

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 56462 / September 19, 2007**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2648 / September 19, 2007**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 27973 / September 19, 2007**

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

<p><b>In the Matter of</b></p> <p><b>Evergreen Investment Management Company, LLC, Evergreen Investment Services, Inc., Evergreen Service Company, LLC and Wachovia Securities, LLC</b></p> <p><b>Respondents.</b></p>	<p><b>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</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), 17A(c)(3) 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, Evergreen Investment Services, Inc., Evergreen Service Company, LLC, and Wachovia Securities, LLC ("EIMCO," "EIS," "ESC" and "Wachovia Securities," respectively, or individually, "Respondent"; 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), 17A(c)(3) and 21C of the Exchange Act, Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order") as set forth below. The Order is instituted as to EIMCO 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 EIS 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. The Order is instituted as to ESC pursuant to Section 17A(c)(3) of the Exchange Act, Section 203(k) of the Advisers Act and Section 9(b) of the Investment Company Act. The Order is instituted as to Wachovia Securities pursuant to Section 15(b)(4) of the Exchange 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. This proceeding concerns (a) various violations of the federal securities laws committed by EIMCO, EIS and ESC in connection with their roles in creating and/or implementing two market timing agreements (and the role of Wachovia Securities in creating and/or implementing one of those two agreements) that permitted, in each case, a registered representative to make, on behalf of certain of his customers, frequent trades in certain Evergreen funds in excess of the exchange limits set forth in the funds' prospectuses and (b) EIMCO's misleading disclosure in fund documents concerning exchange limits. Market timing includes (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. Market timing, while not illegal per se, can harm other mutual fund shareholders because it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund's investment portfolio and can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

2. In January 2000, William M. Ennis ("Ennis"), then the senior vice president of

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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.

Evergreen Investment Company (“EIC”) but who is no longer an officer, employee or affiliate of any Respondent, agreed to permit a registered representative of Wachovia Securities to market time one or more Evergreen funds on behalf of certain of his customers even though the prospectus for each Evergreen fund limited exchanges to three per calendar quarter and five per calendar year. The registered representative subsequently made approximately 386 exchanges into and out of the Evergreen Small Company Growth Fund (now known as the Mid Cap Growth Fund) from approximately January 2001 through March 2003. This timing activity harmed the fund. From January 2001 through March 2003, Ennis signed several Small Company Growth Fund registration statements, each of which incorporated the fund’s prospectus and the exchange limits contained therein. At no point during the period in which the registered representative was making these exchanges did Ennis or anyone else at Evergreen disclose the market timing arrangement to the fund’s board of trustees. Moreover, in January 1999, EIMCO personnel entered into a short-lived agreement with a registered representative of Prudential Securities, Inc. (“Prudential Securities”) that permitted the registered representative to exceed the exchange limit in the Evergreen Municipal Bond Fund.

3. During the relevant period, EIMCO was responsible for operating each Evergreen fund in conformity with the terms of its prospectus. Beginning at least in September 1998, EIMCO’s failure to adequately enforce the exchange restrictions set forth in each Evergreen fund prospectus resulted in a substantial amount of exchange activity occurring beyond those limits in several Evergreen funds. This excessive exchange activity imposed costs and management disruptions on the funds, impaired their performance, rendered their prospectuses materially misleading and diluted their value. At no point during this period did EIMCO disclose to any fund board that the prospectus-based exchange restrictions were not being enforced. In addition, during this period, EIMCO either filed or directed EIS to file with the Commission registration statements on behalf of each affected fund, all of which incorporated the materially misleading exchange limit provision set forth in the fund prospectus.

### **Respondents**

4. Evergreen Investment Management Company, LLC is the Boston-based registered investment adviser for the Evergreen fund family, one of the 20 largest fund groups in the nation. As of March 31, 2007, EIMCO had more than \$312 billion in assets under management.

5. Evergreen Investment Services, Inc. is EIMCO’s affiliated registered broker-dealer.

6. Evergreen Service Co., LLC is EIMCO’s affiliated registered transfer agent.

7. Wachovia Securities, LLC is a Richmond-based registered broker-dealer that is a majority-owned subsidiary of Wachovia Corporation.

