

provides information concerning the merchant and its products and permits buyers to submit orders for such products or services; and

- Operate an Internet Web site that allows multiple buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counterparties for transactions and enter into transactions between themselves.

To address other aspects of the FHCs' requests, the Board in December 2000, requested comment on a proposed rule that would modify the limits imposed by the Board on the amount of nonfinancial data processing activities that a bank holding company may conduct in connection with its financial data processing activities.<sup>11</sup> Regulation Y currently permits all bank holding companies to provide data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), data bases, advice and access to such services, facilities and data to any customer if the data processed or furnished are financial, banking or economic in nature.<sup>12</sup> Regulation Y also currently permits a bank holding company or nonbank subsidiary engaged in processing financial data to provide data processing services for nonfinancial data so long as the annual revenues derived by the company or subsidiary from its nonfinancial data processing activities does not exceed 30 percent of the total annual revenue derived by the company or subsidiary from providing data processing services under section 225.28(b)(14).<sup>13</sup> The Board proposed increasing this limit on nonfinancial data processing activities from 30 percent to 49 percent.

The proposal also requested comment on whether the Board should authorize an FHC to invest, as a complementary activity, up to 5 percent of its Tier 1 capital in companies that provide (1) Data storage services for any type of data, so long as the company also provided data storage services for financial data; (2) general data processing services for any type of data, so long as the company derived at least

20 percent of its total revenues from financial data processing activities, providing data processing services to depository institutions and their affiliates, and the sale of other financial products and services; and (3) information portal services over electronic networks.<sup>14</sup> The Board indicated that an FHC would be expected to market and provide financial products or services through any information portal owned under the proposed authority. The Board asked for comment on whether the connections described above between the acquired company's nonfinancial and financial activities were sufficient to ensure that the acquired company's nonfinancial activities were complementary to financial activities within the meaning of the GLB Act. Consistent with the GLB Act, the Board also proposed to require that FHCs obtain the Board's prior approval under section 4(j) of the BHC Act for any proposed investment under these complementary authorities.<sup>15</sup>

The Board also solicited the public's views on whether the Board should develop a proposal that would authorize FHCs to invest in companies engaged in developing new technologies that might support the marketing or sale of financial products or services, providing communication links, or selling and distributing financial and nonfinancial products and services through electronic means. The Board asked commenters supporting further Board action with respect to these investments to provide detailed arguments and data that would support a finding that investments in companies engaged in these activities are financial in nature or incidental or complementary to financial activities. The Board also sought comment on a variety of other potential issues associated with these investments, including whether authorizing such investments would be consistent with the intent of the GLB Act to maintain the general separation of banking and commerce, and whether investments in such companies, if permitted, should be limited to non-controlling positions.

### C. Overview of Public Comments

The Board received thirteen comments on the proposal from banks, bank holding companies, and trade

associations that represent banking organizations, securities firms and other financial service providers. All of the commenters supported Board action in this area and the Board's efforts to expand the range of activities permissible for bank holding companies and FHCs. Several commenters also stated that the proposal was consistent with Congress's desire, as expressed in the GLB Act, to allow FHCs to engage in an expanded range of financially related activities. Commenters also indicated that the proposal would allow bank holding companies to develop additional sources of revenue and would not present significant safety and soundness concerns.

#### 1. Amending Existing Limits on Nonfinancial Data Processing Activities

Commenters strongly supported the Board's proposal to increase, from 30 percent to 49 percent, the amount of data processing revenues that a bank holding company or nonbank subsidiary engaged in financial data processing activities may derive from processing nonfinancial data. Commenters stated that there are no operational or functional differences between processing financial and nonfinancial data and that the proposal would allow bank holding companies to use more efficiently the systems, expertise and resources that they have developed for processing financial data. Commenters also stated that bank holding companies have gained experience in processing nonfinancial data under the more limited authority currently available under Regulation Y, and that the proposal would allow bank holding companies to meet the needs of their customers more effectively.

Also, customers increasingly are seeking data processing services that can satisfy both the financial and nonfinancial data processing needs of the customer. For example, some hospitals that previously sought only billing, payroll and accounting data processing services from bank holding companies now seek a more complete package of data processing services that include medical record organization, storage and retrieval, as well as billing, payroll and accounting services.

#### 2. General Data Processing, Storage and Portal Services by FHCs

Commenters also supported the proposal to allow FHCs to invest in companies engaged in general data storage, general data processing, or electronic information portal activities. Commenters offered several reasons why the Board should find such investments to be financial in nature,

<sup>11</sup> See 65 FR 80384, Dec. 21, 2000.

<sup>12</sup> See 12 CFR 225.28(b)(14)(i). The phrases "data processing services" and "data processing activities" used herein refer collectively to the broad array of data processing and data transmission services and functions described above that a bank holding company may perform under section 225.28(b)(14).

<sup>13</sup> See *id.* at section 225.28(b)(14)(ii); Letter from Scott G. Alvarez, Associate General Counsel of the Board, to Bryan G. Handlos, Esq., dated March 8, 1999.

<sup>14</sup> Electronic information portal services involve providing or facilitating the search, exchange, consolidation, screening, filtering or aggregation of any type of information over electronic networks, and may include acting as an Internet service provider and providing on-line search engines, bulletin boards, newsgroup services and "chat" rooms.

<sup>15</sup> See 12 U.S.C. 1843(j)(1)(A) and (E).