

FEDERAL RESERVE SYSTEM

The Charles Schwab Corporation  
San Francisco, California

Order Approving Formation of a Bank Holding Company and Notice to  
Acquire Nonbanking Companies

The Charles Schwab Corporation (“Schwab”) has requested the Board’s approval under section 3 of the Bank Holding Company Act (“BHC Act”) (12 U.S.C. § 1842) to become a bank holding company by acquiring all the voting shares of U.S. Trust Corporation, New York, New York (“US Trust”), and of US Trust’s subsidiary banks, including its lead subsidiary bank, United States Trust Company of New York, New York, New York (“UST-NY”).<sup>1</sup> As part of its proposal to become a bank holding company,

---

<sup>1</sup> Schwab proposes to acquire US Trust by merging a wholly owned acquisition subsidiary with and into US Trust, with US Trust as the surviving company. The subsidiary banks of US Trust that Schwab proposes to acquire are UST-NY; U.S. Trust Company National Association, Los Angeles, California (“UST-CA”); U.S. Trust Company of Texas, National Association, Dallas, Texas (“UST-TX”); U.S. Trust Company, Greenwich, Connecticut (“UST-CT”); U.S. Trust Company of New Jersey, Princeton, New Jersey (“UST-NJ”); and U.S. Trust Company of North Carolina, Greensboro, North Carolina (“UST-NC”). Schwab has requested approval to acquire UST-NC, a nondepository trust company that Schwab intends to convert to a commercial bank within six months of consummation of the proposal, under sections 3 and 4 of the BHC Act. Schwab also proposes to acquire U.S.T. L.P.O. Corp., New York, New York, a wholly owned subsidiary of US Trust that is an intermediate bank holding company over UST-TX; and NCT Holdings Inc., Greensboro, North Carolina, a wholly owned subsidiary of US Trust that would be an intermediate bank holding company over UST-NC.

Schwab also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act (12 U.S.C. § 1843(k) and (l)) and section 225.82 of the Board's Regulation Y (12 C.F.R. 225.82).

Schwab also has requested the Board's approval under section 4(c)(8) and 4(j) of the BHC Act (12 U.S.C. § 1843(c)(8) and (j)) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24) to acquire certain nonbanking subsidiaries of US Trust, including U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida ("UST-FL").<sup>2</sup> In addition, Schwab proposes to acquire the Edge Act corporation of US Trust pursuant to section 25A of the Federal Reserve Act (12 U.S.C. § 611 et seq.) and the Board's Regulation K (12 C.F.R. 211).<sup>3</sup>

Notice of the proposal under sections 3 and 4, affording interested persons an opportunity to submit comments, has been published (65 Federal Register 13,765 (2000)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4 of the BHC Act.

Schwab, with total consolidated assets of \$29.3 billion, is a securities firm engaged principally in the business of providing securities

---

<sup>2</sup> US Trust's nonbanking subsidiaries and nonbanking activities for which Schwab has sought Board approval under section 4(c)(8) and 4(j) of the BHC Act are listed in the Appendix.

<sup>3</sup> Schwab also has requested the Board's approval to hold and exercise an option to acquire up to 19.9 percent of the shares of US Trust's common stock. The option would expire on consummation of the proposal.

brokerage services to individuals and institutions.<sup>4</sup> Schwab also engages in a variety of other financial activities in the United States and overseas, including securities underwriting and dealing, investment advisory activities, insurance agency activities, employee benefit plan consulting, and trust company functions.

US Trust, with total consolidated assets of \$5 billion, is the 12th largest commercial banking organization in New York, controlling deposits of approximately \$2.6 billion in the state.<sup>5</sup> US Trust's subsidiary banks and savings association conduct primarily trust activities, and are located in California, Connecticut, Florida, New Jersey, New York, Oregon, Pennsylvania, and Texas. US Trust also engages in trust company functions and provides investment and financial advisory services in the United States.