## **Related Parties**

8. Evergreen Investment Company, Inc. is a wholly-owned holding company subsidiary of Wachovia Corporation, a Charlotte, North Carolina-based company whose common stock is registered with the Commission and principally trades on the New York Stock Exchange. EIC owns EIMCO, EIS and ESC (collectively, "Evergreen").

9. William M. Ennis was employed at Evergreen from 1994 to June 2003, when he resigned. In December 1996, Ennis was named a senior vice president of EIC and, in April 2000, Ennis became EIC's president. During the relevant period, Ennis served as a director of and control person for EIMCO, he supervised the president of EIS, he was the president of the Evergreen Equity Trust, a registered investment company of which the Small Company Growth Fund was a series, and he functioned as the chief executive officer of the Evergreen mutual fund complex. Ennis is no longer affiliated with any of the Respondents.

## **Facts**

### **The Market Timing Agreements**

10. In January 2000, Evergreen had in place an "anti-market timing" policy through which it sought to eliminate market timing in the Evergreen funds. Consistent with this policy, each Evergreen fund prospectus contained a provision stating that: "Exchanges are limited to three per calendar quarter, but in no event more than five per calendar year." In January 2000, Ennis was familiar with the exchange limit provision set forth in the Evergreen Small Company Growth Fund prospectus, he understood that a market timer might make more than three exchanges per quarter and five per year, and he was aware that market timing could impose trading costs on a fund, disrupt fund management and harm fund performance.

11. In January 2000, the retail division of Wachovia Securities, then operating under the name First Union Securities, Inc. (which was under common control with Evergreen at the time), was the number one distributor of Evergreen funds, accounting for about \$2 billion of the funds' approximately \$3 billion in total annual sales. In early January 2000, Wachovia Securities' Private Client Group ("PCG"), the firm's non-bank branch based division, notified an EIS vice president that it was attempting to recruit a top-producing registered representative who was seeking permission to market time one or more Evergreen funds on behalf of one or two of his customers. Convinced that it would otherwise be unable to hire the recruit, the PCG asked the EIS vice president if Evergreen would be willing to accommodate the recruit's market timing activity. The EIS vice president presented the PCG's timing inquiry to EIS' president and to EIMCO's chief investment officer for Equities, both of whom rejected the request. In an e-mail to several PCG officials, the EIS vice president stated that Evergreen would not permit the recruit to time any Evergreen fund because "market timing . . . detrimentally affect[s] the long-term performance of mutual funds." Subsequently, at the request of the PCG's president, the EIS vice president presented the timing inquiry to Ennis, who was trying at that time to improve Evergreen's sales and distribution through the PCG channel. Despite being told by the EIS

vice president that both the EIS president and EIMCO's chief investment officer for Equities had rejected it, Ennis granted the PCG's timing request. Noting that the PCG might not land the recruit, Ennis ordered that this arrangement be kept confidential, specifically instructing that the EIS president not be informed of it.

12. The EIS vice president memorialized the timing agreement in an e-mail to the relevant PCG officials, stating "I talked with Bill Ennis about your recruiting situation . . . this morning and we are going to make an exception for [the recruit's] timing business." The EIS vice president then observed that "I know that you understand that to make this type of agreement is contrary to [Evergreen's] philosophy. However, we also understand that [First Union Securities, Inc.] is our captive broker/dealer and we want to be an asset to your business as much as possible. . . . I hope that this will be a deciding factor in successfully recruiting this broker . . ." Pointing to the "the sensitive nature of market-timing @ Evergreen," the EIS vice president emphasized that this arrangement had to be kept in confidence.

