December 19, 2000

TO: Board of Governors

FROM: Staff[1]

SUBJECT: Final rule regarding financial holding company election procedures and activities.

ACTION REQUESTED: Approval of the attached final rule governing how a domestic bank holding company ("BHC") may become a financial holding company ("FHC") and the permissible activities in which a FHC may engage. This rule implements the FHC provisions of the Gramm-Leach-Bliley Act ("GLB Act").

BACKGROUND: On January 18, 2000, the Board approved an interim rule enumerating the capital, management, and Community Reinvestment Act ("CRA") requirements a BHC or foreign banking organization must meet and the procedures it must follow to qualify for and maintain FHC status.[2] On March 10, 2000, the Board approved an additional interim rule containing a list of the financial activities that a FHC may conduct, the procedures for engaging in those activities, and the procedures for requesting a Board determination that an additional activity is financial in nature or incidental or complementary to a financial activity.[3] Both interim rules became effective on March 11, 2000, the effective date of the GLB Act, so that qualifying companies immediately could take advantage of the expanded powers granted by that statute.

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[1] Messrs. Alvarez and Fallon and Ms. Threatt (Legal Division); and Mr. Biern and Mss. Cross, Oakes, Bouchard (Division of Banking Supervision and Regulation).

[2] See 65 Federal Register 3,786 (January 25, 2000). On March 15, 2000, the Board amended the management criterion applicable to bank holding companies, as well as certain procedures governing FHC elections by foreign banking organizations. See 65 Federal Register 15,053 (March 21, 2000).

[3] 65 Federal Register 14,433 (March 17, 2000).

The Board solicited comment on the interim rules and received a total of 57 public comments on the interim rules, which are summarized in Appendix C. The final rule, which is attached as Appendix B, largely incorporates the framework contained in the interim rules with revisions in response to comments and the System's experiencing in administering the interim rules. The final rule is discussed in detail in a Federal Register notice that is attached as Appendix A.

SUMMARY OF THE FINAL RULE:

The final rule is substantially the same as the interim rules it replaces. Specifically, the rule:

1) Defines a FHC as a BHC that has elected to become a FHC and all of whose subsidiary depository institutions are and remain well capitalized and well managed;

2) States that a BHC may elect to become a FHC by filing a simple written declaration with the System that becomes effective on the 31st day after filing (or sooner if notified by the Board) unless the Board objects;

3) Provides that an election is ineffective if the Board finds that any subsidiary depository institution of the BHC does not have at least a "satisfactory" CRA rating or is not well capitalized and well managed;

4) Describes the limitations imposed by the GLB Act on a company that controls an institution that fails continuously to meet the capital, management, and CRA requirements;

5) Lists the activities that have been defined to date as financial in nature or incidental to a financial activity and thus are permissible for a FHC; and

6) Describes the procedures for requesting the Board to determine that an additional activity is financial in nature, or incidental or complementary to a financial activity.

The discussion below provides more information about each of these items, particularly where the final rule differs from the interim rule. Each item also is discussed in detail in the attached Federal Register notice.

DISCUSSION:

Financial Holding Company Definition and Election Procedures

A FHC is defined as a BHC that has made an effective election to be a FHC and all of whose depository institutions are and remain well capitalized and well managed. The final rule amends the definition in Regulation Y of the term well managed to provide that a depository institution with at least satisfactory composite and management ratings is well managed and to eliminate the requirement that an institution have a satisfactory compliance rating to be well managed.[4]

A BHC may become a FHC by filing a simple written declaration that identifies the company's subsidiary depository institutions and their capital ratios, certifies that each depository institution is well capitalized and well managed, and states that the company seeks to become a FHC. Some commenters asked the Board not to require BHCs to submit capital ratios. This information is readily available to BHCs with little burden, however, and generally has improved the quality of FHC elections. This information also has been helpful in resolving differences between a BHC's capital data and the data otherwise available to the Board. Accordingly, the final rule retains this requirement.

