Tax Administrator to make adequate reserves for tax liability and any costs of tax compliance not required to be paid by the Respondents.

- 9.13 Claims Process. The Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.
- 9.14 Locating Investors. In cooperation with the IDC, the Fund Administrator will handle returned and/or undelivered mail and checks will as follows:
- 9.14.1 All mail returned by the USPS for which a new forwarding address has been provided by the USPS will be voided. The master database will be updated with the new address and a new check will be issued.
- 9.14.2 All mail returned by the USPS for the first time, without a new forwarding address, will be coded as returned mail, the check will be voided, and current account information forwarded to an address research firm for address research. If a new address is found, that address will be updated to the master database and a new check will be issued. If no new address is found, the original check will remain voided. Additional efforts to identify the addresses of eligible investors will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered.
- 9.14.3 All mail returned by the USPS from a second attempted mailing, for which a new forwarding address has been provided by the USPS, will be voided. The master database will be updated with the new address and a new check will be issued.
- 9.14.4 All mail returned by the USPS from a second attempted mailing, without a new forwarding address, will be coded as returned mail and the check will be voided. Additional efforts to identify the addresses of eligible investors will be conducted as is commercially reasonable in the view of the IDC, where the costs of further research and the amount to be distributed will be considered.
- 9.14.5 All uncashed checks returned as undeliverable will be coded as “undeliverable”. These checks will be marked “VOID” directly on the check, coded into the settlement database, and stored in a secure facility until destroyed.
- 9.15 Special Circumstances. It is anticipated that distribution checks will be returned to the Fund Administrator for various reasons, including the death, divorce, incapacitation, bankruptcy, or dissolution of the affected eligible investor. The Fund Administrator and/or the IDC will resolve and process these distributions on a case-by-case basis.

9.16 Excluded Investors. Not later than 30 days after the Commission's final approval of the Plan, the Fund Administrator will, in coordination with the IDC, attempt to notify the Excluded Investors that they are excluded from the distribution of the Fair Fund. The notice will also inform the Excluded Investors that they can review the Distribution plan through the Evergreen website. An Excluded Investor may dispute its exclusion from the distribution by submitting to the Fund Administrator, a sworn statement under penalty of perjury containing information about why it should not be excluded from the distribution. Any submission must be made to the IDC, through the Fund Administrator, within 60 days after Plan approval. The IDC will resolve any dispute in his sole discretion and his decisions will be final.

9.16.1 Any submissions may be shared with the staff of the Commission. False statements in connection with any submissions may subject the certifying individual or entity to civil or criminal sanctions, including, but not limited to, liability under 18 U.S.C. § 1001, liability for any false statements made in an unsworn certificate under penalty of perjury as permitted by 28 U.S.C. § 1746, or liability under any other applicable law.

9.17 Distribution Timing. The Fund Administrator will use its best efforts to start the distribution no later than 180 days after plan approval and to complete the distribution within six months of the distribution start date.

9.18 Undistributed Funds.

9.18.1 A residual account within the Fair Fund is established for any amounts remaining after all funds have been distributed. The residual account may include funds reserved for future taxes and related expenses, distributions from checks that have not been cashed, from checks that were not delivered, or from funds returned to the Fund Administrator. The residual account will be disbursed to the Evergreen Funds after the distribution to investors is complete and allocated to the funds based on the proportion of aggregate dilution losses incurred by each Evergreen Fund.

9.18.2 In order to implement distribution of the residual to the Evergreen Funds, each fund eligible to receive a distribution will be notified that the allocated monies are designated solely for the fund, should be deposited into the fund's asset base, and are not to be used directly for administrative or management fees. In addition, each fund will be required to certify in advance that the money will be deposited into the fund as intended. If this certification is not provided within the deadline specified by the Fund Administrator, the Fund Administrator will make reasonable efforts to contact the mutual fund and will maintain records of each attempt to contact the mutual fund, and each response received, if any. These records will be provided to the Commission staff at least 45 days before the scheduled distribution is to be made. Any fund that does not provide the certification will no longer be considered eligible for a distribution,

and the distribution allocated to that fund will be reallocated to other Evergreen Funds.

