the affected Phoenix variable life contracts the affected contract holders generally may transfer all assets, as substituted, to any other division of the Phoenix VUL Account available under their contracts without limitation or charge.

12. The New Applicants have considered the Substitution, and they believe that the Substitution is in the best interests of Phoenix's contract holders and that the Substituted Portfolios are appropriate replacements for the Replaced Portfolios.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The purpose of Section 26(b) is both to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with a substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company. Certain of the Substitutions will be effected partly or wholly in-kind. Moreover, after the Substitutions Phoenix will combine its divisions invested in the Replaced Portfolios with the divisions invested in the corresponding Substituted Portfolios. The combination may be deemed to involve the indirect purchase of shares of the Substituted Portfolios with portfolio securities of the corresponding Replaced Portfolios, and the indirect sale of securities of the Replaced Portfolios for shares of the Substituted Portfolios. Thus, each Portfolio would be acting as principal, in the purchase and sale of securities to the other Portfolio, in contravention of Section 17(a). The Commission has taken the interpretive position that divisions of a registered separate account are to be treated as separate investment companies in connection with substitution transactions. Phoenix could be said to be transferring unit values between their divisions. The transfer of unit values could be said to involve purchase and sale transactions between divisions that are affiliated persons. The sale and purchase transactions between divisions, could be said to come within the scope of Section 17(a)(1) and 17(a)(2) of the 1940 Act, respectively. Therefore, the combination of divisions may require an exemption from Section 17(a) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act.

3. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) upon application if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act. Applicants represent that the terms of the proposed transactions, as described in the application, are: reasonable and fair, including the consideration to be paid and received; do not involve over-reaching; are consistent with the policies of each investment company concerned; and are consistent with the general purposes of the 1940 Act.

4. In granting the June 9 Order, the Commission previously found that the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that the terms of the proposed transactions are reasonable and fair and do not involve overreaching, the transactions are consistent with the policy of each investment company concerned and with the purposes of the 1940 Act, and the exemption requested is necessary or appropriate in the public interest. Applicants submit that the same findings apply to the Substitutions involving variable universal life insurance contracts issued by Phoenix through the Phoenix VUL Account, and that accordingly, the proposed amendment to the June 9 Order adding the New Applicants as parties meets the applicable legal requirements.

Conclusions

Applicants submit that, for the reasons summarized above, their requests meet the standards set out in Sections 17(b) and 26(b) of the 1940 Act. Accordingly, Applicants request an order, pursuant to Sections 17(b) and 26(b) of the 1940 Act, amending the June 9 Order to include Phoenix and the Phoenix VUL Account as parties and approving the Substitutions by them.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–17753 Filed 7–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23897; 812–11612]

Evergreen Equity Trust, et al.; Notice of Application

July 8, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of registered open-end management investment companies to acquire all of the assets and assume all of the liabilities of certain other series of the investment companies. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Evergreen Equity Trust (the ''Equity Trust''), Evergreen Fixed Income Trust (the ''Fixed Income Trust''), Evergreen Municipal Trust (the ''Municipal Trust''), Evergreen Select Equity Trust (the ''Select Equity Trust'') (collectively, the ''Trusts''), and First Union National Bank (''FUNB'').

FILING DATES: The application was filed on May 17, 1999. Applicants have agreed to file an amendment 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 July 28, 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, NW, Washington, DC 20549–0609. Applicants, One First Union Center, Charlotte, NC 28288.

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, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trusts, each a Delaware business trust, are registered under the Act as open-end management investment companies. Equity Trust has twenty series. Four of these series, the Evergreen Fund, Evergreen Micro Cap Fund, Evergreen Income and Growth Fund, and Evergreen American Retirement Fund are involved in the proposed transactions. Fixed Income Trust has eight series, two of which, Evergreen U.S. Government Fund and Evergreen Intermediate Term Government Securities Fund, are involved in the proposed transactions. Municipal Trust has seventeen series. Three of these series. Evergreen High Grade Municipal Bond Fund, Evergreen California Municipal Bond Fund, and Evergreen New York Municipal Bond Fund are involved in the proposed transactions. Select Equity Trust has thirteen series, two of which, Evergreen Select Core Equity Fund and Evergreen Select Equity Income Fund, are involved in the proposed transactions.