#### Factors Governing Board Review of Transaction

The BHC Act sets forth the factors that the Board must consider when reviewing the formation of a bank holding company or the acquisition of banks. These factors are the competitive effects of the proposal in the relevant geographic markets; the financial and managerial resources and future prospects of the companies and banks involved in the proposal; the convenience and needs of the community to be served, including the records of performance under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) ("CRA") of the insured depository institutions involved in the transaction; and the availability of information needed to determine and

---

<sup>4</sup> Asset data are as of December 31, 1999.

<sup>5</sup> Ranking data are as of December 31, 1999. Deposit data are as of June 30, 1999.

enforce compliance with the BHC Act and other applicable federal banking laws.<sup>6</sup>

### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.<sup>7</sup>

The proposal involves the acquisition of banks by Schwab, which owns a nondeposit trust company and a variety of nonbanking companies, but does not own a commercial bank or savings association. Based on all the facts of record, the Board concludes that consummation of the proposal would not result in any significantly adverse effects on competition or on the concentration of banking resources in any relevant banking market. Accordingly, the Board has determined that competitive factors under section 3 of the BHC Act are consistent with approval of the proposal. The competitive effects of the proposed nonbanking activities are discussed below.

---

<sup>6</sup> In cases involving interstate bank acquisitions by bank holding companies, the Board also must consider the concentration of deposits in the nation and relevant individual states, as well as compliance with the other provisions of section 3(d) of the BHC Act.

<sup>7</sup> 12 U.S.C. § 1842(c)(1).

### Financial and Managerial Considerations

The Board has carefully considered the financial and managerial resources and future prospects of the companies and banks involved in the proposal, the effect the proposed transaction would have on such resources, and other supervisory factors in light of all the facts of record. In evaluating the financial and managerial factors, the Board has reviewed confidential examination and other supervisory information assessing the financial and managerial strength of Schwab and its subsidiaries and of US Trust and its subsidiaries, including UST-NY in particular. In addition, the Board has reviewed public and confidential supervisory reports and information regarding the activities and financial position of the regulated subsidiaries of Schwab.

The Board consistently has considered capital adequacy to be an especially important aspect in analyzing financial factors.<sup>8</sup> US Trust and all the subsidiaries of US Trust and Schwab that are subject to regulatory capital requirements currently exceed the relevant requirements. In addition, US Trust and all its subsidiary depository institutions currently are well capitalized under applicable federal guidelines. Schwab also would be well capitalized on a *pro forma* basis on consummation of the proposal. Moreover, the proposed transaction is structured as a stock-for-stock combination and would not increase the debt service requirements of the combined company and is not expected to have a significantly adverse effect

---

<sup>8</sup> See Chemical Banking Corporation, 82 Federal Reserve Bulletin 230 (1996).

on the financial resources of Schwab. Other financial factors are consistent with approval.

The Board also has carefully considered the managerial resources of Schwab and US Trust in light of all the facts of record, including confidential examination and other supervisory information and information provided by Schwab regarding its existing and proposed risk-management policies and processes. Based on all the facts of record, the Board concludes that considerations relating to the financial and managerial resources and future prospects of the organizations involved are consistent with approval.

In view of the fact that, on a *pro forma* basis, a large majority of Schwab's activities are conducted in subsidiaries that are functionally regulated by the Securities and Exchange Commission, the Board expects, in carrying out its responsibilities as umbrella supervisor, to rely heavily on the Securities and Exchange Commission for examination and other supervisory information.

#### Convenience and Needs Factor

The Board also has carefully considered the effect of the proposal on the convenience and needs of the communities to be served in light of all the facts of record, including comments received on the effect the proposal would have on the communities to be served by the combined organization.

