

Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: December 14, 1998.

**John F. Leyden,**

*Chairman, Federal Prevailing Rate Advisory Committee.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23605; 812-11284]

### Evergreen Equity Trust et al.; Notice of Application

December 16, 1998.

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

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

**SUMMARY OF APPLICATION:** Evergreen Equity Trust and Evergreen Variable Annuity Trust (each a "Trust" and collectively the "Trusts"), on behalf of their various series, and First Union National Bank (the "Adviser") request an order that would (a) permit applicants to enter into and materially amend sub-advisory agreements without shareholder approval and (b) grant relief from certain disclosure requirements.

**APPLICANTS:** The Trusts and the Adviser.

**FILING DATES:** The application was filed on August 28, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 7, 1999, and should be accompanied by proof of service on 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 Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Applicants, 200 Berkeley Street, Boston, Massachusetts 02106.

#### FOR FURTHER INFORMATION CONTACT:

Lawrence W. Pisto, Senior Counsel, at (202) 942-0527, or George J. Zornada, Branch Chief, at (202) 942-0564, Office of Investment Company Regulation, Division of Investment Management.

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

### Applicants' Representations

1. Each trust is organized as a Delaware business trust and registered under the Act as an open-end management investment company. The Evergreen Equity Trust ("Equity Trust") is currently comprised of eighteen separate series (the "Equity Trust Existing Portfolios") and the Evergreen Variable Annuity Trust ("Annuity Trust") is currently composed of eight separate series (the "Annuity Trust Existing Portfolios" together with the Equity Trust Existing Portfolios, the "Existing Portfolios"), each of which has its own investment objectives and policies. The Annuity Trust Existing Portfolios are offered for sale through separate accounts of various insurance companies as a funding medium for variable annuity contracts and/or variable life insurance policies issued by such insurance companies. Each trust is in the process of establishing a new portfolio ("New Portfolios" and together with the Existing Portfolios, the "Portfolios").<sup>1</sup>

2. The Adviser or an entity controlling, controlled by, or under common control with the Adviser ("Advisory Affiliates"), serves as investment adviser to the Existing Portfolios and will serve as investment adviser to the New Portfolios. The Adviser, a North Carolina corporation and a banking subsidiary of First Union Corporation, a publicly-held bank holding company, is exempt from registration under the Investment Advisers Act of 1940 (the "Advisers Act"). The Advisory Affiliates, Evergreen Investment Management Company, Evergreen Asset Management Corp. ("EAMC") and Meridian Investment Company, are registered under the Advisers Act.

3. The Adviser and Advisory Affiliates serve as advisers to the Existing Portfolios pursuant to investment advisory agreements (each an "Advisory Agreement" and together, the "Advisory Agreements"). Under the

<sup>1</sup> Applicants also request relief with respect to any future series of the Trusts and all future registered open-end management investment companies that are (a) advised by the Adviser or the Advisory Affiliates and (b) use the multi-manager structure as described in the application and comply with the terms and conditions in the application. All existing investment companies that currently intend to rely on the order have been named as applicants.

Advisory Agreements, the Adviser or one of the Advisory Affiliates manages and administers the operation of each Trust's Existing Portfolios. The Adviser or the Advisory Affiliate has overall supervisory and administrative responsibility for the Trusts and, subject to the general supervision of the board of trustees of each Trust (each a "Board" and collectively the "Boards"), has the authority to select and contract with one or more sub-advisers (each a "Manager" and collectively the "Managers") to provide each Portfolio with portfolio management services.<sup>2</sup> The Adviser or Advisory Affiliate will continue to provide specific portfolio management to the Existing Portfolios and the Adviser, Advisory Affiliates, or one or more Managers will provide portfolio management for the New Portfolios. Each Manager performs services pursuant to a written agreement (the "Portfolio Management Agreement"). Each Manager will be an investment adviser registered under the Advisers Act or exempt from registration. Managers' fees are paid by the Adviser or Advisory Affiliate out of its fees from the Portfolios at rates negotiated with the Managers by the Adviser or Advisory Affiliate.

4. The Adviser or Advisory Affiliate will employ its expertise to select Managers that have shown the ability, over a period of time, to select specific investments to achieve well-defined objectives. The Adviser or Advisory Affiliates seek to select Managers that have shown a consistent ability to achieve targeted results within select asset classes and investment style and that have demonstrated expertise in particular areas. The Adviser or Advisory Affiliate has responsibility for communicating performance expectations and evaluations to Managers, supervising and monitoring compliance with the Portfolio's investment objectives and policies, authorizing a Manager to engage in certain investment techniques for a Portfolio and recommending to the Board of each Trust whether Portfolio Management Agreements should be renewed, modified, or terminated.

5. Applicants request relief to permit the Adviser and Advisory Affiliates to enter into and amend Portfolio Management Agreements without shareholder approval. The requested relief will not extend to a Manager that is an affiliated person, as defined in

section 2(a)(3) of the Act, of a Trust, the Adviser or an Advisory Affiliate, other than by reason of serving as a Manager to one or more of the Portfolios (an "Affiliated Manager").

