

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 86052 / June 6, 2019**

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

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**In the Matter of**

**Evergreen Investment  
Management Company, LLC,  
Evergreen Investment Services,  
Inc., Evergreen Service  
Company, LLC and Wachovia  
Securities, LLC**

**Respondents.**

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**ORDER AUTHORIZING THE TRANSFER TO  
U.S. TREASURY OF THE REMAINING FUNDS  
AND ANY FUNDS RETURNED TO THE FAIR  
FUND IN THE FUTURE, DISCHARGING THE  
FUND ADMINISTRATOR, AND  
TERMINATING THE FAIR FUND**

On September 19, 2007, the Commission instituted settled administrative proceedings against Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC, and Wachovia Securities, LLC (collectively, the “Evergreen Respondents”) in connection with the market timing of Evergreen mutual funds.<sup>1</sup> Also on September 19, 2007, the Commission instituted settled administrative proceedings against William M. Ennis (“Ennis”) in connection with the market timing of one Evergreen mutual fund.<sup>2</sup> Among other things, the Evergreen Order and the Ennis Order required the Evergreen Respondents and Ennis to pay a total of \$28,503,280 in disgorgement and \$4,150,000 in civil penalties. The Evergreen Order further provided that a fair fund (the “Fair Fund”) be established and distributed pursuant to a distribution plan developed by an Independent Distribution Consultant (“IDC”) retained by Respondents. The Evergreen Respondents selected Kenneth Lehn, Ph.D., of the University of Pittsburgh, to serve as the Fair Fund’s IDC.

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<sup>1</sup> See Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Sections 15(b)(4), 17A(c)(3) 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, Exchange Act Rel. No. 56462 (Sept. 19, 2007) (“Evergreen Order”).

<sup>2</sup> See Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b)(6) and 17A(c)(4)(C) of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act of 1940, Exchange Act Rel. No. 56464 (Sept. 19, 2007) (“Ennis Order”).

On March 19, 2010, the Commission issued an order appointing Rust Consulting, Inc. (“Rust”) as the fund administrator of the Fair Fund and waived the bond requirement.<sup>3</sup>

Also on March 19, 2010, the Commission published a Notice of Proposed Plan of Distribution and Opportunity for Comment (“Notice”) in connection with this proceeding, pursuant to Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans (the “Rules”), 17 C.F.R. § 201.1103.<sup>4</sup> The Notice advised parties they could obtain a copy of the Proposed Plan of Distribution (“Distribution Plan”) at [www.sec.gov](http://www.sec.gov). The Notice also advised that all persons desiring to comment on the Distribution Plan could submit their comments, in writing, within 30 days of the date of the Notice. No comments were received by the Commission in response to the Notice. Accordingly, on April 30, 2010, the Secretary of the Commission, pursuant to delegated authority, issued an Order Approving the Distribution Plan.<sup>5</sup>

The Plan provided to distribute a prorated share of the Fair Fund to accountholders of the affected Evergreen funds based on the individual accountholders’ proportionate share of the total dilution as calculated by the IDC. The Plan also provided that monies not distributed to individual accountholders could be disbursed to the impacted Evergreen funds based on each funds’ proportionate share of the total dilution attributable to the market timing activity.

The Fair Fund received \$33,029,344.00 in disgorgement and civil money penalties from the Respondents for which it earned \$1,078,232.13 in interest, for a total of \$34,107,576.13.

On October 28, 2010,<sup>6</sup> December 3, 2010,<sup>7</sup> and February 1, 2011,<sup>8</sup> the Commission issued orders directing the disbursement of an aggregate of \$33,187,407.23 from the Fair Fund for distribution by the Fund Administrator to harmed individual accountholders. At the conclusion of distributions to individual accountholders, a total of \$26,738,541.49 was cashed by recipient accountholders. In addition, the tax administrator withheld \$9,309.08 from certain distribution payments to pay the recipients’ tax liability. On December 23, 2014, the Commission issued an order to disburse the \$6,974,406.04 residual to 15 Evergreen funds, pursuant to the Plan.<sup>9</sup>

The Fair Fund paid state and federal taxes of \$376,064.00, investment/bank fees of \$8,303.83, and tax related expenses of \$772.18. The Fund Administrator’s and Tax Administrator’s fees and expenses were paid by the Respondents pursuant to the Evergreen Orders. The Fair Fund currently holds \$223.16.

The Plan provides that a final accounting shall be submitted by the Fund Administrator for approval by the Commission prior to the Fair Fund’s termination and the discharge of the Fund Administrator. Furthermore, any residual funds remaining in the Fair Fund after the

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<sup>3</sup> See Order Appointing a Fund Administrator and Waiving Bond, Exchange Act Rel. No. 61746 (Mar. 19, 2010).

<sup>4</sup> Exchange Act Release No. 61745 (Mar. 19, 2010).

<sup>5</sup> Exchange Act Rel. No. 62017 (Apr. 30, 2010).

<sup>6</sup> Exchange Act Rel. No. 63204 (Oct. 28, 2010).

<sup>7</sup> Exchange Act Rel. No.63424 (Dec. 3, 2010).

<sup>8</sup> Exchange Act Rel. No. 63814 (Feb. 1, 2011).

<sup>9</sup> Exchange Act Rel. No. 73923 (Dec. 23, 2014).

payment of all taxes and fees are to be returned to the Commission for transfer to the U.S. Treasury by order of the Commission following the approval of the final accounting. A final accounting, which was submitted to the Commission as required by Rule 1105(f) of the Rules, 17 C.F.R. § 201.1105(f), and as set forth in the Plan, is now approved. The Commission staff has verified that all taxes, fees, and expenses have been paid, and the remaining funds have been returned to the Commission.

Accordingly, it is ORDERED that:

- A. The remaining Fair Fund balance of \$223.16 and any funds returned to the Fair Fund in the future, shall be transferred to the U.S. Treasury, subject to Section 21F(g)(3) of the Securities Exchange Act of 1934, 15 U.S. Code § 78u-6(g)(d);
- B. The Fair Fund is terminated; and
- C. The Fund Administrator, Rust Consulting, Inc., is discharged.

By the Commission.

Vanessa A. Countryman  
Acting Secretary