2. Evergreen Fund, Evergreen Income and Growth Fund, Evergreen U.S. Government Fund, Evergreen High Grade Municipal Bond Fund, and Evergreen Select Core Equity Fund are the ''Acquiring Series.'' Evergreen Micro Cap Fund, Evergreen American Retirement Fund, Evergreen Intermediate Term Government Securities Fund, Evergreen California Municipal Bond Fund, Evergreen New York Municipal Bond Fund, and Evergreen Select Equity Income Fund are the ''Acquired Series.'' Collectively, the Acquiring Series and the Acquired Series are referred to as the ''Series.'' [1]

3. FUNB is a national banking association and a banking subsidiary of First Union Corporation, a publicly-held bank holding company. Evergreen Investment Management (''EIM''), a division of FUNB, is the investment adviser to the Evergreen High Grade Municipal Bond Fund, Evergreen U.S. Government Fund, and Evergreen Intermediate Term Government Securities Fund. First Investment Advisors (''FIA''), another division of FUNB, is the investment adviser to Evergreen Select Core Equity Fund and Evergreen Select Equity Income Fund. Evergreen Asset Management Corp. (''EAMC''), an indirect wholly-owned subsidiary of FUNB, is the investment adviser to the Evergreen Income and Growth Fund, Evergreen American Retirement Fund, Evergreen Fund and Evergreen Micro Cap Fund. Evergreen Investment Management Company (''EIMC''), an indirect wholly-owned subsidiary of FUNB, is the investment adviser to the Evergreen California Municipal Bond Fund and the Evergreen New York Municipal Bond Fund. EIM and FIA, as divisions of FUNB, are not required to register as investment advisers under the Investment Advisers Act of 1940 (the ''Advisers Act''). EAMC and EIMC are registered under the Advisers Act.

4. FUNB, as fiduciary for its customers, owns of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series. In addition, FUNB, as fiduciary for its customers, owns of record more than 5% (and in one case, more than 25%) of the outstanding voting securities of certain of the Acquiring Series.[2] All such shares are held by FUNB in a fiduciary capacity, and FUNB does not have an economic interest in any such shares.

5. On March 12, 1999 (May 14, 1999 in the case of Select Equity Trust), the boards of trustees of the Trusts (the ''Boards''), including a majority of the trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Independent Trustees''), approved plans of reorganization (the ''Plans''). Under the Plans, on the closing date (the ''Closing Date''), which is currently anticipated to be July 30, 1999, the Acquiring Series will acquire all the assets and stated liabilities of the corresponding Acquired Series in exchange for shares of the Acquiring Series that have an aggregate net asset value (''NAV'') equal to the aggregate NAV of the Acquired Series at 4:00 p.m. EST on the day before the Closing Date (''Valuation Date''). On or as soon as is reasonably practicable after the Closing Date, each Acquired Series will distribute full and fractional shares of the Acquiring Series pro rata to shareholders of record of the Acquired Series, determined as of the close of business on the Valuation Date (the ''Reorganizations''). After the distribution of the share of the Acquiring Series and the winding up of their affairs, the Acquired Series will be liquidated.

6. Applicants state that the investment objectives of each Acquired Series and its corresponding Acquiring Series are similar. The investment restrictions and limitations of each Acquired Series and corresponding Acquired Series are substantially similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Funds. The Acquired Series offer four classes of shares, Class A, Class B, Class C, and Class Y which are identical to the respective classes of the Acquiring Funds.[3] Shareholders of

[1] The Acquired Series and the Acquiring Series correspond with one another as follows: Equity Trust's Evergreen Micro Cap Fund with Evergreen Fund; Equity Trust's Evergreen American Retirement Fund with Evergreen Income and Growth Fund; Fixed Income Trust's Evergreen Intermediate Term Government Securities Fund with Evergreen U.S. Government Fund; Municipal Trust's Evergreen California Municipal Bond Fund and Evergreen New York Municipal Bond Fund with Evergreen High Grade Municipal Bond Fund; and Select Equity Trust's Evergreen Select Equity Income Fund with Evergreen Select Core Equity Fund.

