

These modifications to the derivatives provisions in Regulation Y would be effective for all BHCs. The GLB Act preserved the Board's authority to modify the terms and conditions that apply to any BHC activity approved by the Board before November 11, 1999.¹⁰ The Board had authorized BHCs to engage as principal in commodity derivative transactions prior to November 11, 1999. The final rule would represent a relaxation of the current limitations that apply to the conduct of a derivatives activity already approved by the Board under Regulation Y, and would not create a new permissible activity for BHCs.¹¹

Plain Language

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner. No commenter on the proposed rule asked the Board to take additional steps to make the rule easier to understand.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish a final regulatory flexibility analysis with this final rule. The final rule expands the scope of permissible commodity derivatives activities for a bank holding company. A description of the reasons for the Board's decision to issue the final rule and a statement of the objectives of, and legal basis for, the rule are contained in the supplementary material provided above. The final rule applies to bank holding companies regardless of their size and should enhance the ability of all bank holding companies, including small ones, to compete with other providers of financial services in the United States and to respond to changes in the marketplace in which banking organizations compete. The comments received by the Board on the proposed rule did not indicate that the rule would impose burden on bank holding companies of any size.

types newly authorized by the rule. 12 CFR 225.21(a)(2).

¹⁰ See 12 U.S.C. 1843(c)(8).

¹¹ The Board notes that, subsequent to the Board's issuance of the proposed rule, the Office of the Comptroller of the Currency ("OCC") approved a request by Bank of America, N.A., to engage in customer-driven electricity derivative transactions that involve the transitory transfer of title to electricity. See OCC Interpretive Letter No. 962 (April 21, 2003).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1843(k), 1844(b), 1972(1), 3106, 3108, 3310, 3331-3351, 3907, and 3909.

■ 2. Section 225.28 is amended by revising paragraph (b)(8)(ii)(B) to read as follows:

§ 225.28 List of permissible nonbanking activities

* * * * *

(b) * * *

(8) * * *

(ii) * * *

(B) Forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal approved by the Board), nonfinancial asset, or group of assets, other than a bank-ineligible security,¹² if:

(1) A state member bank is authorized to invest in the asset underlying the contract;

(2) The contract requires cash settlement;

(3) The contract allows for assignment, termination, or offset prior to delivery or expiration, and the company—

(i) Makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract; or

¹² A bank-ineligible security is any security that a state member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

(ii) Receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset; or

(4) The contract does not allow for assignment, termination, or offset prior to delivery or expiration and is based on an asset for which futures contracts or options on futures contracts have been approved for trading on a U.S. contract market by the Commodity Futures Trading Commission, and the company—

(i) Makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract; or

(ii) Receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset.

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By order of the Board of Governors of the Federal Reserve System, June 27, 2003.

Jennifer J. Johnson,

Secretary of the Board.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 910 and 913

[No. 2003-08]

RIN 3069-AB07

Privacy Act and Freedom of Information Act; Implementation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is revising its Privacy Act regulation to reflect an agency reorganization. The responsibilities of the Secretary to the Board of Directors, including administration of the Finance Board's Privacy Act program, have been transferred to the Office of General Counsel (OGC) and an OGC staff member is acting as the Finance Board's Privacy Act Official. The Finance Board also is revising the rule to make it more "user-friendly" by using plain language and where appropriate, a question-and-answer format.

Elsewhere in this issue of the **Federal Register**, the Finance Board is publishing a notice that makes corresponding changes to the agency's Privacy Act systems of records. The notice also adds a new system of records covering Office of Inspector General investigative files.