

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22734 ; 812-10666]

### The Cascades Trust, et al.; Notice of Application

July 2, 1997.

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

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** The Cascades Trust on behalf of its series, the Tax-Free Trust of Oregon ("Fund"), Qualivest Capital Management, Inc. ("Adviser"), and First Bank National Association ("New Adviser").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) granting an exemption from section 15(a).

**SUMMARY OF APPLICATION:** Adviser's parent, U.S. Bancorp, will merge with and into New Adviser's parent, First Bank System, Inc. ("FBS"), which will result in the assignment, and thus the termination, of the Fund's existing advisory agreement with Adviser. Applicants request an order to permit the implementation, without shareholder approval, of an interim advisory agreement between the Fund and New Adviser ("Interim Advisory Agreement") for a period commencing on the date the merger is consummated (but in no event later than September 30, 1997) and continuing for a period of up to the earlier of 120 days or the date the Interim Advisory Agreement is approved or disapproved by shareholders of the Fund ("Interim Period"). The order also would permit New Adviser to receive, following shareholder approval of the Interim Advisory Agreement, all fees earned during the Interim Period.

**FILING DATES:** The application was filed on May 14, 1997 and amended on June 16, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 28, 1997 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: The Cascades Trust, 380 Madison Avenue, Suite 2300, New York, NY 10017; Adviser, 111 S.W. Fifth Avenue, Suite T-15, Portland, OR 97204; New Adviser, 601 Second Avenue South, Minneapolis, MN 55402.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Krudys, Senior Counsel, at (202) 942-0641, or Mercer E. Bullard, 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 from the SEC's Public Reference Branch.

### Applicants' Representations

1. The Cascades Trust is a Massachusetts business trust registered as an open-end management investment company under the Act. Adviser, a registered investment adviser under the Investment Advisers Act of 1940, currently serves as investment adviser to the Fund. Adviser is a wholly-owned subsidiary of United States National Bank of Oregon, which is a wholly-owned subsidiary of U.S. Bancorp. New Adviser serves as the investment adviser and manager of the First American Family of Funds through its First Asset Management Group. New Adviser is a direct, wholly-owned subsidiary of FBS.

2. On March 20, 1997, FBS and U.S. Bancorp jointly announced the signing of a definitive merger agreement for FBS to acquire U.S. Bancorp (the "Merger"). Under the merger agreement U.S. Bancorp shareholders will receive 0.755 shares of FBS common stock for each share of U.S. Bancorp common stock. FBS will be the surviving corporation and will use the name U.S. Bancorp. Applicants expect the Merger to be consummated sometime before September 30, 1997, subject to the satisfaction of certain conditions, including receipt or certain regulatory approvals.

3. At a meeting on June 6, 1997, the board of trustees of the Fund ("Board"), including a majority of its trustees that are not "interested persons" under section 2(a)(19) of the Act ("Independent Trustees"), after full evaluation and with the advice and assistance of counsel, voted in the manner prescribed by section 15(c) of

the Act to approve the Interim Advisory Agreement and to recommend that shareholders on the Fund approve the Agreement during the 120-day period commencing on the earlier of the consummation of the Merger ("Effective Date") or September 30, 1997. The Board was advised that, in order to ensure the continued provision of high quality investment advisory services to the Fund, on the Effective Date the New Adviser will employ several portfolio managers now employed by the Adviser, including the manager of the Fund. These portfolio managers, together with the investment professionals already employed by New Adviser, then would assume management of the Fund on the Effective Date pursuant to the New Advisory Agreement between New Adviser and the Fund. Applicants state that these arrangements take into account the fact that several other portfolio managers, including the Fund's backup portfolio manager, have departed or will depart from Adviser by or shortly after the Effective Date.

4. All investment advisory fees paid by the Fund to New Adviser during the Interim Period will be paid to an escrow agent (which will be an unaffiliated third party institution), and none of such fees held in escrow will be paid to New Adviser until the related shareholder approval has been obtained. If Fund shareholders fail to approve the Interim Advisory Agreement, the escrow agent will pay to the Fund the applicable escrow amounts (including interest earned). The escrow agent will release the escrow funds only upon receipt of a certificate from the officers of The Cascades Trust stating, if the escrow funds are to be delivered to New Adviser, that the Interim Advisory Agreement has received the requisite shareholder vote, or, if the escrow funds are to be delivered to the Fund, that the Interim Period has ended and the Interim Advisory Agreement has not received the requisite shareholder vote. Before any such certificate is sent, the Independent Trustees of the Cascades Trust will be notified.

