

and 17(b). Applicants assert that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any Applicant; the investment objectives, policies, and restrictions of the Common Trust Funds are compatible with and substantially similar to the applicable Mutual Funds' investment objectives, policies, and restrictions; and the proposed transactions and the requested exemption are in the public interest, consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants' Conditions

1. The proposed transactions will comply with the terms of rule 17a-7(b) through (f).

2. The proposed transactions will not occur unless and until the board of trustees of the Mutual Funds (including a majority of the board's disinterested members) find that participation by the Mutual Funds in the proposed transactions is in the best interests of such funds and that the interests of existing shareholders of such funds will not be diluted as a result of the transactions. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Mutual Funds.

3. The proposed transactions will not occur unless and until Trust Company or any entity controlling, controlled by, or under common control with it or Keystone, as trustee, has determined in accordance with its fiduciary duties as trustee for the Common Trust Funds and fiduciary for the Participants, that the proposed transactions are in the best interests of the Participants in the Common Trust Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-2883 Filed 2-4-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23013; 812-10902]

The Virtus Funds, et al.; Notice of Application

January 30, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 17(b) of the

Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the reorganization and consolidation of series of certain registered open-end investment companies into certain series of another registered open-end investment company.

APPLICANTS: Evergreen Municipal Trust, Evergreen Equity Trust, Evergreen Fixed Income Trust, Evergreen International Trust, Evergreen Money Market Trust (together, "Evergreen Funds" or "Acquiring Funds"), The Virtus Funds ("Virtus Funds"), and First Union National Bank (the "Bank").

FILING DATES: The application was filed on December 19, 1997, and amended on January 27, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Bank, 201 S. College Street, Charlotte, North Carolina 28288; Virtus Funds, Federated Investors Tower, Pittsburgh, Pennsylvania 15222-3779; and Evergreen Funds, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942-0533, or Mary Kay Frech, Branch Chief, at (202) 942-0564, (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202-942-8090).

Applicant's Representations

1. The Virtus Funds, a Massachusetts business trust consisting of eight series is an open-end management investment company registered under the Act. Virtus Capital Management, Inc. ("Virtus") is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is the investment adviser for the Virtus Funds.

2. The Evergreen Funds are Delaware business trusts and each is an open-end management investment company registered under the Act. The Bank is a North Carolina corporation and a banking subsidiary of First Union Corporation, a publicly held bank holding company. The Capital Management Group, a division of the Bank, and two of its subsidiaries, Evergreen Asset Management Corp. and Keystone Investment Management Company, are the investment advisers to the Evergreen Funds. Evergreen Asset Management Corp. and Keystone Investment Management Company are each registered as investment advisers under the Advisers Act.

3. The Bank, as a fiduciary for its customers, controls, or holds with power to vote, 5% or more of the outstanding voting securities of the Virtus Funds. In addition, the Bank, as a fiduciary for its customers, owns of record or controls, or holds with power to vote, 5% or more of the outstanding voting securities of the Evergreen Funds.

4. On September 16 and 17, 1997, the board of each Evergreen Fund and Virtus Fund (together, the "Funds") ("Board"), including a majority of the disinterested directors/trustees, authorized plans of reorganization pursuant to which a series of the Evergreen Funds will acquire a corresponding series of the Virtus Funds with similar investment objectives ("Plans").

Pursuant to the terms of the Plans, the Virtus Funds have agreed to sell all of their assets and certain stated liabilities to a corresponding series of the Acquiring Funds in exchange for shares of the Acquiring Fund ("Reorganization"). The number of Acquiring Fund shares to be issued in exchange for each Virtus Fund share of each class will be determined by dividing the net asset value of one Acquiring Fund share of the appropriate corresponding class by the net asset value of one Virtus Fund share of such class.

5. Holders of Investment Shares of the Virtus Funds will receive Class A shares of the corresponding Evergreen Fund and holders of Trust Shares will receive

Class Y shares of the corresponding Evergreen Fund. Each such class of shares of the Evergreen Fund has the same distribution-related fees, if any, as the shares of the class of Virtus Funds held prior to the Reorganization and no initial sales charge will be imposed in connection with Class A shares of the Evergreen Funds received by Virtus Fund shareholders.

