

parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

Dated: November 25, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03-30442 Filed 12-8-03; 8:45 am]

BILLING CODE 4810-33-P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-1092]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Y to expand the ability of all bank holding companies, including financial holding companies, to process, store and transmit nonfinancial data in connection with their financial data processing, storage and transmission activities. Specifically, the Board is raising the revenue limit that currently applies to the nonfinancial data processing activities of bank holding companies from 30 percent to 49 percent. The Board also announced that it will consider proposals by a financial holding company to engage in, or acquire a company engaged in, other nonfinancial data processing, information portal, and technology-related activities that the financial holding company believes are complementary to financial activities on a case-by-case basis in accordance with the procedures established by section 4(j) of the Bank Holding Company Act.

EFFECTIVE DATE: The final rule is effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A. Background

The Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) (BHC Act), as amended by the Gramm-Leach-Bliley Act (GLB Act),¹ permits all bank holding companies to engage in any nonbanking activity that the Board had determined, by order or regulation prior to November 12, 1999, to be "so closely related to banking as to be a proper incident thereto" under section 4(c)(8) of the BHC Act.² The GLB Act requires bank holding companies to conduct these activities subject to the terms and conditions contained in the Board's regulation or order authorizing the activity, unless the Board modifies those terms or conditions.³

The GLB Act also permits a bank holding company or foreign bank that has made an effective election to become a financial holding company (FHC) to engage in a broader range of activities that the GLB Act defines as being financial in nature or incidental to a financial activity, including the sale of insurance as principal or agent, full-scope securities underwriting and dealing, and merchant banking.⁴ FHCs also may engage in any other activity that the Board, in consultation with the Secretary of the Treasury, determines to be financial in nature or incidental to a financial activity.⁵ The text and legislative history of the GLB Act indicate that the "financial in nature" test was intended to be broader and more flexible than the "closely related to banking" standard that previously governed the scope of permissible nonbanking activities under section 4(c)(8) of the BHC Act.⁶ Moreover, the factors that the Board is directed to consider in determining whether an activity is financial in nature or incidental to financial activities indicates that the scope of financial and incidental activities may expand over time in light of, among other things, changes in the marketplace in which FHCs compete.⁷

¹ Pub. L. 106-102, 113 Stat. 1338 (1999).

² See 12 U.S.C. 1843(c)(8).

³ See *id.*

⁴ See 12 U.S.C. 1843(k)(4)(B), (E) and (H).

⁵ See 12 U.S.C. 1843(k)(1)(A), (2) and (4).

⁶ See H. Rept. No. 106-434 at 153 (1999)

("Permitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may only be engaged in activities that are closely related to banking.")

⁷ The GLB Act directs the Board to consider a variety of factors in considering whether an activity is financial in nature or incidental thereto, including (1) The purposes of the BHC Act and the GLB Act; (2) changes and reasonably expected changes in the marketplace in which FHCs compete

The GLB Act also permits an FHC to engage in a nonfinancial activity if the Board determines that the activity is "complementary to a financial activity and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally."⁸ This authority was intended to permit the Board to authorize an FHC to engage, to a limited extent, in activities that appear to be commercial if a meaningful connection exists between the proposed commercial activity and the FHC's financial activities and the proposed commercial activity would not pose undue risks to the safety and soundness of the FHC's affiliated depository institutions or the financial system. The GLB Act requires an FHC to obtain the Board's approval under section 4(j) of the BHC Act prior to engaging in an activity that the FHC believes is complementary to financial activities.⁹

B. Board Proposal

Following passage of the GLB Act, several FHCs, represented by their trade associations, requested that the Board authorize FHCs to engage in, or invest in companies engaged in, a wide range of data processing, technology, communication and e-commerce-related activities. In response to these requests, the Board took several steps. In December 2000, the Board adopted a final rule that authorizes FHCs to act as a "finder" through electronic or other means and thereby bring together buyers and sellers of financial and nonfinancial products for transactions that the parties themselves negotiate and consummate.¹⁰ The Board's Finder Rule addressed several of the activities requested by the FHCs and permits FHCs, among other things, to—

- Host an electronic marketplace on the FHC's Internet Web site that provides hypertext links to the Web sites of third parties;
- Host the Web site of a merchant that

and in the technology for delivering financial services; and (3) whether the activity is necessary or appropriate to allow FHCs to compete effectively with other companies providing financial services, to deliver efficiently information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, and to offer customers any available or emerging technological means for using financial services or for the document imaging of data. See 12 U.S.C. 1843(k)(3).

⁸ See *id.* at section 1843(k)(1)(B).

⁹ See 12 U.S.C. 1843(j)(1)(A) and (E).

¹⁰ See 65 FR 80735, Dec. 22, 2000 (Finder Rule). The Board, in consultation with the Secretary of the Treasury, determined that acting as finder, as defined in the rule, is an activity that is incidental to financial activities.