5. Applicants request relief from section 15(a) to permit the Fund to implement the Interim Advisory Agreement during the Interim Period. In the event the Effective Date is later than September 30, 1997, the Interim Period will commence on September 30, 1997. The Interim Advisory Agreement will contain the same terms and conditions as the existing advisory agreement between the Fund and Adviser ("Existing Advisory Agreement"), except for the effective and termination dates, escrow provisions, and the

substitution of New Adviser in place of Adviser. Applicants also request an exemption to permit New Adviser to receive from the Fund, subject to shareholder approval of the Interim Advisory Agreement and to the escrow arrangement described in the application, any and all fees earned during the Interim Period under such Interim Advisory Agreement. The fees to be paid during the Interim Period will be unchanged from the fees to be paid under the Existing Advisory Agreement.

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such company. Section 15(a) further requires that such written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a contract by the assignor. Applicants state that, on the Effective Date, the Adviser will become a wholly-owned subsidiary of the surviving corporation. Applicants therefore believe that the Merger will result in the "assignment" of the Existing Advisory Agreement.

2. Rule 15a-4 under the Act provides that, if an investment advisory contract with an investment company is terminated by assignment, an investment adviser may act as such for the company during the 120 day period following such termination pursuant to a written contract that has not been approved by the company's shareholders, provided that (a) the new contract is approved by the company's board of directors, including a majority of the non-interested directors, (b) the compensation to be paid under the new contract money does not exceed the compensation that would have been paid under the contract most recently approved by company's shareholders, and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receive(s) money or other benefit" in connection with the assignment. Applicants state that they may not be permitted to rely on rule 15a-4 because of the benefits U.S. Bancorp's shareholders will receive from the Merger.

3. Applicants contend that, because the Fund did not have sufficient advance notice of the Merger, it will not be possible to obtain shareholder approval of the Interim Advisory Agreement in accordance with section

15(a) prior to the closing of the Merger. Applicants state that the terms and timing of the Merger were determined by FBS and U.S. Bancorp in response to a number of factors relating principally to their commercial banking and other similar business concerns.

4. Applicants state that the Board determined that retention of New Adviser to provide advisory services to the Fund during the Interim Period was in the best interests of Fund shareholders because it would (a) provide that the Fund will continue to be managed by one of the same individuals who now manage it; (b) ensure that, regardless of any further personnel changes which may take place at Adviser during the Interim Period, the Funds would be managed during such period by a group of investment professionals which the Board has determined can provide the appropriate scope and quality of advisory services; and (c) avoid the need for the Board to consider on an *ad hoc* basis whether and how to proceed under rule 15a-4 if further personnel changes were to take place at Adviser during the Interim Period.

5. The Board noted that, at the Effective Date, the business operations of Adviser will be greatly reduced or eliminated altogether. Applicants state that, of approximately \$9.7 billion of assets under management by Adviser (excluding assets of the Fund), New Adviser will assume management of approximately \$9.45 billion on the Effective Date. The Board also noted that the remaining portfolio managers of Adviser who advise other mutual funds are expected to become employees of New Adviser. Thus, applicants state that most or all of the current operations of Adviser, apart from those relating to the Fund, will be effectively transferred to New Adviser on the Effective Date. Under these circumstances, the Board believed that New Adviser's investment management staff and support personnel and systems would be much better equipped to provide ongoing services to the Fund than whatever staff, support personnel and systems, if any, may remain in place at Adviser following the Effective Date.

6. Applicants submit that the Fund will receive during the Interim Period substantially comparable investment advisory services, provided in substantially the same manner, as it received prior to the Effective Date. Applicants anticipate that New Adviser will employ one of the co-managers who managed the Fund prior to the announcement of the Merger. In the event there is any material change in personnel providing advisory services

under the Interim Advisory Agreement during the Interim Period, applicants state that New Adviser will apprise and consult the Board to ensure that such Board, including a majority of the Independent Trustees, is satisfied that the services provided by New Adviser will not be diminished in scope and quality.

7. Applicants submit that to deprive New Adviser of its customary fees during the Interim Period for no reason, other than the fact that the Merger may be deemed to result in an assignment of the Existing Advisory Agreement, would be unduly harsh and unreasonable penalty to impose upon an investment adviser. New Adviser submits that, in good faith and consistent with the Act and the spirit of rule 15a-4, it seeks to promote the interests of the Fund and its shareholders by undertaking the fee and other arrangements described in the application. Applicants state that the fees payable to New Adviser under the Interim Advisory Agreement have been approved by the Board, including a majority of the Independent Trustees, in accordance with their fiduciary and other obligations under the Act, and that such fees will not be released by the escrow agent without the approval of the Fund's shareholders.

8. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the relief requested satisfied this standard.

#### Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The Interim Advisory Agreement will have the same terms and conditions as the Existing Advisory Agreement, except for the effective and termination dates, escrow provisions, and the substitution of New Adviser in place of Adviser.

2. Fees earned by New Adviser and paid by the Fund during the Interim Period in accordance with the Interim Advisory Agreement will be maintained with an unaffiliated financial institution in an interest-bearing escrow account, and amounts in such account (including interest earned on such amounts) will be paid to New Adviser only upon approval of the shareholders of the Fund or, in the absence of approvals by such shareholders, to the Fund.

