

POSTAL SERVICE BOARD OF GOVERNORS**Sunshine Act Meeting**

TIMES AND DATES: 1:00 p.m., Monday, November 1, 1999; 8:30 a.m., Tuesday, November 2, 1999.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: November 1 (Closed); November 2 (Open).

MATTERS TO BE CONSIDERED:

Monday, November 1—1:00 p.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99-2, Weight-Averaged, Nonletter-Size Business Reply Mail.
2. NetPost—Mailing Online Major Market Test.
3. Mailing Online Filing.
4. Los Angeles, California, Terminal Annex.
5. Rate Case Filing.
6. Contract for External Audit Services.
7. Office of Inspector General FY 2000 Performance Plan.
8. Compensation Issues.
9. Personnel Matters.

Tuesday, November 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 4-5, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Semiannual Report to Congress on Summary of Investigative Activities (Actions Under 39 USC 3005 and 3007).
4. Quarterly Report on Service Performance.
5. Tentative Agenda for the December 6-7, 1999, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260-1000. Telephone (202) 268-4800.

Thomas J. Koerber,
Secretary.

[FR Doc. 99-27657 Filed 10-19-99; 1:14 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24084; 812-11808]

Evergreen Equity Trust et al.; Notice of Application

October 14, 1999.

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

ACTION: Notice of an application under rule 17d-1 under the Investment Company Act of 1940 (the "Act") for an order to permit certain transactions in accordance with section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF THE APPLICATION:

Applicants request an order to permit certain registered investment companies to pay to an affiliated lending agent, and the affiliated lending agent to accept, fees based on a share of the revenue generated from securities lending transactions.

APPLICANTS: Evergreen Equity Trust, Evergreen Select Equity Trust, Evergreen International Trust, Evergreen Fixed Income Trust, Evergreen Select Fixed Income Trust, Evergreen Municipal Trust, Evergreen Money Trust, Evergreen Select Money Market Trust (collectively, the "Funds"), First Union National Bank ("First Union"), and Evergreen Investment Management Company ("EIM").

FILING DATE: The application was filed on October 8, 1999.

HEARING AND 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 November 8, 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 request should state the nature of the writer's interest, the reason for the request, and the issues contested. Person 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, 200 Berkeley Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549-0102 (tel. 202-942-8090).

Applicant's Representations

1. Each Fund is registered under the Act as an open-end management investment company. The Funds currently consist of 92 portfolios ("Portfolios"). EIM, a subsidiary of First Union Corporation, is registered under the Investment Advisers Act of 1940. EIM or an entity controlling, controlled by, or under common control with EIM serves as investment adviser to each Portfolio of the Funds (each, an "Adviser"). First Union, a wholly-owned subsidiary of First Union Corporation, is a national banking association.¹

2. Each Portfolio is permitted by its investment objectives, policies, and restrictions to lend its portfolio securities. Applicants may propose that the Funds engage First Union as custodian and that First Union act as lending agent for the Funds in transactions where the Funds loan portfolio securities to unaffiliated borrowers ("Borrowers"). First Union, as lending agent, would be responsible for, among other things, soliciting Borrowers from a pre-approved list of eligible Borrowers, entering into loans of pre-approved securities on pre-approved terms, negotiating loans, requesting Borrowers to add collateral when required, and performing other administrative functions.² In addition, First Union would, under guidelines established by the Adviser, invest cash collateral in instruments pre-approved by the Adviser.

3. A Fund's board of trustees ("Board"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), will establish procedures to govern the securities leading program. These procedures will comply with the policies and procedures set forth by the

¹ Applicants also request that the relief apply to any other registered investment company that in the future is advised by EIM or an entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with EIM ("Future Funds"). Applicants state that all registered investment companies that currently intend to rely on the relief are named as applicants and that any Future Funds that rely on the relief will so do so only in accordance with the terms and conditions of the application.

² Applicants state that the duties to be performed by First Union will be consistent with and not exceed the parameters set forth in *Norwest Bank* (pub. avail. May 25, 1995).

Commission and its staff. The duties of First Union, as the lending agent, as well as procedures governing the securities lending, will be included in the Portfolio's agreement with First Union or otherwise detailed in writing. The ultimate responsibility for determining which securities are available to be loaned and to whom the securities may be loaned will reside with the Portfolio's Adviser, subject to the procedures approved by the Fund's Board.

4. Each Borrower of a Portfolio's securities will be required to tender collateral to be held by the Portfolio's custodian. In transactions where the collateral is other than cash, First Union typically will negotiate on behalf of a Portfolio a lending fee to be paid by the Borrower. The Borrower will deliver to the Portfolio's custodian U.S. Government securities or bank letters of credit equal to at least 100% of the value of the securities loaned, with the collateral to be increased, as necessary, to cover differences between the market value of the collateral and the market value of the loaned securities. At the termination of the loan, the Borrower will pay to the Portfolio the lending fee, or which First Union will receive a pre-negotiated percentage.

5. In transactions where the collateral consists of cash, the Portfolio typically will receive a portion of the return earned on the investment of the cash collateral by or under the direction of the Portfolio's Adviser. Depending on the agreement negotiated with the Borrower by First Union, a percentage of the return on the investment of the cash collateral may be remitted by the Portfolio to the Borrower. Cash collateral delivered by the Borrower to the Portfolio's custodian will equal at least 100% of the portfolio securities loaned, and will be supplemented to cover increases in the market value of the loaned securities, as necessary. Out of amounts earned on the investment of cash collateral, the Borrower would be paid the amount agreed upon, if any, and, out of any remaining earnings, First Union would receive its pre-negotiated percentage and the Portfolio would receive the remainder.