13. About a year later, in approximately January 2001, Wachovia Securities notified the EIS vice president that the recruit had joined the PCG and that he wished to begin market timing the Small Company Growth Fund on behalf of certain of his customers. The EIS vice president then informed a vice president in the ESC, where Evergreen's market timing monitoring operation was located, of the "special arrangement" Evergreen had made to permit the registered representative to exceed the three per quarter and five per year exchange limits and instructed her not to interfere with the registered representative's trading. The ESC vice president complied with this order. The portfolio manager of the Small Company Growth Fund was not made aware of the arrangement.

14. In approximately January 2001, the registered representative began trading in the Small Company Growth Fund on behalf of certain of his customers. From that time through March 2003, the registered representative made approximately 386 exchanges into and out of the fund, thus greatly exceeding the three per quarter and five per year exchange limits set forth in the fund's prospectus. The dollar amounts of the registered representative's trades, which ranged from approximately \$50,000 to more than \$2.2 million, averaged about \$500,000. During the period in which the arrangement was in place, the registered representative made a cumulative total of approximately \$282.4 million worth of exchanges into and out of the fund. In approximately March 2003, after the EIS vice president had left Evergreen, the ESC vice president, who had become increasingly frustrated over the difficulty of processing the commissions on the registered representative's trades, told him that Evergreen would no longer permit him to exceed its exchange limits. The registered representative then ceased his market timing in the Small Company Growth Fund and closed out the account through which the activity had occurred. During the period in which the registered representative timed the Small Company Growth Fund, Ennis signed several registration statements on the fund's behalf, each of which incorporated the fund's prospectus and the exchange limits contained therein. At no point during the period in which the registered representative was making these exchanges did Ennis or anyone else at Evergreen disclose the market timing arrangement to the fund's board of trustees.

15. On October 31, 2003, EIMCO repaid approximately \$379,000 to the Small Company Growth Fund, representing EIMCO's calculation of the registered representative's customers' net gain from the trading under the timing arrangement. In November 2003, EIMCO reimbursed the fund for approximately \$25,000 in advisory fees EIMCO received and expenses the fund incurred in connection with the trading at issue.

16. In addition to the timing agreement described above, in January 1999, EIMCO authorized a registered representative of Prudential Securities to make, on behalf of certain of his customers, exchanges into and out of the Evergreen Municipal Bond Fund in excess of the prospectus-set limitations. Pursuant to that authorization, the registered representative made exchanges into and out of that fund in excess of the exchange limits before being told to cease the activity in approximately March/April 1999. The registered representative's trading activity during this period harmed the fund.

### **Evergreen's Misrepresentation of Its Exchange Limits**

17. Consistent with its anti-market timing policy, during the relevant period, each Evergreen fund prospectus stated that: "Exchanges are limited to three per calendar quarter, but in no event more than five per calendar year." Under the terms of the Investment Advisory and Management Agreement between itself and the Evergreen Funds, EIMCO assumed responsibility for managing the operation of each Evergreen fund in conformity with this prospectus restriction. During the period in question, EIMCO effectively delegated to ESC the responsibility for detecting problematic trading in the Evergreen funds. Until late 1999, ESC's sole undertaking in this area was to perform a daily review of trading activity in the Evergreen funds for the purpose of notifying portfolio managers of transactions in their funds over a certain dollar amount. The amount trigger varied depending upon the size of the fund. For example, as of September 1998, the trading activity reviewers would inform the portfolio manager of the Evergreen Fund of any transaction in that fund over \$3 million. ESC's daily trading activity review did nothing to stop exchange activity beyond the posted limits in dollar amounts below the trigger and would not necessarily impede excessive exchange activity occurring in dollar amounts above that level.

18. Beginning in late 1999, ESC's Field Support Group attempted to combat market timing by generating a "Large Transaction Report" ("LTR") each day that set forth all purchase and exchange transactions over \$100,000 in any Evergreen fund ("exchange transactions" involve the movement of money between two Evergreen funds and "purchase transactions" involve the movement of money from outside the Evergreen complex into an Evergreen fund). An ESC employee would review the LTR on a daily basis in an effort to identify market timing trading activity. However, there was an 11 a.m. deadline for completing this review and, until ESC streamlined it in early 2002, the LTR contained so much data that the monitor was usually unable to examine all of the transactions by that hour. Consequently, the responsible ESC manager instructed the monitor to focus the review on purchase activity in Evergreen international funds. The monitor was often unable to examine anything other than this activity by 11 a.m., thus leaving unmonitored all exchange activity as well as non-international purchase activity.

