

engage in financial data processing activities permits bank holding companies to provide their customers with a wide range of data processing services, including data processing related to payroll, accounts receivable and accounts payable processing; bill preparation and bill payment; processing credit card, debit card and ATM transactions and other electronic funds transfers; loan processing; credit analysis; tax planning; accounting and bookkeeping services; economic forecasting; and data processing services to support the customer's marketing, sale and delivery of financial products and services over the Internet or other electronic networks, such as home banking or securities brokerage services.<sup>20</sup>

Regulation Y also currently permits a company engaged in financial data processing activities under section 225.28(b)(14) to process nonfinancial data so long as the annual revenue derived by the company from its nonfinancial data processing activities does not exceed 30 percent of the company's total annual data processing revenues. As noted above, the Board proposed to raise this 30 percent limit on the nonfinancial data processing activities of bank holding companies to 49 percent. Commenters strongly supported this change for the reasons outlined above.

The Board has amended its regulatory limitation governing the conduct of data processing activities previously authorized for bank holding companies under section 4(c)(8) of the BHC Act to raise the threshold on nonfinancial data processing services as proposed.<sup>21</sup> In accordance with the GLB Act, all bank holding companies, including FHCs, may take advantage of the expanded data processing authority granted by the final rule.

The Board believes that the final rule will allow all bank holding companies

to leverage more effectively the experience and resources they have developed from engaging in financial data processing activities. In addition, by allowing bank holding companies to process additional amounts of nonfinancial data for their customers, the final rule should allow bank holding companies to achieve additional economies of scale and compete more effectively with nonbank providers of data processing services.

The 49-percent revenue limit included in the final rule ensures that the data processing subsidiaries of bank holding companies operating under section 4(c)(8) of the BHC Act remain predominantly engaged in processing financial, banking or economic data. The Board believes this limit provides reasonable assurances that any nonfinancial data processing activities conducted by a bank holding company under section 225.28(b)(14) will remain incidental to the company's financial data processing for purposes of section 4(c)(8) of the BHC Act.

Bank holding companies that provide data processing services to customers should take appropriate steps to maintain the security, integrity and confidentiality of the customer's data.<sup>22</sup> In addition, bank holding companies must take appropriate steps to ensure compliance with all applicable federal and state laws governing the privacy of consumer data processed by the bank holding company on behalf of third parties.

Several commenters asked the Board to clarify the ability of bank holding companies to provide data storage, retrieval and imaging services as part of their data processing activities under section 225.28(b)(14). Data storage, retrieval and imaging are functions that are an integral and often necessary part of data processing and data transmission activities. Accordingly, the Board previously has indicated that the data processing services that bank holding companies may provide under section 225.28(b)(14) include data storage, imaging and retrieval.<sup>23</sup> In light of the commenters' requests, the Board has included language in the final rule that clarifies that bank holding companies may provide data storage, imaging and retrieval services for financial, economic or banking data without limit, and may provide such services for nonfinancial

data to the extent permitted by the 49-percent revenue limit adopted by the final rule.<sup>24</sup>

A few commenters also asserted that the Board should allow a bank holding company to use any excess capacity that may exist in the company's data processing systems to process nonfinancial data. The Board previously has indicated that bank holding companies may use any excess capacity that results in good faith from the bank holding company's financial data processing activities under section 225.28(b)(14) to process nonfinancial data, and bank holding companies may continue to use their excess capacity in this manner subject to the Board's regulations and policies governing these activities.<sup>25</sup> The Board also previously has indicated that revenue derived by a bank holding company from the use of excess capacity is not included for purposes of determining the company's compliance with the rule's revenue limit on nonfinancial data processing activities.<sup>26</sup>

A bank holding company may use any currently available or newly developed technological means, including dedicated or shared electronic facilities, the Internet and optical technology, to provide its customers permissible data processing services. In addition, a bank holding company may provide its customers data processing services either as a stand-alone service or in conjunction with other products and services that the bank holding company is authorized to provide under the BHC Act.

The Board notes, however, that the authority to provide data processing services for financial and nonfinancial data does *not* authorize bank holding companies to engage in an activity simply because it involves the use of a computer or the transmission of data in electronic form. Section 225.28(b)(14)

<sup>24</sup> A few commenters expressed concern that any revenue-based limit on nonfinancial data processing activities may be difficult to monitor or may cause pricing distortions in the market for data processing services. These commenters did not present any evidence indicating that the existing 30-percent test, which also is based on revenue, has caused significant compliance or pricing difficulties, and the Board notes that other measures of activity (such as one based on the quantity of financial and nonfinancial data processed) likely would be even more difficult for bank holding companies to monitor than the existing revenue-based test.

<sup>25</sup> See 12 CFR 225.123(e)(1); *Citicorp*, 68 Federal Reserve Bulletin 505, 510 (1982). These policies prohibit a bank holding company from acquiring equipment solely for the purpose of creating excess capacity and limit the ability of bank holding companies to provide hardware and software in connection with their sale or provision of excess data processing capacity. See 12 CFR 225.123(e)(1).

<sup>26</sup> See 62 FR 9290, 9304 at n.5, Feb. 28, 1997.

software designed and marketed for the processing and transmission of financial, banking or economic data, and any general purpose hardware may not constitute more than 30 percent of the cost of any packaged offering. See 12 CFR 225.28(b)(14)(i)(B).

<sup>20</sup> See *The Toronto-Dominion Bank*, 83 Federal Reserve Bulletin 335 (1997); *Royal Bank of Canada*, 83 Federal Reserve Bulletin 135 (1997); *Compagnie Financiere de Paribas*, 82 Federal Reserve Bulletin 348 (1996); *BNCCORP, INC.*, 81 Federal Reserve Bulletin 294 (1995); *The Bank of New York Company, Inc.*, 80 Federal Reserve Bulletin 1107 (1994); *Bank One Corporation*, 80 Federal Reserve Bulletin 139 (1994); see also Letter from J. Virgil Mattingly, General Counsel of the Board, to Thomas A. Plant, Esq., dated Nov. 25, 1997.

<sup>21</sup> See 12 U.S.C. 1843(c)(8). At the time the Board adopted the current 30-percent revenue limit on nonfinancial data processing activities, the Board specifically noted that it reserved the authority to review and adjust this limit as appropriate. See 62 FR 9290, 9304, Feb. 28, 1997.

<sup>22</sup> See Federal Financial Institutions Examination Council, IT Examination Handbook—Information Security (Dec. 2002).

<sup>23</sup> See *Royal Bank of Canada*, 83 Federal Reserve Bulletin 135 (1997); *BNCCORP, INC.*, 81 Federal Reserve Bulletin 295 (1995); *State Street Boston Corporation*, 81 Federal Reserve Bulletin 1049 (1995).