

FEDERAL RESERVE SYSTEM

The Charles Schwab Corporation  
San Francisco, California

U.S. Trust Corporation  
New York, New York

Order Approving Acquisition and Merger of Bank Holding Companies

The Charles Schwab Corporation (“Schwab”) and its wholly owned subsidiary, U.S. Trust Corporation (“U.S. Trust”), each a bank holding company within the meaning of the Bank Holding Company Act (“BHC Act”) (together “Applicants”), have requested the Board’s approval under section 3 of the BHC Act (12 U.S.C. § 1842) to acquire Resource Companies, Inc. (“Resource”), and thereby acquire Resource’s subsidiary bank, Resource Trust Company, both in Minneapolis, Minnesota.<sup>1</sup>

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (66 Federal Register 798 (2001)). The time for filing comments has expired, and the Board has considered the proposal in light of the factors set forth in section 3 of the BHC Act.

Schwab, with total consolidated assets of \$35.5 billion, is the 43<sup>rd</sup> largest commercial banking organization in the United States, controlling less than 1 percent of the total assets of insured commercial banks in the

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<sup>1</sup> Applicants propose to merge Resource into U.S. Trust, with U.S. Trust as the surviving corporation. In addition, Applicants propose to merge Resource Trust Company into U.S. Trust Company, Greenwich, Connecticut (“UST-Connecticut”), with UST-Connecticut as the surviving corporation. The merger of Resource Trust Company and UST-Connecticut is subject to review by the Federal Deposit Insurance Corporation (“FDIC”) under the Bank Merger Act (12 U.S.C. § 1828(c)).

United States.<sup>2</sup> Schwab, through U.S. Trust, operates depository institutions in California, Connecticut, the District of Columbia, Florida, New Jersey, New York, Oregon, Pennsylvania, and Texas.

Resource operates only in Minnesota. It controls the 82<sup>nd</sup> largest depository institution in the state, with \$100.3 million in deposits, representing less than 1 percent of total deposits in depository institutions in Minnesota.<sup>3</sup> After consummation of the proposal, Schwab would remain the 43<sup>rd</sup> largest commercial banking organization in the United States, with total consolidated assets of \$35.6 billion.

### Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the home state of such bank holding company if certain conditions are met.<sup>4</sup> For purposes of the BHC Act, the home state of Applicants is New York, and Schwab proposes to acquire Resource Trust Company, which is located in Minnesota. All the conditions for an interstate acquisition enumerated in section 3(d) are met in this case.<sup>5</sup> In light of all the

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<sup>2</sup> All data used for purposes of calculating nationwide rankings are as of September 30, 2000. All other banking data are as of June 30, 2000.

<sup>3</sup> In this context, depository institutions include commercial banks, savings banks, and savings associations.

<sup>4</sup> See 12 U.S.C. § 1842(d). A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

<sup>5</sup> 12 U.S.C. §§ 1842(d)(1)(A) and (B) and 1842(d)(2)(A) and (B). Applicants meet the capital and managerial requirements established under applicable law. Resource Trust Company has been in existence and operated for the minimum

facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

#### Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or be in furtherance of a monopoly. The BHC Act also prohibits the Board from approving a proposal that would substantially lessen competition in any relevant banking market unless the anticompetitive effects of the proposal in that banking market 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>6</sup>

The proposal involves the acquisition of a bank in Minnesota, a state in which Applicants do not have banking operations. Based on this and 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.

#### Financial and Managerial Considerations

The BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal and certain other supervisory factors. The Board has reviewed these factors in light of all the facts of record, including supervisory reports of examination, other confidential supervisory information assessing the financial and managerial resources of the organizations, and financial information

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period of time required by applicable state law. On consummation, Schwab would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. All other requirements under section 3(d) of the BHC Act would be met on consummation of the proposal.