6. Applicants request relief to permit the Funds to pay First Union, and First Union to accept, fees based on a share of the proceeds derived by the Funds from their securities lending activities.

Applicants' Legal Analysis

1. Section 17(d) of the Act and Rule 17d-1 under the Act prohibit an affiliated person of a registered investment company or any affiliated person of such person, acting as

principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement or profit sharing plan in which the investment company participates. Section 2(a)(3) of the Act defines an "affiliated person" of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with, the other person, and if the other person is an investment company, any investment adviser of that company.

2. EIM, as investment adviser to the Funds, is an affiliated person of each Fund. Because EIM and First Union are under common control, First Union and EIM are affiliated persons and First Union is an affiliated person of an affiliated person of the Funds. Accordingly, applicants request an order under section 17(d) of the Act and rule 17d-1 under the Act to the extent necessary to permit each Fund to pay, and First Union as lending agent to receive, fees based on a percentage of the revenue generated by the Funds' securities lending program.

3. Rule 17d-1 authorizes the Commission to permit a proposed joint transaction. In determining whether to permit a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment company is on a basis different from or less advantageous than that of the other participants. For the reasons discussed below, applicants believe that the requested relief satisfies that standards for relief set forth in rule 17d-1.

4. Applicants propose that the Funds adopt the following procedures to ensure that the fee arrangement and other terms of the relationship between the Funds and First Union are fair:

a. In connection with the initial approval of First Union as lending agent to a Fund, a majority of the Board of the Fund (including a majority of the Disinterested Trustees) will determine that: (i) The contract with First Union is in the best interests of the Fund and its shareholders; (ii) the services to be performed by First Union are required by the Fund; (iii) the nature and quality of the services to be performed by First Union are at least equal to those provided by others offering the same or similar services; and (iv) the fees for First Union's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature quality.

b. In connection with the initial approval of First Union as lending agent to a Fund, the Board will obtain

competing quotes of the lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

c. Each Fund's contract with First Union for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of Disinterested Trustees) makes the findings referred to in paragraph (a) above.

d. The Board of each Fund, including a majority of Disinterested Trustees will (i) determine at each quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application; and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and any modification thereto) described in the application or otherwise followed in connection with lending securities and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the Borrower, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions set forth in the application.

Applicants' Condition

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

1. The securities lending program of each Portfolio will comply with all present and future applicable Commission and Commission staff positions regarding securities lending arrangements.

2. The approval of the Board, including a majority of Disinterested Trustees, shall be required for the initial and subsequent approvals of First Union's service as lending agent for the Fund, for the institution of all procedures relating to the securities lending program of the Fund, and for any periodic review of loan transactions for which First Union acted as lending agent.

3. No Portfolio may lend its portfolio securities to a borrower that is an

affiliated person of the Fund, EIM, First Union, or an affiliated person of any such person.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 99-27444 Filed 10-20-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-24085; 812-11776]

GW Capital Management, LLC, et al.; Notice of Application

October 15, 1999.

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

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to implement a "fund of funds" arrangement. The fund of funds would invest in other funds that are part of the same group of investment companies and in funds that are not part of the same group of investment companies in reliance on section 12(d)(1)(F) of the Act.

APPLICANTS: GW Capital Management, LLC ("Adviser"), Maxim Series Fund, Inc. ("Fund"), Orchard Series Fund ("Trust"), and One Orchard Equities, Inc. ("Distributor").

FILING DATES: The application was filed on September 16, 1999. Applicant 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 November 9, 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, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609; Applicants, c/o Beverly A. Byrne, Esq., Maxim Series Fund, Inc., 8505 East Orchard Road, Englewood, CO 80111.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942-0574 or Michael W. Mundt, 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 Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (telephone (202) 942-8090).

Applicants' Representations

1. The Fund is organized as a Maryland corporation and the Trust is organized as a Delaware business trust. The Fund and the Trust are registered under the Act as open-end management investment companies and are part of the same "group of investment companies" (as defined in section 12(d)(1)(G)(ii) of the Act). The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Fund and the Trust.

2. Applicants request relief to permit the series of the Fund and any other registered open-end management investment company that is part of the same "group of investment companies" as the Fund (collectively, the "Profile Portfolios") to purchase shares of series of the Fund, series of the Trust, and other registered open-end management investment companies or series that are part of the same "group of investment companies" as the Profile Portfolios (collectively, the "Underlying Portfolios").¹ The Profile Portfolios also would invest in other registered open-end management investment companies that are not part of the same "group of investment companies" as the Profile

¹ Applicants request relief for each existing or future registered open-end management investment company or series of such company that is part of the same "group of investment companies" as the Fund, and (1) is, or will be, advised by the Adviser or by any entity controlling, controlled by, or under common control with the Adviser; or (2) for which the Distributor or any entity controlling, controlled by, or under common control with the Distributor serves as principal underwriter. Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant. Any registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

Portfolios (the "Other Portfolios") in reliance on section 12(d)(1)(F) of the Act.

3. Shares of the Profile Portfolios are offered to separate accounts of Great-West Life & Annuity Insurance Company and its affiliates and separate accounts of unaffiliated insurers for the purpose of funding variable contracts issued by those insurance companies. Shares may also be offered directly to qualified pension and retirement plans. The Profile Portfolios do not impose any front-end sales charges, contingent deferred sales charges, or rule 12b-1 fees. Applicants state that the Profile Portfolios are intended as an efficient and cost-effective method of allowing investors who are pursuing long-term investment goals, namely, owners of variable insurance contracts and qualified plan participants, to structure a comprehensive asset allocation program with investments in the Underlying Portfolios and Other Portfolios consistent with the investors' investment time horizon.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted