

permits a bank holding company to provide data processing services to third-party customers to support the functions or activities of the customer. Where the bank holding company's data processing activities represent the conduct of a separate or different activity by the bank holding company itself, the bank holding company must have the authority to engage in that activity under other provisions of Regulation Y. For example, while a bank holding company may provide data processing support to an unaffiliated insurance agency under section 225.28(b)(14), such as, for example, by processing customer payments and optically scanning and storing the insurance policies issued by the agency, a bank holding company may not itself sell insurance (through electronic means or otherwise) under section 225.28(b)(14).

A few commenters asked that the Board permit bank holding companies to determine their compliance with the 49-percent revenue limit on nonfinancial data processing activities on a business line or organization-wide basis. The Board recognizes that there may be situations where a bank holding company has bona fide operational reasons for conducting its financial and related nonfinancial data processing activities through separately incorporated subsidiaries. Accordingly, bank holding companies may request permission to administer the 49-percent revenue limit on a business-line or multiple-entity basis in appropriate circumstances. The Board has delegated authority to its General Counsel, in consultation with the Director of the Division of Banking Supervision and Regulation, to review and act on these requests. Such requests should describe the structure of the holding company's data processing operations, the methodology the holding company proposes to use to administer the revenue test, and the reasons why the holding company believes the proposed methodology is appropriate. The General Counsel or the Board where appropriate will consider any request in light of all the facts and circumstances, including the inter-relationships between the data processing activities conducted by the bank holding company's separate subsidiaries, the holding company's business or operational reasons for conducting its data processing activities in different subsidiaries, and the level of the holding company's ownership interest in the individual subsidiaries.

The Board will revisit whether it would be appropriate to authorize all bank holding companies to monitor

compliance with the revenue limit on a consolidated or business-line basis based on the experience gained from reviewing any such requests.

2. General Data Storage, Data Processing, Electronic Information Portal, Technology, Communication and E:Commerce Investments

In response to requests from FHCs, the Board also requested comment on whether the Board should adopt a rule permitting FHCs to invest, as a complementary activity, in any company that provides (1) Data storage services for nonfinancial data without regard to the revenue limitations discussed above, so long as the company provided data storage services for some financial data; (2) data processing services for nonfinancial data, so long as the company derived at least 20 percent of its total revenues from processing financial data, processing data for depository institutions, or the sale of other financial products or services; or (3) electronic information portal services.²⁷ The Board proposed limiting the aggregate carrying value of an FHC's investments in companies engaged in these activities to 5 percent of the FHC's Tier 1 capital. FHCs also had requested authority to invest in companies that develop technology that might support the marketing or sale of financial products or services in the future; provide communication linkages for any type of information; or market and sell nonfinancial and financial products or services through electronic means.

The Board notes that much of the need expressed by FHCs for authority to make these types of investments may be addressed by the Board's decision to raise the revenue limit on the nonfinancial data processing activities of bank holding companies to 49 percent. In addition, the Board notes that FHCs currently have the authority to make investments in data processing companies that do not comply with the 49 percent revenue limit and other technology-related companies under the GLB Act's merchant banking authority. Although some commenters noted that the cross-marketing restrictions applicable to merchant banking investments may diminish the attractiveness of this investment authority, the Board notes that these restrictions apply only to the depository institution subsidiaries of an FHC (and not to the FHC itself or its nonbank

affiliates) and Congress currently is considering legislation that would loosen these restrictions in several important respects.²⁸ Commenters also presented little evidence that, in the Board's view, indicates why data processing, information portal and the other technology-related activities, without limit on the type of data processed or amount of nonfinancial data processed, should, in all circumstances, be found to be financial in nature or incidental to a financial activity.

The GLB Act does permit an FHC to engage in, or acquire a company engaged in, a nonfinancial activity if the Board determines that the activity is complementary to financial activities and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system. As noted above, this authority was intended to provide the Board a mechanism to allow an FHC to engage to a limited degree in commercial activities if the proposed commercial activities would meaningfully complement or enhance the financial activities of the FHC, and the proposed activities would not present undue risks to the subsidiary depository institutions of the FHC or the financial system.

The Board believes that there are a variety of relationships or connections between a commercial activity or investment and an FHC's financial activities that may indicate that the activity or investment is complementary to the FHC's activities within the meaning of the GLB Act. Ultimately, the determination whether a commercial activity or investment is complementary will depend on the nature of the activity and the level and quality of the many types of connections that may exist between the proposed activity or investment and the FHC's financial activities.

The Board does not believe that the limited record developed during this rulemaking provides the Board a sufficient basis for determining, by rule, that nonfinancial data processing and information portal activities are as a general matter financial in nature, incidental to a financial activity, or complementary to the financial activities of FHCs. The Board also does not believe that the record is sufficient at this time to warrant developing a formal proposal requesting comment on whether the Board should determine, by rule, that the other technology-related

²⁷ The Board indicated that it expected an FHC to market or provide financial products or services through any electronic information portal service owned under this proposed authority.

²⁸ See Financial Services Regulatory Relief Act of 2003, section 501, H.R. 1375, 108 Cong., 1st Sess. (2003); H. Rept. 108-152, Part 1, 108 Cong., 1st Sess. (2003).