19. In early 2002, ESC streamlined the LTR and was thus able to typically include all purchase and exchange activity in its daily market timing monitoring sweep. However, shortly thereafter, in the middle of 2002, even though it had cancelled several exchanges beyond the posted limits in dollar amounts below \$250,000 prior to that time, ESC increased its monitoring threshold to \$250,000. In early 2003, after some of its employees began to suspect that traders were exceeding the exchange limits in dollar amounts below \$250,000, ESC lowered its review threshold to \$50,000. In addition, in late October 2003, ESC adopted policies to enforce the posted limits without regard to the dollar amount of the exchange. In January 2004, EIMCO amended the prospectus of each Evergreen international fund to require the imposition of a one percent redemption fee on short-term transactions (less than 90 days) in those funds.

20. From at least September 1998 to at least October 2003, EIMCO's failure to adequately enforce the exchange restrictions set forth in each Evergreen fund prospectus resulted in a substantial amount of exchange activity occurring beyond those limits in several Evergreen funds. This excessive exchange activity imposed costs and management disruptions on the funds, impaired their performance, rendered their prospectuses materially misleading and diluted their value. During this period, EIMCO either filed or directed EIS to file with the Commission registration statements on behalf of each of the affected funds, all of which incorporated the exchange limit set forth in each fund prospectus. At no point during this period did EIMCO disclose to any fund board that the prospectus-based exchange restrictions were not being enforced. Moreover, during the period in question and as recently as July 2003, the portfolio managers of several Evergreen international funds repeatedly complained internally (both orally and in writing) to compliance personnel and senior ESC and EIMCO officials that fund management was being disrupted and fund performance was suffering as a result of what they perceived to be Evergreen's apparent lack of ability or aggressiveness in preventing timing.

21. While a significant number of exchanges beyond the posted limits took place in various Evergreen funds from 2000 on, most of the harm resulting from excessive exchange activity at issue occurred from September 1, 1998 through December 31, 1999. Approximately 90% of the disgorgement amount recited in paragraph IV.G.1 of the Order is related to excessive exchange activity from September 1, 1998 through December 31, 1999. The portion of the disgorgement amount related to the arrangement permitting exchanges by a registered representative in the Small Company Growth Fund, described above, is approximately 4%. After Evergreen began instituting procedures to identify and limit excessive trading starting in approximately January 2000, both the number and average size of trades in excess of prospectus limits was substantially reduced.

#### **EIS' Failure to Preserve Communications Related to its Business as a Broker-Dealer**

22. From at least January 2001 to September 2003, EIS did not preserve certain communications relating to its business as a broker-dealer. Throughout this period, EIS also had a policy of instructing employees whose e-mail "in-boxes" had reached their storage capacity to create space by either deleting or archiving e-mails. On a daily basis, the EIS computer server made a backup tape of all in-box e-mails. These backup tapes, however, were taped over every 30 days. As a result, EIS did not preserve certain e-mails related to its

business as such.

### **Violations**

23. As a result of the conduct described above, EIMCO willfully violated Sections 206(1) and 206(2) of the Advisers Act. Specifically, through Ennis, EIMCO entered into a market timing agreement that created a conflict of interest between itself, which benefited from the advisory fees generated by the timing activity as well as from the prospects the timing arrangement created for improving its relationship with the PCG, and the Small Company Growth Fund, which suffered the dilutive effect of the timing trades and the transaction costs related thereto. Because neither Ennis nor anyone else associated with EIMCO disclosed either the PCG timing arrangement or the fact that EIMCO was permitting exchange activity above the limits set forth in the Small Company Growth Fund's prospectus to the fund's board of trustees, EIMCO willfully violated Sections 206(1) and 206(2) of the Advisers Act. EIMCO also willfully violated Section 206(2) of the Advisers Act with respect to its failure to adopt procedures to block exchanges beyond the three per quarter and five per year limits set forth in each fund prospectus because it negligently failed to disclose to any fund board that it was not enforcing the prospectus-based exchange limits.