##### A. CRA Performance Examinations

The Board has long held that consideration of the convenience and needs factor includes a review of the records of the relevant depository institutions under the CRA. As provided in the CRA, the Board evaluates the record of performance of an institution in light of examinations by the

appropriate federal supervisors of the CRA performance records of the relevant institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.<sup>9</sup>

Schwab currently does not control an institution subject to evaluation under the CRA. The Board has reviewed in detail, however, the CRA performance records of the insured depository institutions of US Trust (the "UST Banks"). The UST Banks all received "satisfactory" ratings at their most recent examinations for CRA performance. In particular, UST-NY received a "satisfactory" CRA performance rating from the Federal Reserve Bank of New York at its most recent examination, as of May 26, 1998 (the "1998 Examination"). In addition, the New York State Banking Department, as of May 26, 1998, rated UST-NY's CRA performance "satisfactory" pursuant to section 28-b of New York state banking law.<sup>10</sup>

---

<sup>9</sup> The Interagency Questions and Answers Regarding Community Reinvestment ("CRA Q&A") provide that a CRA examination is an important and often controlling factor in the consideration of an institution's CRA record. See 64 Federal Register 23,641 (1999).

<sup>10</sup> UST-CT received a "satisfactory" rating from its appropriate federal supervisor, the Office of the Comptroller of the Currency ("OCC"), at its most recent examination for CRA performance, as of June 16, 1999. UST-TX received an overall rating of "satisfactory" from its appropriate federal supervisor, the OCC, at its most recent evaluation for CRA performance, as of June 25, 1997. UST-CA received a "satisfactory" rating from the Federal Deposit Insurance Corporation ("FDIC") at its most recent CRA examination, as of October 12, 1999. UST-NJ received a "satisfactory"

(continued...)

B. Community Development Record of US Trust

The UST Banks are wholesale banking institutions that provide investment management, corporate trust, financial and estate planning, fiduciary, and private banking services for institutions and high net worth individuals. Each of the UST Banks has been designated a “wholesale bank” and has been evaluated as such under the CRA regulations of the federal banking agencies. Schwab proposes to continue to operate the UST Banks as wholesale banks and to maintain their CRA policies. Designation as a wholesale bank requires the appropriate federal banking agency to evaluate a bank’s record of CRA performance under a separate “community development test.”<sup>11</sup> Community development activities as a general matter must benefit areas within an institution’s assessment area(s) or a broader statewide or regional area that includes the institution’s assessment area(s).<sup>12</sup>

---

rating from the FDIC at its most recent CRA examination, as of April 27, 1999. Finally, UST-FL received a “satisfactory” rating from the Office of Thrift Supervision at its most recent CRA examination, as of November 12, 1997.

<sup>11</sup> See 12 C.F.R. 228.25(a). This test evaluates a wholesale bank on its record of community development services, community development investments, and community development lending. 12 C.F.R. 228.25(c). The primary purpose of any service, investment, or loan considered under the test must be “community development,” which is defined in terms of specific categories of activities that benefit low- and moderate-income (“LMI”) individuals, LMI areas, or small businesses or farms. See 12 C.F.R. 228.12(h).

<sup>12</sup> Community development activities outside an institution’s assessment area(s) may also be considered if the institution has adequately addressed the needs of its assessment area(s). See 12 C.F.R. 228.25(e).

Inner City Press/Community on the Move (“Protestant”) questioned the appropriateness of the wholesale bank designations of the UST Banks. Protestant argued that the UST Banks are in the business of making mortgage and small business loans and, therefore, should not be able to maintain their wholesale bank status. Protestant also suggested that at least UST-NY and UST-CT hold themselves out to the public as mortgage lenders. Although the UST Banks do originate some mortgage loans, the CRA Q&A make clear that “wholesale institutions may engage in some retail lending without losing their wholesale designation if this activity is incidental and done on an accommodation basis.”<sup>13</sup> The CRA Q&A also set forth criteria that the federal banking agencies use to assess whether an institution’s retail lending activities are inconsistent with a wholesale bank designation under the CRA.<sup>14</sup> An analysis of the retail lending of the UST Banks in light of these factors indicates that such lending is not inconsistent with their wholesale designations. The most recent CRA performance examinations of the institutions indicate that their lending is provided as an incident to their other services and that the loans provided by the institutions are provided as an accommodation to their wholesale customers or as a means of soliciting trust, asset management, and private banking business from new customers.<sup>15</sup> The record also indicates that the number of retail

---

<sup>13</sup> See CRA Q&A at .12(o).

<sup>14</sup> Id.