3. The Fund will hold a meeting of shareholders to vote on approval of the Interim Advisory Agreement for the Fund on or before the 120th day following the earlier of the termination of the Existing Advisory Agreement on the Effective Date or September 30, 1997.

4. New Adviser will pay the costs of preparing and filing this application. New Adviser will pay the costs relating to the solicitation of approval of the Interim Advisory Agreement necessitated by the Merger.

5. New Adviser will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Fund under the Interim Advisory Agreement will be at least equivalent, in the judgment of the Board including a majority of the Independent Trustees, to the scope and quality of services provided under the Existing Advisory Agreement. In the event of any material change in personnel providing services pursuant to the Interim Advisory Agreement, New Adviser will apprise and consult the Board to assure that the Board, including a majority of the Independent Trustees, is satisfied that the services provided by New Adviser will not be diminished in scope or quality.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97-17983 Filed 7-9-97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22733; 812-10654]

### Qualivest Funds, et al.; Notice of Application

July 2, 1997.

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

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Qualivest Funds on behalf of each of its investment portfolios (each portfolio, a "Fund"), Qualivest Capital Management, Inc. ("Adviser"), and First Bank National Association ("New Adviser").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) granting an exemption from section 15(a).

**SUMMARY OF APPLICATION:** Adviser's parent, U.S. Bancorp, will merge with

and into New Adviser's parent, First Bank System, Inc. ("FBS"), which will result in the assignment, and thus the termination, of the Funds' existing advisory agreements with Adviser. Applicants request an order to permit the implementation, without shareholder approval, of interim advisory agreements between the Funds and New Adviser ("Interim Advisory Agreements") for a period commencing on the date the merger is consummated (but in no event later than September 30, 1997) and continuing for a period of up to the earlier of 120 days or the date the Interim Advisory Agreements are approved or disapproved by shareholders of the Funds ("Interim Period"). The order also would permit New Adviser to receive, following shareholder approval of the related Interim Advisory Agreement, all fees earned during the Interim Period.

**FILING DATES:** The application was filed on May 12, 1997 and amended on June 12, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 28, 1997 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 may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Qualivest Funds, 3425 Stelzer Road, Columbus, OH 43219-3035; Adviser, 111 S.W. Fifth Avenue, Suite T-15, Portland, OR 97204; New Adviser, 601 Second Avenue South, Minneapolis, MN 55402.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Krudys, Senior Counsel, at (202) 942-0641 or Mercer E. Bullard, 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 from the SEC's Public Reference Branch.

### Applicant's Representations

1. Qualivest Funds, a business trust organized under the laws of the

Commonwealth of Massachusetts, is registered as an open-end management investment company under the Act. It is organized as a series investment company and currently offers 15 separate Funds, of which 13 are currently offered for sale to the public. Adviser, a registered investment adviser under the Investment Advisers Act of 1940, currently serves as investment adviser to the Funds. Adviser is a wholly-owned subsidiary of United States National Bank of Oregon, which is a wholly-owned subsidiary of U.S. Bancorp. New Adviser serves as the investment adviser and manager of the First American Family of Funds through its First Asset Management Group. New Adviser is a direct, wholly-owned subsidiary of FBS.

2. On March 20, 1997, FBS and U.S. Bancorp jointly announced the signing of a definitive agreement for FBS to acquire U.S. Bancorp (the "Merger"). Under the merger agreement, U.S. Bancorp shareholders will receive 0.755 shares of FBS common stock for each share of U.S. Bancorp common stock. FBS will be the surviving corporation and will use the name U.S. Bancorp. Applicants expect the Merger to be consummated sometime before September 30, 1997, subject to the satisfaction of certain conditions, including receipt of certain regulatory approvals.

3. At a meeting on May 8, 1997, the board of trustees of Qualivest Funds ("Board") voted in the manner prescribed by section 15(c) of the Act to approve Interim Advisory Agreements and to recommend that shareholders of each Fund approve the related Interim Advisory Agreement during the 120-day period commencing on the earlier of the consummation of the Merger ("Effective Date") or September 30, 1997. The Board determined to retain New Adviser rather than the current Adviser after considering the capabilities of New Adviser and determining that it was indeed well-qualified to manage each of the Funds, and the exigent circumstances with which the Board was faced. Applicants expect that at least six of the eleven Fund portfolio managers now employed by Adviser will leave the employ of the Adviser by or shortly after the Effective Date. As a result of these departures, at least four Funds will lose both their portfolio co-managers; at least another three Funds will lose one of their two portfolio co-managers; and the committee which manages another four Funds will lose more than half its members. In light of these facts, the Board determined that doubt exists whether the remaining personnel of Adviser, acting alone,