<sup>6</sup> See 12 U.S.C. § 1842(c).

provided by Applicants. The Board notes that Applicants and Resource and their subsidiary banks currently are well capitalized and are expected to remain so on consummation of the proposal. Based on all the facts of record, the Board concludes that the financial and managerial resources and the future prospects of Applicants, Resource, and their respective subsidiary banks, are consistent with approval, as are the other supervisory factors the Board must consider under section 3 of the BHC Act.

#### Convenience and Needs Factor

In acting on a proposal under section 3 of the BHC Act, the Board is required to consider the effect of the proposal on the convenience and needs of the communities to be served. 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 Community Reinvestment Act (12 U.S.C. § 2901 et seq.) (“CRA”). Accordingly, the Board has carefully considered the effect of the proposed merger on the convenience and needs of the communities to be served and the CRA records of performance of the institutions involved in light of all the facts of record.

As provided in the CRA, the Board has evaluated the convenience and needs factor in light of examinations of the CRA performance records of the relevant depository institutions by their appropriate Federal banking agencies.<sup>7</sup> United States Trust Company of New York, New York, New York (“UST-New York”), the lead depository institution of Applicants, received an

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<sup>7</sup> The Interagency Questions and Answers Regarding Community Reinvestment provides that an institution’s most recent CRA performance evaluation is an important and often controlling factor in the consideration of an institution’s CRA record because it represents a detailed evaluation of the institution’s overall record of performance under the CRA by its appropriate Federal banking agency. 65 Federal Register 25,088 and 25,107 (2000).

“outstanding” rating at its most recent CRA performance examination by the Federal Reserve Bank of New York, as of April 3, 2000. UST-Connecticut received a “satisfactory” rating from the FDIC, as of February 23, 1998.<sup>8</sup> Resource Trust Company received an “outstanding” rating at its most recent CRA performance examination by the FDIC, as of July 15, 1998.

The Board received comments from a single commenter (“Protestant”) objecting to the proposal. Protestant asserted that neither Applicants’ subsidiary depository institutions nor Resource Trust Company are serving the credit needs of their communities, especially low- and moderate-income (“LMI”) communities. Protestant also claimed that the CRA performance examinations of Applicants’ subsidiary depository institutions, particularly UST-Connecticut, and Resource Trust Company are out-of-date and should not be relied on to assess the CRA performance of the depository institutions. In addition, Protestant asserted that the CRA performance examination of UST-Connecticut is inadequate because it does not assess the activities conducted by UST-Connecticut at offices opened since its last examination, particularly the bank’s Pennsylvania and District of Columbia offices.

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<sup>8</sup> The other subsidiary depository institutions of Applicants also received “satisfactory” ratings at their most recent CRA performance examinations. U.S. Trust Company of California, N.A., Los Angeles, California, received a “satisfactory” rating from the Office of the Comptroller of the Currency (“OCC”), as of July 19, 1999; U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida, received a “satisfactory” rating from the Office of Thrift Supervision, as of November 12, 1997; U.S. Trust Company of New Jersey, Princeton, New Jersey, received a “satisfactory” rating from the FDIC, as of April 27, 1999; and U.S. Trust Company of Texas, N.A., Dallas, Texas, received a “satisfactory” rating from the OCC, as of June 25, 1997.

In assessing the convenience and needs factor in this case, the Board has carefully considered all the facts of record. As noted above, this includes review of the CRA performance examinations of the depository institutions involved in the proposal. In addition, the Board has considered confidential supervisory information provided by the appropriate Federal banking agencies for the institutions involved, and information provided by the Applicants on the record of their depository institutions in meeting the convenience and needs of their communities since their last CRA performance examinations.