<sup>15</sup> Schwab has represented that the UST Banks continue to make retail loans only as an incident to the institutions’ asset management business and that substantially all of the loans originated by the institutions in 1999 were made

(continued...)

loans originated by each UST Bank represents less than 2 percent of the bank's noninstitutional accounts, and that the UST Banks do not hold themselves out as offering mortgage or other retail loans. The Board will continue to monitor the retail lending activities of UST-NY, the only UST Bank for which the Board is the appropriate federal financial supervisory agency, and retains sufficient authority to revoke the bank's wholesale status if the facts and circumstances so warrant.<sup>16</sup>

*Community Development Record of UST-NY.* The 1998 Examination indicated that UST-NY's community development loan commitments during the examination period (May 20, 1996, through May 26, 1998) totalled \$5.6 million and represented a 27-percent increase since the previous examination. Consistent with UST-NY's wholesale bank operations, a substantial portion of these loans were indirect, i.e., they were made to intermediaries supporting affordable housing and economic development and revitalization within the bank's assessment area.<sup>17</sup>

---

as accommodations to existing customers or to individuals conducting an active dialogue with the institutions regarding the establishment of an asset management relationship.

<sup>16</sup> 12 C.F.R. 228.25(b). Protestant contended that the proposal represents an evasion of the CRA because the UST Banks are assessed as wholesale banks while Schwab is primarily a retail operation. The Board notes that the CRA applies only to insured depository institutions and not to Schwab's brokerage and other subsidiaries that are not insured depository institutions. Moreover, the CRA regulations and written guidance of the federal banking agencies specifically require wholesale bank determinations to be made on the basis of the activities of the bank and do not restrict the affiliations of a wholesale bank. See, e.g., 12 C.F.R. 228.12(w) and 228.25(b).

<sup>17</sup> Protestant criticized US Trust for fulfilling a large proportion of its  
(continued...)

Examiners also indicated that UST-NY exhibited innovative lending practices and exhibited excellent responsiveness to the credit needs in its assessment area.

The 1998 Examination determined that UST-NY had an adequate level of community development investments. Qualified investments totalled \$2.7 million, including \$580,000 in charitable grants and contributions. Examiners noted, in particular, UST-NY's innovative tax credit investments of \$880,000 made through the New York Equity Fund, an investment pool for corporate equity investments supporting low-income housing development.

Examiners also found that UST-NY provided community development services in its assessment area -- including technical assistance, investment advisory services, and in-kind donations -- and that the bank's services exhibited an excellent responsiveness to the needs of its assessment area.<sup>18</sup> Examiners noted that the bank provided fundraising, advisory, and trustee services for Brooklyn Legal Services, Children's House Inc., Big

---

community development lending obligations by providing standby letters of credit rather than loans. The Board notes that the CRA does not require an institution to offer any specific credit products but allows an institution to help serve the credit needs of the institution's community by providing credit of the types consistent with the institution's overall business strategy and expertise.

<sup>18</sup> Protestant complained that UST-NY does not have a branch in Bronx County or Brooklyn. As discussed above, UST-NY has been designated as a wholesale bank by its appropriate federal financial supervisory agency. Accordingly, federal regulators assess UST-NY's provision of community development services rather than its provision of general banking services to its assessment area.

Brothers/Big Sisters, Little Sisters of the Assumption Family Health Services, Inc., and American Red Cross of Greater New York. Examiners made special mention of the financial expertise provided by bank employees to various community development organizations, including Mercy Haven, Inc., an organization that operates residences on Long Island for the mentally ill, formerly homeless, and AIDS patients.<sup>19</sup>

According to information provided by US Trust, UST-NY had a total of \$17.8 million of community development lending and investments as of February 2000, an increase of 114 percent over the levels credited to the bank in the 1998 Examination. The lending activities include a \$1 million line of credit for the working capital needs of Henry Street Settlement, a nonprofit social agency serving the community development needs of LMI areas in lower Manhattan; a \$1.58 million line of credit issued for the benefit of the New York State Housing Finance Agency as security for debt payments on financing for an LMI housing project in the Bronx; and a \$500,000 loan to Nonprofit Finance Fund, a financial intermediary that provides advisory services and loans to nonprofit organizations that offer community development services to LMI families and areas in New York City. US Trust also indicated that it has made \$12.4 million in qualified community development investments and \$805,000 in CRA-eligible grants since the 1998 Examination.