An election automatically becomes effective on the 31st day after it is received by the System unless the System notifies a BHC prior to that date that the

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[4] The rule amends other provisions of Regulation Y to retain the requirement that a BHC's banking and nonbanking proposals will not qualify for expedited processing unless the company's depository institutions satisfy a compliance requirement.

election is ineffective because a subsidiary depository institution does not meet the applicable requirements. The System also may affirmatively notify a BHC that its election is effective prior to the automatic effective date.[5] In light of the System's experience administering the interim rule, the final rule contains a brief list of the information that must be contained in a declaration and provides that the 30-day review period does not begin until the System receives a declaration that contains all the required information.

In response to public comments and the number of joint BHC/FHC requests that the Board has received in recent months, the final rule adds a procedure that allows a company to request to become a FHC at the time it files a proposal to become a BHC under section 3 of the BHC Act. To coordinate action on these two requests, the final rule delays the official acceptance of the FHC declaration to the date the company consummates its section 3 proposal and becomes a lawful bank holding company. The rule provides that the Board generally will find this declaration effective on the date the company consummates its section 3 proposal to become a bank holding company.

The interim rule included a provision reaffirming the Board's supervisory authority to restrict the conduct and activities of a company that becomes a FHC where the Board has supervisory concerns. Although a few commenters supported this provision, a number of commenters asserted that the Board did not have statutory authority to limit a FHC in the proposed manner. The final rule and preamble explain that the Board retains authority under section 8 of the BHC Act,

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[5] For the overwhelming majority of FHC declarations handled to date, the Board has notified the company that its declaration is effective before expiration of the review period.

section 8 of the Federal Deposit Insurance Act, and other applicable Federal laws to take supervisory actions against any BHC, including a FHC, when circumstances warrant. The final rule therefore retains this provision.

Cure Procedures

The rule provides that the Board will notify a FHC if the Board finds the company controls a depository institution that ceases to be well capitalized and well managed. A company that receives notice of noncompliance must execute a corrective action agreement with the Board and must obtain prior Board approval to engage in additional activities under section 4(k) of the BHC Act until the conditions described in the notice are corrected.[6] The Board may grant general approval or approval on a transaction-by-transaction basis, as appropriate, for a company in the cure period to engage in additional activities when circumstances warrant. For example, the Board previously has granted general approval in a case where a company acquired a relatively small institution with an existing poor management rating and immediately developed a plan to improve the condition of the troubled institution.

CRA Prohibitions

The GLB Act requires the Board to prohibit a FHC from engaging in additional activities under the GLB Act if an insured depository institution that is controlled by the FHC has received a less-than-satisfactory CRA rating in its most

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[6] Because section 4(c)(8) is a separate source of authority for engaging in activities that are closely related to banking, a company in the cure period still may engage in activities under 4(c)(8) without obtaining the Board's prior approval if the company meets the approval and other requirements of section 225.23 for conducting the activities under section 4(c)(8) and Regulation Y.

recent examination. The terms of the GLB Act require that the Board apply the prohibitions if "any insured depository institution subsidiary of such FHC . . . has received in its most recent examination under the CRA a rating of less than 'satisfactory record of meeting community credit needs.'" Staff believes this language is best read to apply only when an insured depository institution receives a less-than-satisfactory CRA rating while it is under the control of the FHC.[7] A FHC is responsible for the CRA rating of an insured depository institution only if the FHC controlled the institution during the period that the examination occurs. Moreover, it would discourage FHCs with well rated institutions from acquiring and correcting poorly rated institutions if a penalty were imposed on the FHC immediately upon acquiring the poorly rated institution. There are strong public benefits in allowing a bank holding company

[7] Although the GLB Act requires the Board to impose prohibitions on the activities and acquisitions of a FHC if an insured depository institution of the FHC has received a less-than-satisfactory rating at its most recent CRA examination, the statute does not enumerate a specific procedure or time frame within which the Board must implement this requirement.

with a proven CRA performance record at its existing insured depository institutions to acquire a poorly rated insured depository institution.

