

incidental to financial activities or complementary to financial activities. For example, some commenters argued that data processing and data storage activities are, by their nature, financial activities regardless of the type of data involved. Others argued that the proposed activities were similar to, or an appropriate extension of, the existing data processing activities of bank holding companies or the "finder" activities permissible for FHCs.¹⁶ Similarly, some commenters contended that general data storage activities are functionally similar to the safe deposit and custody services that banks have traditionally offered to their customers.

Alternatively, commenters asserted that the connections required by the proposed rule between the acquired company's nonfinancial activities and financial activities were sufficient to demonstrate that the investments were complementary to financial activities for purposes of the GLB Act. Some, however, argued that the proposed investments should be deemed incidental to financial activities if the acquired company engaged in *any* financial data processing activities or did so to a substantial extent. Similarly, some commenters argued that investing in a company providing information portal services should be deemed to be incidental to financial activities if the portal was used to sell financial products or services, or if the company operating the portal derived a certain portion of its revenues (e.g. 50 percent) from financial activities.

Several commenters opposed the proposed 5 percent Tier 1 capital limit on investments made by FHCs in companies providing general data processing, data storage or information portal services. These commenters argued that the 5 percent investment limit was too low, was unnecessary to address any potential safety and soundness issues, or would force FHCs to sell profitable investments or engage in these activities only through separate subsidiaries.¹⁷

Some commenters also asserted that the 60-day prior notice requirement for complementary investments would impede the ability of FHCs to respond quickly to investment opportunities and marketplace developments, and asked the Board to consider establishing a

streamlined notice procedure for complementary investments. One commenter, however, asserted that the prior approval process was appropriate and would allow the Board to review and address on an individualized basis the issues associated with proposals by FHCs to engage in complementary activities.

3. Broad technology, communication and e:commerce investments by FHCs

Commenters generally favored allowing FHCs to invest in companies engaged in developing new technology, providing communication links, or marketing or selling financial and nonfinancial products or services through electronic means and encouraged the Board to take steps to determine that these types of investments are financial in nature or incidental or complementary to financial activities. Only a few commenters, however, addressed specifically this aspect of the proposal and the Board's questions concerning these types of investments. Commenters generally asserted that the financial industry increasingly relies on technology, communication systems, and electronic sales channels to support the marketing and sale of financial products and services. Commenters also asserted that new technologies, systems and networks often are developed and operated to support a wide range of financial and nonfinancial applications, and that companies providing these services may seek equity (rather than contractual) partners. In light of these developments, commenters argued that FHCs must be able to invest in companies developing or operating new technologies, communication systems and electronic sales channels to ensure that these technologies, systems and networks will meet the needs of the financial industry, and to ensure that FHCs do not become reliant on third parties for the tools and delivery channels that may be used in the marketing and sale of financial products and services. Some commenters also noted that while FHCs may invest in technology-related companies under the GLB Act's merchant banking authority,¹⁸ the cross-marketing restrictions imposed on merchant banking investments by the GLB Act may diminish the ability of FHCs to compete for these investments.

D. Explanation of Final Rule

After carefully considering the comments received on the proposal, the Board has adopted a final rule that

amends the limitations previously imposed by the Board to allow all bank holding companies additional flexibility to process, store and transmit nonfinancial data in connection with their financial data processing, storage and transmission activities. The Board believes that the final rule will enhance the ability of bank holding companies to compete in the market for data processing services and respond to the financial and nonfinancial data processing needs of their customers. The Board also believes that amending the limitations in this manner would not negatively affect the safety and soundness of bank holding companies and their depository institution subsidiaries.

As discussed further below, the Board also believes that there are a variety of ways that additional nonfinancial data processing, information portal and other technology-related investments and activities may be complementary to the financial activities of an FHC within the meaning of the GLB Act. However, the factors and relationships that may demonstrate that a proposed activity or investment by an FHC is complementary to the financial activities of the FHC may vary based on the facts and circumstances associated with the proposal. In light of these facts, and the limited record developed during this rulemaking, the Board believes it is appropriate at this time to review proposals by FHCs to engage in, or acquire a company engaged in, a complementary activity on a case-by-case basis in accordance with the prior notice procedures established by section 4(j) of the BHC Act. The Board expects to revisit whether it would be appropriate to propose a rule permitting FHCs generally to engage in, or invest in companies engaged in, additional nonfinancial data processing, information portal or other technology-related activities after the Board has gained experience in reviewing requests by individual FHCs to engage complementary activities.

1. Expanded Nonfinancial Data Processing Authority for All Bank Holding Companies

Section 225.28(b)(14) of Regulation Y currently permits bank holding companies, including FHCs, to provide data processing services (including software, hardware, advice and personnel) to any customer if the data to be processed is financial, banking or economic in nature.¹⁹ The authority to

¹⁶ A few commenters asserted that the Board should reclassify acting as a "finder" as an activity that is financial in nature, or should expand the types of services that an FHC may provide when acting as a finder. Such actions are outside the scope of this rulemaking.

¹⁷ A few commenters also stated that no special regulatory capital charge should be imposed on the proposed complementary investments.

¹⁸ See 12 U.S.C. 1843(k)(4)(H).

¹⁹ See 12 CFR 225.28(b)(14)(i). Any hardware provided must be offered only in conjunction with