---

<sup>19</sup> Examiners also noted that the bank participated in cooperative work study programs and provided free investment advisory services for the Lower East Side People's Federal Credit Union.

*HMDA Data.* Protestant maintained that Home Mortgage Disclosure Act (12 U.S.C. § 2801 et seq.) (“HMDA”) data demonstrate that the UST Banks make substantially all of their loans to nonminority borrowers outside LMI census tracts. Protestant stated, in particular, that UST-NY does not lend in Bronx County, the lowest income and most predominantly minority county in the New York City Metropolitan Statistical Area.<sup>20</sup> The Board has recognized that HMDA data alone provide an incomplete measure of an institution’s lending in its community, and that these data have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination. The limitations of HMDA data are even greater when, as here, the relevant institutions are not engaged in the business of mortgage lending. In light of the limitations of HMDA data, particularly as applied to wholesale banks, the Board has carefully reviewed other information, particularly examination reports that provide an on-site evaluation of compliance with the fair lending laws by the subsidiaries of US Trust.

---

<sup>20</sup> Protestant also contended that UST-NY failed to comply with the requirements of HMDA to report the race of borrowers receiving mortgage loans. Most of the mortgage applications received by UST-NY are received by telephone. Under regulations implementing HMDA, an institution is specifically exempted from the requirement of recording the race of an applicant when a mortgage application is made entirely by telephone. See 12 C.F.R. 203, Appendix A, § V(D)(2), and Appendix B, § I(B)(4). Furthermore, an institution is not required to record race data under this exemption even if the telephone applicant has an existing banking relationship with the institution. For these reasons, the Board concludes that the reporting practices with respect to the collection of race data used in mortgage applications taken by UST-NY do not violate HMDA.

Examiners found no evidence of prohibited discrimination or other illegal credit practices at UST-NY or any other UST Bank and found no substantive violations of fair lending laws.

C. Conclusion on Convenience and Needs

The Board has carefully considered all the facts of record, including the public comments received, responses to the comments, and reports of examinations of CRA performance of the institutions involved, in reviewing the proposal's effect on the convenience and needs of the communities to be served by the combined organization. The Board also has carefully considered the effect of the proposed acquisition of US Trust by Schwab on the future performance of the UST Banks under the CRA. In connection with the proposal, Schwab has indicated that it intends to continue US Trust's record of CRA performance.

The Board expects that, after the proposed acquisition by Schwab, UST-NY and the other UST Banks will demonstrate the same commitment to serving the community development needs of their communities that they have demonstrated to date. Schwab is a large financial organization with a satisfactory record of legal and regulatory compliance, and has financial and managerial resources that are sufficient to ensure compliance by the UST Banks with all relevant regulatory requirements, including the CRA. Based on a review of the entire record, and for the reasons discussed above, the Board concludes that convenience and needs considerations, including the CRA performance records of the UST Banks, are consistent with approval of the proposal.

Nonbanking Activities

Schwab also has filed notice under section 4(c)(8) and 4(j) of the BHC Act to acquire the nonbank subsidiaries of US Trust, including

UST-FL, and thereby engage in a number of nonbanking activities, including extending credit, operating a savings association, performing trust company functions, and providing investment and financial advisory services.<sup>21</sup> The Board determined by regulation before November 12, 1999, that the types of activities for which notice has been provided are so closely related to banking as to be a proper incident thereto for purposes of section 4(c)(8) of the BHC Act.<sup>22</sup> Schwab has committed that it will conduct these activities in accordance with the Board's regulations and orders approving these activities for bank holding companies.<sup>23</sup>

In order to approve the notice, the Board also must determine that the acquisition of the nonbank subsidiaries of US Trust and the performance of the proposed activities by Schwab can reasonably be expected to produce benefits to the public that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.<sup>24</sup>

---

<sup>21</sup> Schwab has indicated that its current activities are permissible under section 4(k) of the BHC Act.