Accordingly, the final rule retains the provisions of the interim rule that provide that the CRA prohibitions apply to a FHC when an insured depository institution that is controlled by the FHC receives notice from the appropriate Federal banking agency that the insured depository institution has received a less-than-satisfactory CRA rating. This notice typically will occur, if at all, at the first CRA examination after a poorly rated insured depository institution is acquired by the FHC. If the institution does not achieve at least a satisfactory CRA rating at its first CRA examination following the acquisition, the prohibitions would apply to the FHC.[8] This interpretation is consistent with the provision of the GLB Act that allows the Board when evaluating a FHC election to exclude the poor rating of any institution acquired by the company within the preceding 12 months.[9]

Activities That Are Permissible for FHCs and Procedures for Engaging in Them

The final rule lists the activities that to date have been determined to be financial in nature or incidental to a financial activity and thus are permissible for FHCs. These activities include:

(1) Activities found by the Board to be closely related to banking

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[8] The prohibitions imposed by section 225.84 remain in effect until each insured depository institution controlled by the FHC has received at least a satisfactory CRA rating at its most recent examination.

[9] The Board will monitor the FHC's progress in addressing the CRA performance of any recently acquired insured depository institution and the final rule reserves the ability of the Board also to provide notice that the CRA prohibitions apply if the FHC is not taking appropriate action to improve the insured depository institution's CRA performance.

under the BHC Act (such as lending and leasing);

(2) Activities found by the Board to be usual in connection with the transaction of banking abroad (such as travel agency activities);

(3) Other activities that the GLB Act defines as financial activities (such as insurance underwriting and merchant banking); and

(4) Any other activity that the Board, in consultation with the Secretary, finds to be financial in nature or incidental thereto.

A FHC typically may engage in a listed activity by providing a post-transaction notice to the System within 30 days of commencing the activity or acquiring a company engaged solely in listed activities. The final rule clarifies that a FHC must use a specific reporting form designated by the Board to fulfill its post-transaction notice requirement. The rule also allows a FHC to acquire a company with some commercial activities if the impermissible activities are terminated, divested, or otherwise conformed to the BHC Act within two years of the acquisition.

No notice is required for a FHC to acquire shares of a company engaged in financial activities if the FHC does not control the company as a result of the acquisition, or for individual merchant banking investments that are less than $200 million or 5 percent of the FHC's Tier 1 capital. The final rule also states that once a FHC provides notice that it conducts an activity, the FHC may engage in the activity through any of its existing subsidiaries without providing additional notice. Prior Board approval still is required if an FHC acquires a savings association or if the Board requires an application for supervisory reasons.

Procedures for Authorization of Additional Activities

Any party may request that the Board determine that an additional activity is financial in nature or incidental to a financial activity. The request must contain sufficient information about the activity and how it would be conducted for the Board to evaluate the activity, including an explanation that justifies the requested determination. The rule allows but does not require the Board to seek public comment on requests to authorize an additional financial or incidental activity and states that the Board will endeavor to make a determination within 60 days of the conclusion of the consultative process and the public comment period, if any. In each case, the Board must consult with the Secretary of the Treasury.

A FHC must obtain Board approval prior to commencing a complementary activity. The final rule sets forth the factors that the Board must consider under the BHC Act when acting on a complementary activity request, including safety and soundness of the activity and possible adverse effects, such as decreased or unfair competition. The final rule requires a FHC that seeks a determination that an activity is complementary to provide information describing how the activity relates to, complements, or enhances a financial activity.

RECOMMENDATION: Staff recommends that the Board approve the attached Federal Register notice and final rule regarding FHCs.

In addition, staff recommends that the Board delegate to the General Counsel authority under the GLB Act (1) to transmit to the Secretary of the Treasury proposals raised before the Board to determine that an activity is financial in nature or incidental to a financial activity and thereby commence the 30-day period in which the Secretary must review the proposal; (2) to extend the 30-day review period during which the Secretary must determine whether a proposed activity raised before the Board is financial in nature or incidental to a

financial activity; and (3) to extend, in consultation with the Secretary, the 30-day period during which the Board, after receiving an activity proposal raised by the Secretary, must decide whether to initiate a rulemaking proposing authorization of the activity.

Appendix A

Federal Register Notice Regarding FHC Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 225

Regulation Y; Docket Nos. R-1057 and R-1062

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System has adopted a final rule that implements the financial holding company provisions of the Gramm-Leach-Bliley Act. This final rule replaces the interim rules governing financial holding companies that the Board adopted previously. The final rule describes the procedures a domestic bank holding company and a foreign banking organization must follow and the capital, management, and Community Reinvestment Act requirements they must meet in order to qualify as a financial holding company. The final rule also contains provisions that apply to a financial holding company that subsequently ceases to meet the applicable requirements.