The subsidiary depository institutions of Applicants and Resource Trust Company 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 depository institutions involved in the proposal has been designated a “wholesale bank” and has been evaluated as such under the CRA regulations of the federal banking agencies.<sup>9</sup>

Protestant questioned the appropriateness of the wholesale bank designations of the subsidiary depository institutions of Applicants and Resource Trust Company. Protestant asserted that UST-New York, UST-Connecticut, and the other subsidiary depository institutions of Applicants

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<sup>9</sup> 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.” See, e.g., 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. See, e.g., 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 LMI individuals, LMI areas, or small businesses or farms. See, e.g., 12 C.F.R. 228.12(h).

make a substantial volume of mortgage loans and hold themselves out to the public as mortgage lenders and, therefore, should not be accorded wholesale bank status under the CRA.

The Board recently considered the wholesale bank designations of the subsidiary depository institutions of U.S. Trust in response to comments submitted by Protestant in connection with Schwab's application under the BHC Act to acquire U.S. Trust.<sup>10</sup> The initial determination of the wholesale bank status of a depository institution is made by the institution's appropriate Federal banking agency and is reviewed by the agency during each CRA performance examination of the institution. The Board gives great weight to the determination made by examiners because that review is made on-site and encompasses an evaluation of all the activities of the institution by the agency charged by the CRA with responsibility for assessing the CRA performance of the institution. As noted above, examiners reaffirmed the wholesale bank status of each depository institution involved in the proposal at its most recent CRA performance examination. The Board has also consulted with the appropriate Federal banking agencies for depository institutions involved in the proposal concerning their current status as wholesale banks. Based on this information, the Board has considered the CRA record of each depository institution involved in the proposal pursuant to the community development test appropriate for wholesale banks. The Board has forwarded the comments of Protestant to the appropriate Federal banking agencies for the depository

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<sup>10</sup> See The Charles Schwab Corporation, 86 Federal Reserve Bulletin 494 (2000).

institutions so that they can be considered in the next examinations of the institutions.<sup>11</sup>

In its review of the convenience and needs factor under the BHC Act, the Board has carefully considered the entire record in this case. Based on all the facts of record, and for the reasons discussed above, the Board concludes that considerations relating to the convenience and needs factor, including the CRA performance records of the relevant insured depository institutions, are consistent with approval of the proposal.

### Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved.<sup>12</sup>

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<sup>11</sup> Protestant also maintained that Home Mortgage Disclosure Act (12 U.S.C. § 2801 *et seq.*) (“HMDA”) data for 1999 demonstrate racial disparities in the loans made by Applicants and Resource. 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 in this case, the relevant institutions are not engaged in the business of mortgage lending. For example, Resource Trust Company originated only ten loans totaling \$2.1 million from 1997 through 1999 that were reported under HMDA. 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 Applicants’ subsidiary depository institutions and Resource Trust Company. Examiners found no substantive violations of antidiscrimination laws or other illegal credit practices at any of the depository institutions involved in this proposal, and the Board incorporates those findings in this order. Protestant also requested that the Board consider the HMDA data of the Applicants and Resource for 2000. However, these data are not required to be submitted until March 1, 2001.

<sup>12</sup> Protestant also requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a



The Board's approval is specifically conditioned on compliance by Applicants with all the commitments and representations made in connection with this application. For purposes of this action, the commitments and conditions relied on by the Board in reaching its decision 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.

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public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a timely written recommendation of denial. 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). The Board has carefully considered the request for a public meeting or hearing in light of all the facts of record. In the Board's view, the public has had ample opportunity to submit comments on the proposal and, in fact, Protestant has submitted written comments that have been carefully considered by the Board in acting on the proposal. The Protestant's request fails to identify disputed issues of fact that are material to the Board's decision and that may be clarified by a public meeting or hearing. The Protestant's request also fails to show why a public meeting or hearing is necessary for the proper presentation or consideration of the Protestant's views. 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 is hereby denied.

The acquisition of Resource shall not be consummated before the fifteenth calendar day after the effective date of this order, or 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.

By order of the Board of Governors,<sup>13</sup> effective February 26, 2001.

(signed)

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Robert deV. Frierson  
Associate Secretary of the Board

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<sup>13</sup> Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Meyer and Gramlich. Absent and not voting: Governor Kelley.