<sup>22</sup> See 12 C.F.R. 225.28(b)(1), (4)(ii), (5), and (6).

<sup>23</sup> In connection with its August 1999 acquisition of NCT Holdings, Inc., Greensboro, North Carolina ("NCT"), US Trust committed to conform the activities and investments of NCT and its subsidiaries to those permissible for bank holding companies under section 4 of the BHC Act and Regulation Y within two years of acquiring NCT. Schwab has committed to conform the activities and investments of NCT and its subsidiaries within two years of US Trust's acquisition of NCT.

<sup>24</sup> See 12 U.S.C. § 1843(j)(2)(A).

Schwab has indicated that the proposed transaction would create a stronger and more diversified financial services organization and would provide the current and future customers of Schwab and US Trust with improved financial products and services and with a comprehensive and integrated asset management service. Schwab has stated that its current and prospective clients would benefit from referrals to US Trust's financial planning, tax and estate planning, private banking, investment management, fiduciary, and equity research services. Schwab also has stated that US Trust's current and prospective customers would benefit from Schwab's marketing efficiency, multi-channel distribution capacity, and ability to develop and implement innovative technology. In addition, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in nonbanking companies and from permitting banking organizations to allocate their resources in the manner they consider to be most efficient when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.

As part of its evaluation of the statutory factors, the Board considers the financial and managerial resources of the notificant, its subsidiaries, and any company to be acquired; the effect the transaction would have on such resources; and the management expertise, internal control and risk management systems, and capital of the entity conducting the activity.<sup>25</sup> For the reasons discussed above, and based on all the facts of

---

<sup>25</sup> See 12 C.F.R. 225.26.

record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

The Board has carefully considered the competitive effects of the proposed transaction under section 4 of the BHC Act. To the extent that Schwab and US Trust offer different types of nonbanking products, the proposed acquisition would result in no loss of competition. Certain nonbanking subsidiaries of Schwab and US Trust do compete, however, in securities brokerage, investment advisory, mutual funds, and asset management and fiduciary services. The markets for each of these nonbanking activities are regional or national in scope. The record in this case indicates that there are numerous providers of these services and that the markets for these nonbanking services are unconcentrated. For these reasons, and based on all the facts of record, the Board concludes that consummation of the proposal would have a de minimis effect on competition.

The Board also believes that the conduct of the proposed nonbanking activities within the framework established in this order, prior orders, and Regulation Y is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would not be outweighed by the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of public interest factors that the Board must consider under the standard of section 4(j) of the BHC Act is favorable and consistent with approval.

Schwab also has proposed to acquire US Trust's Edge Act corporation, and the Board has no objection to such acquisition.

## Conclusion

Based on the foregoing, the Board has determined that the application under section 3 of the BHC Act and the notice under section 4(c)(8) of the BHC Act should be, and hereby are, approved.<sup>26</sup> In reaching its conclusion, the Board has considered all the facts of record in light of the factors that the Board is required to consider under the BHC Act and other applicable statutes.<sup>27</sup> The Board's approval is specifically

---

<sup>26</sup> Protestant requested that the Board hold a public meeting or hearing on the proposal. Section 3(b) of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial of the application. The Board has not received such a recommendation from the appropriate supervisory authorities.

Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if a meeting or hearing is necessary or appropriate to clarify factual issues related to the application and to provide an opportunity for testimony. 12 C.F.R. 225.16(e). Section 4 of the BHC Act and the Board's rules thereunder provide for a hearing on a notice to acquire nonbanking companies if there are disputed issues of material fact that cannot be resolved in some other manner. 12 U.S.C. § 1843(c)(8); 12 C.F.R. 225.25(a)(2). The Board has considered carefully Protestant's request in light of all the facts of record. In the Board's view, Protestant has had ample opportunity to submit its views, and, in fact, submitted written comments that have been considered carefully by the Board in acting on the proposal. Protestant's request fails to demonstrate why its written comments do not present its views adequately and fails to identify disputed issues of fact that are material to the Board's decision that would be clarified by a public meeting or hearing. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting on the proposal is denied.