- 9.19 Termination of the Fair Fund. The Fair Fund shall be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (1) a final accounting, in an SEC standard accounting format provided by the staff, has been submitted by the Fund Administrator for approval of, and has been approved by, the Commission, (2) all taxes, fees and expenses have been paid, and (3) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the staff shall seek an order from the Commission to approve the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and to terminate the Fair Fund and discharge the Fund Administrator.
- 9.20 Extensions of Deadlines. For good cause shown, the Commission staff may extend any of the procedural deadlines set forth in the Distribution Plan.
- 9.21 Material Changes in Plan. The IDC and Fund Administrator shall take reasonable and appropriate steps to distribute the Fair Fund according to the Distribution Plan. The IDC will inform the Commission staff of any changes needed in the Distribution Plan. Upon agreement with Commission staff, the IDC may implement immaterial changes to the Distribution Plan to effectuate its general purposes. If a change is deemed to be material by the Commission staff, Commission approval is required prior to implementation by amending the Distribution Plan, which may be done upon the motion of any party or the Fund Administrator or upon the Commission's own motion.

**Table 1A**  
**Summary of Market Timer Activity In The Evergreen Funds**  
**9/1/98 – 6/30/04**

Source: Evergreen

Fund Name	Number of Market Timing Accounts	Number of Market Timing Round Trips	Total Transaction Amount
Evergreen Fund	368	9,200	\$4,304,482,282
Global Large Cap Equity Fund	277	2,728	\$3,381,043,567
International Growth Fund (renamed International Equity Fund in June 2003)	481	2,475	\$525,119,604
U.S. Government Fund	98	1,150	\$150,968,306
Mid Cap Growth Fund	113	1,109	\$455,232,689
Municipal Bond Fund	80	428	\$601,060,445
Precious Metals Fund	44	391	\$35,250,931
Global Opportunities Fund	142	369	\$117,605,390
Growth and Income Fund	20	328	\$238,770,151
Aggressive Growth Fund	39	223	\$67,688,381
Emerging Markets Growth Fund	85	175	\$39,563,836
Perpetual International Fund	19	143	\$49,593,212
Growth Fund	21	141	\$54,645,385
High Yield Bond Fund	31	97	\$159,897,227
International Equity Fund (Pre-Merger)	9	42	\$59,879,034

**Table 1B**  
**Summary of Market Timer Activity In The Evergreen Funds By Year**

**9/1/98 – 6/30/04**

Source: Evergreen

Fund Name	Year	Number of Market Timing Round Trips	Total Transaction Amount
Evergreen Fund	1998	1,709	\$720,575,057
Evergreen Fund	1999	6,962	\$3,343,799,396
Evergreen Fund	2000	494	\$234,795,730
Evergreen Fund	2001	16	\$2,552,891
Evergreen Fund	2002	19	\$2,759,207
Global Large Cap Equity Fund	1998	241	\$522,476,482
Global Large Cap Equity Fund	1999	1,375	\$2,479,192,032
Global Large Cap Equity Fund	2000	310	\$291,435,794
Global Large Cap Equity Fund	2001	44	\$4,623,570
Global Large Cap Equity Fund	2002	754	\$82,858,416
Global Large Cap Equity Fund	2003	4	\$457,275
International Growth Fund (renamed International Equity Fund in June 2003)	1998	35	\$31,591,334
International Growth Fund (renamed International Equity Fund in June 2003)	1999	153	\$105,231,081
International Growth Fund (renamed International Equity Fund in June 2003)	2000	124	\$65,044,186
International Growth Fund (renamed International Equity Fund in June 2003)	2001	195	\$34,851,217
International Growth Fund (renamed International Equity Fund in June 2003)	2002	1,877	\$269,437,249
International Growth Fund (renamed International Equity Fund in June 2003)	2003	90	\$18,791,968
International Growth Fund (renamed International Equity Fund in June 2003)	2004	1	\$172,569
U.S. Government Fund	1998	5	\$653,573
U.S. Government Fund	1999	11	\$4,264,985
U.S. Government Fund	2000	50	\$5,686,325
U.S. Government Fund	2001	195	\$22,177,931
U.S. Government Fund	2002	836	\$105,815,523
U.S. Government Fund	2003	53	\$12,369,970
Mid Cap Growth Fund	1998	108	\$52,705,134
Mid Cap Growth Fund	1999	375	\$166,809,071
Mid Cap Growth Fund	2000	140	\$75,999,392
Mid Cap Growth Fund	2001	159	\$80,306,147
Mid Cap Growth Fund	2002	240	\$66,013,020
Mid Cap Growth Fund	2003	87	\$13,399,926