24. As a result of the conduct described above, EIMCO also willfully violated Section 34(b) of the Investment Company Act. Specifically, the registration statements EIMCO either filed or directed EIS to file on behalf of the Small Company Growth Fund and the other Evergreen funds in which excessive exchange activity occurred were materially misleading because they incorporated the unenforced exchange limits set forth in the fund prospectuses.

25. As a result of the conduct described above, EIS and ESC willfully aided and abetted and caused EIMCO's violations of Sections 206(1) and 206(2) of the Advisers Act.

26. As a result of the conduct described above, Wachovia Securities (then operating under the name of First Union Securities, Inc.), which, by virtue of its common control with EIMCO, was affiliated with the Small Company Growth Fund, willfully violated Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder. Specifically, by seeking and ultimately entering into an understanding with EIMCO to allow the Small Company Growth Fund to be market timed, Wachovia Securities formed a joint arrangement with an affiliated fund. As a result, Wachovia Securities willfully violated Section 17(d) and Rule 17d-1 thereunder.

27. By granting Wachovia Securities' request to permit the registered representative to market time the Small Company Growth Fund, Ennis and, through him, EIMCO and EIS willfully aided and abetted and caused Wachovia Securities' violation of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.

28. EIS 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.



## Undertakings

29. Compliance and Ethics Oversight Structure. Through 2012, EIMCO shall maintain a compliance and ethics oversight infrastructure having the following characteristics:
- a. EIMCO shall maintain a Code of Ethics Oversight Committee having responsibility for all matters relating to issues arising under EIMCO's Code of Ethics. The Code of Ethics Oversight Committee shall be comprised of senior executives of EIMCO's operating businesses. EIMCO shall hold at least quarterly meetings of the Code of Ethics Oversight Committee to review violations of the Code of Ethics, as well as to consider policy matters relating to the Code of Ethics. EIMCO shall report on issues arising under the Code of Ethics, including all violations thereof, to the board of Trustees of each Evergreen fund with such frequency as such board may instruct, and, in any event, at least quarterly, provided, however, that any material violation shall be reported promptly.
  - b. EIMCO shall maintain an Internal Compliance Controls Committee to be chaired by EIMCO's Chief Compliance Officer, which Committee shall have as its members senior executives of EIMCO's operating businesses. The Internal Compliance Controls Committee shall review compliance issues throughout the business of EIMCO, endeavor to develop solutions to those issues as they may arise from time to time, and oversee the implementation of those solutions. The Internal Compliance Controls Committee shall provide reports on internal compliance matters to the board of Trustees of each Evergreen fund with such frequency as the independent Trustees of each such fund may instruct and, in any event, at least quarterly. The Internal Controls Committee may also serve as EIMCO's Code of Ethics Oversight Committee.
  - c. EIMCO shall require its Chief Compliance Officer to report to the independent Trustees of each Evergreen fund any breach of a fiduciary duty or of a federal securities law of which he or she becomes aware in the course of carrying out his or her duties, with such frequency as the independent Trustees may instruct, and, in any event, at least quarterly, provided, however, that any material breach (i.e., any breach that would be important, qualitatively or quantitatively, to a reasonable Trustee) shall be reported promptly.
30. Independent Compliance Consultant.
- a. EIMCO, EIS and ESC 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 EIMCO or its affiliates. EIMCO, EIS and ESC shall require the Independent Compliance Consultant to conduct a comprehensive review of EIMCO, EIS and ESC's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by EIMCO, ESC, EIS and their employees. This review shall include, but shall not be limited to, a review of EIMCO, EIS and ESC's market timing controls across all areas of its business, a review of EIMCO, EIS and ESC's policies and procedures for enforcing any limit on trading activity set forth in any Evergreen fund prospectus, a review of any EIMCO's funds' pricing practices that may make those funds vulnerable to market timing, a review of each Evergreen fund's utilization of short-term trading fees and other controls for deterring excessive short-term trading, and a review of EIMCO, EIS and ESC's policies and procedures concerning conflicts of interest. EIMCO, EIS and ESC 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. EIMCO, EIS and ESC 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 EIMCO, EIS, ESC and each Evergreen fund, and a procedure for implementing the recommended changes in or improvements to those policies and procedures.
- c. EIMCO, EIS and ESC 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, EIMCO, EIS and ESC 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 more of them considers to be unnecessary or inappropriate. With respect to any such recommendation, EIMCO, EIS or ESC need not 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 EIMCO, EIS or ESC's policies and procedures on which EIMCO, EIS or ESC 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 EIMCO, EIS or ESC and the Independent Compliance Consultant are unable to