<sup>27</sup> Protestant requested that the Board consider Schwab's recent acquisition of CyBerCorp. Protestant provided no basis or reason for the Board to deny  
(continued...)

conditioned on compliance by Schwab with all the commitments made in connection with the application and notice, including the commitments and conditions discussed in this order.<sup>28</sup> The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) of Regulation Y (12 C.F.R. 225.7 and 225.25(c)), and to the Board's authority

---

the application because of this acquisition.

Protestant also requested that the Board delay action and extend the comment period on the proposal for a variety of reasons. The request for delay does not warrant postponement of the Board's consideration of the proposal. The Board has accumulated a significant record in this case, including reports of examination, supervisory information, public reports and information, and public comment. In the Board's view, for the reasons discussed above, Protestant has had ample opportunity to submit its views, and, in fact, has provided substantial written submissions that have been considered carefully by the Board in acting on the proposal. Moreover, the BHC Act and Regulation Y require the Board to act on proposals submitted under those provisions within certain time periods. Based on a review of all the facts of record, the Board concludes that the record in this case is sufficient to warrant Board action at this time, and that further delay of consideration of the proposal, extension of the comment period, or denial of the proposal is not warranted.

<sup>28</sup> Protestant also expressed concern about the fairness of the Board's processing of the proposal because of discussions that occurred between Federal Reserve staff and representatives of Schwab and US Trust before the application and notice were filed. Protestant claimed that Schwab may have received prior determinations on certain issues raised by the proposal in these discussions. The Board has carefully considered this contention and has found no factual basis for Protestant's claims that any aspect of the proposal was predetermined. Moreover, the Board finds that any prefiling meetings were proper both as a matter of Board policy and as a matter of administrative law. See Action for Children's Television v. FCC, 564 F.2d 458, 474 n.28, and 477 (D.C. Cir. 1977).

to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. These commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of US Trust's subsidiary banks may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of San Francisco, acting pursuant to delegated authority.

#### Financial Holding Company Declaration

Schwab also has filed with the Board an election to become a financial holding company pursuant to sections 4(k) and (l) of the BHC Act and section 225.82 of Regulation Y. Schwab has certified that all depository institutions controlled by US Trust are well capitalized and well managed, and has provided all the information required under Regulation Y.

The Board has reviewed the examination ratings received by each insured depository institution controlled by US Trust under the CRA, and other relevant examinations and information. Based on all the facts of record, the Board has determined that this election to become a financial holding company will become effective on consummation of the acquisition of US Trust by Schwab.

By order of the Board of Governors,<sup>29</sup> effective May 1, 2000.

(signed)

---

Robert deV. Frierson  
Associate Secretary of the Board

---

<sup>29</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, and Gramlich.

## APPENDIX

### Nonbanking Subsidiaries of U.S. Trust Corporation

- (1) Fernhill Holding, Inc., Larkspur, California, and thereby engage in extending credit, in accordance with section 225.28(b)(1) of Regulation Y (12 C.F.R. 225.28(b)(1));
- (2) U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida, and thereby engage in operating a savings association, in accordance with section 225.28(b)(4)(ii) of Regulation Y (12 C.F.R. 225.28(b)(4)(ii));
- (3) U.S. Trust Company of North Carolina, Greensboro, North Carolina, and thereby engage in performing trust company functions, in accordance with section 225.28(b)(5) of Regulation Y (12 C.F.R. 225.28(b)(5));
- (4) U.S. Trust Company of Delaware, Wilmington, Delaware, and thereby engage in performing trust company functions, in accordance with section 225.28(b)(5) of Regulation Y (12 C.F.R. 225.28(b)(5));
- (5) NCT Opportunities, Inc., Greensboro, North Carolina, and thereby provide investment and financial advisory services, in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6)); and
- (6) CTC Consulting, Inc., Portland, Oregon, and thereby provide investment and financial advisory services, in accordance with section 225.28(b)(6) of Regulation Y (12 C.F.R. 225.28(b)(6)).