[2] FUNB owns 21.13% of Equity Trust's Evergreen Fund, 12.41% of Fixed Income Trust's Evergreen U.S. Government Fund, 45.22% of Fixed Income Trust's Evergreen Intermediate Term Government Securities Fund, 7.84% of Municipal Trust's Evergreen High Grade Municipal Bond Fund, 99.08% of Select Equity Trust's Evergreen Select Equity Income Fund, and 98.19% of Select Equity Trust's Evergreen Select Equity Fund. Although the proposed transaction between Equity Trust's Evergreen American Retirement Fund and Equity Trust's Evergreen Income and Growth Fund does not currently require exemptive relief, applicants are requesting relief in the event that FUNB's ownership as fiduciary increase to 5% or more of either Series' assets prior to the proposed transactions. If FUNB does not acquire such ownership, the Series will not rely on the requested relief.

[3] Except for Class A shares of the Evergreen Intermediate Term Government Securities Fund,

Continued

the Acquired Series will not incur any sales charges in connection with the Reorganizations. FUNB will be responsible for the fees and expenses related to the Reorganizations other than each Acquiring Series federal and state registration fees.

7. The Boards, including the Independent Trustees, determined that the Reorganizations are in the best interests of the shareholders of each of the Acquired Series and each of the Acquiring Series, and that the interests of the shareholders of the Acquired Series and the Acquiring Series would not be diluted by the Reorganizations. In assessing the Plans, the factors considered by the Boards included, among others, (a) the terms and conditions of the Reorganizations, (b) the expense ratios, fees and expenses of the Acquired Series and Acquiring Series, (c) the fact that FUMB will bear the expenses incurred in connection with the Reorganizations, and (d) the tax-free nature of the Reorganizations.

8. The Plans are subject to a number of conditions precedent, including that: (a) the Plans shall have been approved by the Boards on behalf of each of the Acquiring Series and the Acquired Series and approved by the shareholders of each of the Acquired Series, (b) definitive proxy solitation materials shall have been filed with the Commission and distributed to shareholders of the Acquired Series, (c) the Acquiring and Acquired Series receive an opinion of tax counsel that the Reorganizations will be tax-free for each Series and its shareholders, and (d) applicants receive from the Commission an exemption from section 17(a) of the Act for the Reorganizations. Each Plan may be terminated and the Reorganizations abandoned at any time by mutual consent of the respective Boards of the Acquired Series and the Acquiring Series or by either party in case of a breach of the Plan. Applicants agree not to make any material changes to the Plans without prior Commission approval.

9. Definitive proxy solicitation materials have been filed with the Commission and were mailed to shareholders of the Acquired Series (with the exception of the Evergreen Select Equity Income Fund) on or about June 2, 1999. Proxies were mailed to shareholders of Evergreen Select Equity Income Fund on or about June 25, 1999. A special meeting of shareholders is scheduled for July 23, 1999 (July 30, 1999 in the case of Evergreen Select Equity Income Fund).

Applicant's Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly and indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquiring and Acquired Series may be deemed affiliated persons and thus the Reorganizations may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) 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 set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganizations because the Acquiring Series and Acquired Series may be deemed to be affiliated by reason other than having a common investment adviser, common directors, and/or common officers. FUNB, as fiduciary for its customers, owns of record with power to vote more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series and Acquiring Series. Because of this ownership each Acquiring Series may be deemed an affiliated person of an affiliated person of each of the Acquired Series for a reason other than having a common investment adviser.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that 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, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the Boards have determined that the transactions are in the best interests of each Series' shareholders and that the interests of the existing shareholders will not be diluted as a result of the Reorganizations. In addition, applicants state that the exchange of the Acquired Series' shares for shares of the Acquiring Series will be based on relative NAV.

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

Margaret H. McFarland,

Deputy Secretary.

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which have a maximum front-end sales load of 3.25% and a distribution fee of 0.10% of average daily net assets, while other Class A shares have a maximum front end sales load of 4.75% and a distribution fee of 0.25% of average daily net assets.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Digitcom Interactive Video Network; Order of Suspension of Trading

July 8, 1999.

It appears to the Securities and Exchange Commission that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning Digitcom Interactive Video Network, relating to the company's financial condition and the nature or existence of agreements and contracts with overseas private and governmental entities.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on July 8, 1999, through 11:59 p.m. EDT on July 21, 1999.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–17823 Filed 7–8–99; 4:29 pm]

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