

investments suggested by the initial FHC requestors are as a general matter financial in nature, incidental to a financial activity, or complementary to the financial activities of FHCs.

In light of the foregoing, the Board believes it is appropriate to review proposals by FHCs to engage in, or acquire a company engaged in, general data processing and electronic information portal activities, as well as other nonfinancial technology-related activities, on a case-by-case basis under section 4(j) of the BHC Act. This approach is consistent with the procedure established by the GLB Act for FHCs to engage in complementary activities.²⁹ This process will allow an FHC to present, and the Board to review, all the connections that may demonstrate that a proposed investment or activity is complementary to the FHC's financial activities for purposes of the GLB Act. Moreover, because the proposed rule would have required FHCs to obtain the Board's approval under section 4(j) prior to making any complementary investment under the proposal, the procedural approach adopted by the Board does not impose any additional filing burden on FHCs.

FHCs that believe a proposed investment or activity is complementary to the FHC's financial activities should submit a notice to the Board in accordance with section 4(j) of the BHC Act and section 225.89 of the Board's Regulation Y (12 CFR 225.89). The notice should, among other things, identify and define the proposed complementary activity, identify the financial activity to which the proposed complementary activity would be complementary, and describe the relationships and connections between the proposed activity and the identified financial activity that the FHC believes support a finding that the proposed activity is complementary.³⁰ In addition, the notice should explain why the proposed complementary activity or investment would not pose undue risks to the safety and soundness of the FHC's subsidiary depository institutions or the financial system and what, if any, limits would be appropriate to ensure that the investment or activity remains small in relation to the FHC's financial activities.

Regulatory Flexibility Act

In accordance with section 4(a) of the Regulatory Flexibility Act (5 U.S.C. 604(a)), the Board must publish a final regulatory flexibility analysis with this rulemaking. The final rule expands the ability of bank holding companies of all

sizes to process, store and transmit nonfinancial data in connection with their financial data processing activities. The Board specifically requested comment on the likely burden that the proposed rule would have on bank holding companies of all sizes, including small bank holding companies.³¹ Commenters noted that the rule should enhance the ability of bank holding companies of all sizes to compete with other providers of data processing services, achieve additional economies of scale and utilize more efficiently their existing data processing resources and expertise. In response to comments received, the Board also has clarified the ability of bank holding companies to engage in data storage, imaging and retrieval activities in connection with their permissible data processing activities, and to use any excess capacity that may result, in good faith, from the bank holding company's financial data processing activities to process, store and transmit nonfinancial data.

A few commenters asked that the Board permit bank holding companies to derive more than 49 percent of their data processing revenues from processing, storing or transmitting nonfinancial data, or to apply the rule's revenue limit on nonfinancial data processing activities on a business-line or organization-wide basis. For the reasons discussed in the supplementary information above, the Board does not believe such actions would generally be appropriate or consistent with section 4(c)(8) of the BHC Act. The Board, however, has established a process whereby any bank holding company, including small bank holding companies, may obtain permission to administer the rule's revenue limit on nonfinancial data processing activities on a multiple-entity or consolidated basis. This process will permit bank holding companies, including small bank holding companies, to administer the revenue test in a more flexible manner when such action would be consistent with the BHC Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget ("OMB"). The Federal Reserve may not

conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number.

As discussed in the **SUPPLEMENTARY INFORMATION** above, bank holding companies may request permission to administer the 49-percent revenue limit on nonfinancial data processing activities adopted by the final rule on a business-line or multiple-entity basis in appropriate circumstances. Such requests should be directed to the Board's General Counsel and 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. It is estimated that there will be 5 respondents per year with an estimated burden of 2 hours per response. Therefore the total amount of annual burden is estimated to be 10 hours. There is estimated to be \$200 annual cost burden over the annual hour burden. An OMB control number for this information collection will be obtained.

A request may be filed in letter form and there will be no reporting form for this information collection. The agency form number for the notice will be the FR 4021. A bank may request confidentiality for the information contained in the notice in accordance with the Freedom of Information Act and the Board's Rules Regarding the Availability of Information. *See* 5 U.S.C. 552; 12 CFR part 261.

As required by the GLB Act, section 225.89 of the Board's Regulation Y currently requires an FHC to obtain the Board's approval prior to engaging in, or acquiring a company engaged in, an activity that the FHC believes is complementary to a financial activity. *See* 12 CFR 225.89. Section 225.89 also describes the information that must be included in any request to engage in, or acquire a company engaged in, a complementary activity. The Board previously has reviewed and approved this information collection in accordance with the requirements of the Paperwork Reduction Act. *See* Requests for Approval to Engage in an Activity that is Complementary to a Financial Activity (FR 4012; OMB No. 7100-0292).

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden,

²⁹ *See* 12 U.S.C. 1843(j)(A) and (E).

³⁰ *See* 12 CFR 225.89(a).

³¹ For purposes of the Regulatory Flexibility Act, small entities are defined to include bank holding companies that have \$150 million or less in assets. *See* 13 CFR 121.201. As of March 31, 2003, there were 3117 bank holding companies with consolidated total assets of \$150 million or less.