6. Applicants also request an exemption from the various disclosure provisions described below that may require each Trust to disclose the fees paid by the Adviser or Advisory Affiliates to the Managers. Each Trust will disclose for each Portfolio (both as a dollar amount and as a percentage of a Portfolio's net assets): (i) aggregate fees paid to the Adviser or Advisory Affiliate and Affiliated Managers; and (ii) aggregate fees paid to Managers other than Affiliated Managers ("Limited Fee Disclosure"). For any Portfolio that employs an Affiliated Manager, the Portfolio will provide separate disclosure of any fees paid to the Affiliated Manager.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Items 2, 5(b)(iii), and 16(a)(iii) of Form N-1A (and after the effective date of the amendments to Form N-1A, items 3, 6(a)(1)(ii), and 15(a)(3), respectively) require disclosure of the method and amount of the investment adviser's compensation.

3. Form N-14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N-14 requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction."

4. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy

statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

5. Form N-SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N-SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Managers.

6. Regulation S-X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6-07(2)(a), (b), and (c) of Regulation S-X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act if, and to the extent that, an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

8. Applicants assert that the Trusts' investors will rely on the Adviser or Advisory Affiliate to select one or more Managers best suited to achieve a Portfolio's investment objectives. Therefore, applicants assert that, from the perspective of the investor, the role of the Managers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

9. Applicants further assert that some Managers use a "posted" rate schedule to set their fees, particularly at lower asset levels. Applicants believe that some organizations may be unwilling to serve as Managers at any fee rate other than their "posted" fee rates, unless the rates negotiated for the Portfolios are not publicly disclosed. Applicants believe that requiring disclosure of Managers' fees may deprive the Adviser of its bargaining power while producing no benefit to shareholders, since the total

<sup>2</sup> Existing Portfolios managed by EAMC are subadvised by Lieber & Company, an indirect wholly-owned subsidiary of First Union Corporation and an affiliated person of the Trust. The Adviser has selected three unaffiliated subadvisers for the New Portfolios.

advisory fee they pay would not be affected.

### **Applicant's Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each Trust will disclose in its registration statement the Limited Fee Disclosure.

2. The Adviser or Advisory Affiliate will not enter into a Portfolio Management Agreement with any Affiliated Manager without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account).

3. At all times, a majority of each Trust's Board will be persons each of whom is not an "interested person" of the Trust as defined in Section 2(a)(19) of the Act ("Independent Trustees"), and the nomination of new or additional Independent Trustees to be at the discretion of the then existing Independent Trustees.

4. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Trust. The selection of such counsel will remain within the discretion of the Independent Trustees.

5. The Adviser or Advisory Affiliate will provide the Board of each Trust, no less than quarterly, information about the Adviser's or Advisory Affiliate's profitability for each Portfolio relying on the relief requested in this application. Such information will reflect the impact on profitability of the hiring or termination of any Manager during the applicable quarter.

6. Whenever a Manager is hired or terminated, the Adviser or Advisory Affiliate will provide the Board information showing the expected impact on the Adviser's or Advisory Affiliate profitability.

7. When a Manager change is proposed for a Portfolio with an Affiliated Manager, each Trust's Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Trust's Board minutes, that the change is in the best interests of the Portfolio and its shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Portfolio and the unitholders of any sub-account) and does not involve a conflict of interest from which the Adviser or Advisory

Affiliate, or the Affiliated Manager derives an inappropriate advantage.

8. Before an Existing Portfolio may rely on the order requested in the application, the operation of the Portfolio in the manner described in the application will be approved by a majority of its outstanding voting securities (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a New Portfolio whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 11 below, by the sole initial shareholder(s) before offering shares of that New Portfolio to the public.

9. For each Trust's Portfolio relying on the requested order, the Adviser's or Advisory Affiliate will provide general management services, including overall supervisory responsibility for the general management and investment of the Portfolio's securities portfolio, and, subject to review and approval by the Trust's Board will (i) set the Portfolio's overall investment strategies; (ii) select Managers; (iii) when appropriate, allocate and reallocate the Portfolio's assets among multiple Managers; (v) monitor and evaluate the performance of Managers; and (v) ensure that the Managers comply with the Portfolio's investment objectives, policies and restrictions.

10. Within 60 days of the hiring of any new Manager, shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) will be furnished all information about the new Manager or Portfolio Management Agreement that would be included in a proxy statement, except as modified by the order to permit Limited Fee Disclosure. Such information will include Limited Fee Disclosure and any change in such disclosure caused by the addition of a new Manager. The Adviser or Advisory Affiliate will meet this condition by providing shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Exchange Act. The information statement also will meet the requirements of Schedule 14A under the Exchange Act, except as modified by the order to permit Limited Fee Disclosure.

11. Each Trust will disclose in its prospectus the existence, substance, and

effect of any order granted pursuant to the application. In addition, each Portfolio relying on the requested order will hold itself out to the public as employing the Manager of Managers Strategy described in this application. The prospectus will prominently disclose that the Adviser or Advisory Affiliate has ultimate responsibility (subject to oversight by the Board) to oversee the Managers and recommend their hiring, termination, and replacement.

12. No trustee or officer of the Trusts or director or officer of the Adviser or Advisory Affiliate will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Manager except for (i) ownership of interests in the Adviser or Advisory Affiliates or any entity that controls, is controlled by, or is under common control with the Adviser or Advisory Affiliates; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

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-23600; 812-11144]

### **Quantitative Group of Funds, et al.; Notice of Application**

December 15, 1998.

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

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

**SUMMARY OF APPLICATION:** Applicants, Quantitative Group of Funds (the "Trust") and Quantitative Advisors, Inc. (the "Adviser"), request an order that would permit them to enter into and materially amend sub-advisory agreements without shareholder approval.

**FILING DATES:** The application was filed on May 11, 1998, and amended on August 31, 1998, and November 23, 1998. Applicants have agreed to file an