6. The investment objectives of each Virtus Fund and its corresponding Acquiring Fund are similar. The investment restrictions and limitations of each Virtus Fund and corresponding Acquiring Fund are substantially similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Funds.

7. The Board of each Fund approved the Reorganization as in the best interests of existing shareholders and determined that the interests of existing shareholders will not be diluted as a result of the Reorganization. The Bank will be responsible for the expenses incurred in connection with the Reorganization.

8. The Board of each Fund considered a number of factors in authorizing the Reorganization, including: (a) The terms and conditions of the Reorganization; (b) whether the Reorganization would result in the dilution of shareholders' interests; (c) expense ratios, fees and expenses of the Funds participating in the Reorganization; (d) the comparative performance records of the Acquiring Fund and Virtus Fund; (e) compatibility of the Funds' investment objectives and policies; (f) the investment experience, expertise and resources of the Funds' advisers; (g) service features available to shareholders of the respective Acquiring Fund and Virtus Fund; (h) the fact that the Bank will bear the expenses incurred by the Funds in connection with the Reorganization other than the Acquiring Fund's federal and state registration fees; (i) the fact that the Acquiring Funds will assume certain stated liabilities of the Virtus Fund; and (j) the expected federal income tax consequences of the Reorganization.

9. The Reorganization is subject to a number of conditions precedent, including requirements that: (a) the Plans have been approved by the Boards of the Acquiring Funds and the Virtus Funds and each of such Fund's shareholders in the manner required by law; (b) the Virtus Funds and the Acquiring Funds have received opinions of counsel stating, among other things, that the Reorganization will constitute a "reorganization" under section 368 of the Internal Revenue Code of 1986, as amended and, as a

consequence, the Reorganization will not result in Federal income taxes for the Fund or its shareholders; and (c) the Virtus Funds and the Acquiring Funds have received from the SEC an order exempting the Reorganization from the provisions of the Act as requested in the application. Applicants agree not to make any material changes to the Plans that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, knowingly: (a) To sell any security or other property to such registered company; or (b) to purchase from such registered company any security or other property. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include: (a) Any person owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (c) any person controlling, controlled by, or under common control with, such other person; and (d) if such other person is an investment company, any investment adviser of the person.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that the proposed transactions may not be exempt from the prohibitions of section 17(a) by reason of rule 17a-8 because the Funds may be affiliated for reasons other than those set forth in the rule. The Virtus Funds may be affiliated persons of the Bank because the Bank, as fiduciary for its customers, owns of record or controls or holds with the power to vote 5% or more of the outstanding securities of the Virtus Funds. The Bank, in turn, is an affiliated person of the Evergreen Funds because the Bank, or one of its subsidiaries, serves as adviser to the Evergreen Funds. In addition, the Evergreen Funds may be affiliated persons of the Bank because the Bank, as fiduciary for its customers, owns of record or controls or holds with the power to vote 5% or more of the

outstanding securities of the Evergreen Funds and a subsidiary of the Bank (*i.e.*, Virtus) is the adviser to the Virtus Funds. Consequently, applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the Reorganization satisfies the provisions of section 17(b) of the Act. The Board of each of the Funds has determined that the transactions are in the best interests of the shareholders. In approving the Plans, the Boards of the Funds considered: (a) That the interests of Fund shareholders will not be diluted; (b) that the Virtus and Acquiring Funds' investment objectives and policies are generally substantially identical; (c) that no sales charges will be imposed; (d) that the conditions and policies of rule 17a-8 will be followed; and (e) that no overreaching by any affiliated person is occurring.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-23012; 812-10776]

Weiss, Peck & Greer Funds Trust, et al.; Notice of Application

January 30, 1998.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act to permit in-kind redemptions of shares of certain registered open-end management investment companies held by shareholders who are affiliated persons of the investment companies.