agree on an alternative proposal, EIMCO, EIS or ESC will abide by the determinations of the Independent Compliance Consultant.

- e. Neither EIMCO, EIS nor ESC, 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. EIMCO 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 EIMCO, EIS nor ESC shall be in or have an attorney-client relationship with the Independent Compliance Consultant and neither EIMCO, EIS nor ESC 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. EIMCO, EIS and ESC 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 EIMCO, EIS, ESC or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. EIMCO, EIS and ESC 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 EIMCO, EIS or ESC 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.

31. Periodic Compliance Review. In 2010 and again in 2012, EIMCO, EIS and ESC shall undergo a compliance review by a third party, who is not an interested person, as defined in the Investment Company Act, of EIMCO. At the conclusion of the review, the third party shall issue a report of its findings and recommendations concerning EIMCO, EIS and ESC's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by EIMCO, EIS, ESC and their employees in connection with their duties and activities on behalf of and related to any Evergreen fund. Each such report shall be promptly delivered to EIMCO's Code of Ethics Oversight Committee, its Internal Compliance Controls Committee and to the Audit Committee of the board of Trustees of each Evergreen fund.

32. Independent Distribution Consultant. EIMCO shall retain, within 30 days of the date of entry of the Order, the services of an Independent Distribution Consultant not unacceptable to the staff of the Commission or to the majority of the independent Trustees of any Evergreen fund. The Independent Distribution Consultant's compensation and

expenses shall be borne exclusively by EIMCO. EIMCO, EIS and ESC shall cooperate fully with the Independent Distribution Consultant and shall comply with all of the Independent Distribution Consultant's reasonable requests for access to their files, books, records, and personnel. EIMCO shall require that the Independent Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement and penalties ordered in paragraph IV.G.1. of this Order, and any interest or earnings thereon, as well as for the distribution of all of the disgorgement and penalties ordered in paragraph IV.G. of the 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 in the Matter of William M. Ennis ("the Ennis Order"), and any interest or earnings thereon, according to a methodology developed in consultation with EIMCO and not unacceptable to the staff of the Commission and to a majority of the independent Trustees of each Evergreen fund.

- a. EIMCO shall require that the Independent Distribution Consultant submit a Distribution Plan to it and to the staff of the Commission no more than 100 days after the date of entry of the Order.
- b. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 130 days after the date of entry of the Order, EIMCO or the staff of the Commission advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate.
- c. With respect to any determination or calculation with which EIMCO or the staff of the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 160 days of the date of entry of the Order. In the event that EIMCO and the staff of the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.
- d. Within 175 days of the date of entry of the Order, EIMCO shall require that the Independent Distribution Consultant submit to the Commission the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to Rule 1101 [17 C.F.R. § 201.1101] of the Commission's Rules Regarding Fair Fund and Disgorgement Plans. Following a Commission order approving a final plan of distribution, as provided in Rule 1104 [17 C.F.R. § 201.1104] of the Commission's Rules Regarding Fair Fund and Disgorgement Plans, EIMCO shall require that the Independent Distribution Consultant, with EIMCO, take all necessary and appropriate steps to assist in the administration of the final Distribution Plan. The costs of

administering this distribution, including the payment of any applicable taxes as well as the payment of the fees of any Tax Administrator, shall be borne exclusively by EIMCO.