**Table 1B**  
**Summary of Market Timer Activity In The Evergreen Funds By Year**

**9/1/98 – 6/30/04**

Source: Evergreen

Fund Name	Year	Number of Market Timing Round Trips	Total Transaction Amount
Municipal Bond Fund	1998	12	\$15,623,632
Municipal Bond Fund	1999	162	\$306,052,948
Municipal Bond Fund	2000	90	\$209,164,012
Municipal Bond Fund	2001	43	\$42,793,305
Municipal Bond Fund	2002	86	\$23,124,600
Municipal Bond Fund	2003	34	\$4,187,007
Municipal Bond Fund	2004	1	\$114,940
Precious Metals Fund	1998	30	\$4,440,894
Precious Metals Fund	1999	30	\$6,211,897
Precious Metals Fund	2000	6	\$1,053,396
Precious Metals Fund	2001	10	\$1,460,075
Precious Metals Fund	2002	287	\$18,760,050
Precious Metals Fund	2003	26	\$3,066,969
Precious Metals Fund	2004	2	\$257,650
Global Opportunities Fund	1998	10	\$18,805,276
Global Opportunities Fund	1999	67	\$48,285,988
Global Opportunities Fund	2000	33	\$10,443,585
Global Opportunities Fund	2001	7	\$5,441,578
Global Opportunities Fund	2002	241	\$32,397,569
Global Opportunities Fund	2003	11	\$2,231,394
Growth And Income Fund	1998	24	\$16,745,131
Growth And Income Fund	1999	280	\$210,277,561
Growth And Income Fund	2000	16	\$10,177,168
Growth And Income Fund	2001	3	\$641,213
Growth And Income Fund	2002	3	\$568,900
Growth And Income Fund	2003	2	\$360,178
Aggressive Growth Fund	1998	49	\$13,657,237
Aggressive Growth Fund	1999	89	\$35,195,003
Aggressive Growth Fund	2000	38	\$12,876,219
Aggressive Growth Fund	2001	8	\$1,049,765

**Table 1B**  
**Summary of Market Timer Activity In The Evergreen Funds By Year**

**9/1/98 – 6/30/04**

Source: Evergreen

Fund Name	Year	Number of Market Timing Round Trips	Total Transaction Amount
Aggressive Growth Fund	2002	34	\$4,009,779
Aggressive Growth Fund	2003	5	\$900,378
Emerging Markets Growth Fund	1999	26	\$11,650,968
Emerging Markets Growth Fund	2000	10	\$3,618,131
Emerging Markets Growth Fund	2001	5	\$1,325,081
Emerging Markets Growth Fund	2002	119	\$21,142,551
Emerging Markets Growth Fund	2003	15	\$1,827,106
Perpetual International Fund	1999	34	\$27,228,326
Perpetual International Fund	2000	21	\$5,572,884
Perpetual International Fund	2001	88	\$16,792,002
Growth Fund	1999	54	\$41,416,345
Growth Fund	2000	5	\$3,509,875
Growth Fund	2001	4	\$629,530
Growth Fund	2002	74	\$8,432,082
Growth Fund	2003	4	\$657,553
High Yield Bond Fund	1998	2	\$627,046
High Yield Bond Fund	1999	20	\$32,572,368
High Yield Bond Fund	2000	26	\$100,968,643
High Yield Bond Fund	2001	5	\$1,643,481
High Yield Bond Fund	2002	33	\$23,322,985
High Yield Bond Fund	2003	8	\$559,595
High Yield Bond Fund	2004	3	\$203,109
International Equity Fund (Pre-Merger)	1998	42	\$59,879,034