- e. EIMCO shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, 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 as such. EIMCO shall require that any firm with which the Independent Distribution Consultant is affiliated in the performance of his or her duties under the Order not, without prior written consent of a majority of the independent Trustees of each Evergreen fund and the staff of the Commission, 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 as such for the period of the engagement and for a period of two years after the engagement.

33. Certification. No later than twenty-four months after the date of entry of the Order, the chief executive officer of Respondents EIMCO, EIS, and ESC 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.

34. Recordkeeping. Respondents EIMCO, EIS, and ESC 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.

35. Deadlines. For good cause shown, the Commission's staff may extend any of the procedural dates set forth 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. In determining to accept the Offer, the Commission considered the cooperation the Respondents have demonstrated throughout the investigation. It is hereby ORDERED that:

- A. Pursuant to Section 203(e) of the Advisers Act, EIMCO is hereby censured.  
Pursuant to Section 15(b)(4) of the Exchange Act, EIS is hereby censured.  
Pursuant to Section 17A(c)(3) of the Exchange Act, ESC is hereby censured.

Pursuant to Section 15(b)(4) of the Exchange Act, Wachovia Securities is hereby censured.

- B. Pursuant to Section 203(k) of the Advisers Act, EIMCO shall cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act. Pursuant to Section 9(f) of the Investment Company Act, EIMCO shall cease and desist from committing or causing any violations and any future violations of Sections 17(d) and 34(b) of the Investment Company Act and Rule 17d-1 thereunder.
- C. Pursuant to Section 21C of the Exchange Act, EIS shall 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. Pursuant to Section 203(k) of the Advisers Act, EIS shall cease and desist from causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act. Pursuant to Section 9(f) of the Investment Company Act, EIS shall cease and desist from committing or causing any violations and any future violations of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.
- D. Pursuant to Section 203(k) of the Advisers Act, ESC shall cease and desist from causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act.
- E. Pursuant to Section 9(f) of the Investment Company Act, Wachovia Securities shall cease and desist from committing or causing any violations and any future violations of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.
- F. EIMCO, EIS and ESC shall comply with the undertakings set forth above.
- G. Disgorgement and Civil Money Penalties
  - 1. Within ten days of the entry of this Order, Respondent EIMCO shall pay disgorgement in the total amount of \$28,503,276 and, 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 \$1,500,000, Respondent EIS shall pay disgorgement in the amount of \$1 and, pursuant to Section 21B(a) of the Exchange Act and Sections 9(b) and 9(d) of the Investment Company Act, a civil penalty in the amount of \$1,500,000, Respondent ESC shall pay disgorgement in the amount of \$1 and, pursuant to Sections 9(b) and 9(d) of the Investment Company Act, a civil penalty in the amount of \$500,000, and Respondent Wachovia Securities shall pay disgorgement in the amount of \$1 and, pursuant to Sections 9(b) and 9(d) of the Investment Company Act, a civil penalty in the amount of \$500,000. All of the payments referred to above shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money

order; (B) made payable to the Securities and Exchange Commission; (C) 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 (D) submitted under cover letter that identifies the Respondent making the payment, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to David P. Bergers, Regional Director, Securities and Exchange Commission, 33 Arch Street, 23<sup>rd</sup> Floor, Boston, Massachusetts, 02110.

2. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in paragraph IV.G.1. 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 EIMCO, EIS, ESC and Wachovia Securities agree that they shall not, after offset or reduction in any Related Investor Action based on either EIMCO, EIS, ESC or Wachovia Securities' payment of disgorgement in this action, further benefit by offset or reduction of any part of EIMCO, EIS, ESC or Wachovia Securities' payment of civil penalties in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, EIMCO, EIS, ESC and Wachovia Securities 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 EIMCO, EIS, ESC, Wachovia

Securities 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.

By the Commission.

Nancy M. Morris  
Secretary