In addition, the final rule lists the activities that the Gramm-Leach-Bliley Act defines as financial in nature and thereby authorizes a FHC to conduct. The final rule contains procedures that apply to a financial holding company that conducts those activities, a procedure that allows any interested party to request that the Board determine, in consultation with the Secretary of the Treasury, that additional activities are financial in nature or incidental to a financial activity and thus permissible for a financial holding company, and a procedure that allows a financial holding company to request the Board's prior approval to conduct an activity that is complementary to a financial activity.

The final rule also amends Regulation Y to define the term "depository institution" and to revise the existing definitions of the terms "well capitalized" and "well managed," and makes conforming and other technical changes.

DATES: The final rule is effective [INSERT 30 days after publication].

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), Kieran J. Fallon, Senior Counsel (202/452-5270), or Adrianne G. Threatt, Senior Attorney (202/452-3554), Legal Division; or Betsy Cross, Assistant Director (202/452-2574), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C., 20551. For users

of Telecommunications Device for the Deaf ("TDD"), contact Janice Simms at 202/452-4984.

SUPPLEMENTARY INFORMATION:

Background and Summary of Final Rule

The Gramm-Leach-Bliley Act (Pub. L. No. 106-102, 113 Stat. 1338 (1999)) ("GLB Act") amended the Bank Holding Company Act (12 U.S.C. 1841 et seq.) ("BHC Act") to allow a bank holding company that elects to become a FHC (a "FHC") and a foreign banking organization that elects to be treated as a FHC to engage in a broad range of financial activities, including securities underwriting, insurance sales and underwriting, and merchant banking. On January 18, 2000, the Board approved an interim rule implementing these provisions and detailing the procedures that allow a bank holding company and foreign banking organization to qualify for and maintain FHC status (65 Federal Register 3,786 (January 25, 2000)). This interim rule also enumerated the capital, management, and Community Reinvestment Act (12 U.S.C. § 2901 et seq.,) ("CRA") requirements that must be satisfied in order to establish and maintain FHC status. On March 15, 2000, the Board amended the management criterion and certain provisions concerning the FHC election process applicable to foreign banking organizations. (65 Federal Register 15,053 (March 21, 2000)).

On March 10, 2000, the Board approved an additional interim rule containing a list of the financial activities that are permissible for a FHC to conduct. This interim rule also set forth the procedures a FHC must follow to engage in a financial activity; the process for requesting a Board determination that an additional activity is financial in nature or incidental thereto; and a procedure for requesting the Board's prior approval to engage in an activity that is complementary to a financial activity (65 Federal Register 14,433 (March 17, 2000)).

The interim rules on elections and activities both became effective on March 11, 2000, the effective date of the GLB Act, so that qualifying companies immediately could take advantage of the expanded powers granted by the statute. The vast majority of the provisions of the interim rules were included in a new subpart I of Regulation Y, entitled "Financial Holding Companies."

The Board solicited comment on the interim rules and received a total of 57 public comments on these rules. The commenters included bank holding companies and foreign banking organizations; state bank supervisory officials; trade associations representing the banking, insurance, and securities industries; foreign central banks and governmental officials; law firms; community groups; and individuals.

Many commenters supported the Board's interim rules and commended the

Board for issuing the rules swiftly and using an easily comprehensible format. Commenters representing the interests of foreign banking organizations urged the Board to amend the FHC election procedures and requirements applicable to those organizations, including the leverage capital ratio requirement, while domestic organizations asked the Board to hold foreign banking organizations to the same requirements that apply to U.S. bank holding companies. Commenters also were divided as to whether the Board should retain sections of the interim rules that reserved the Board's supervisory authority to impose restrictions on a bank holding company that met the statutory criteria to become a FHC but about which the Board nonetheless had supervisory concerns. Most comments regarding this section asserted that the Board did not have a statutory basis for imposing a requirement on a company that met the GLB Act's criteria to become a FHC. Several commenters also suggested that the Board should not require bank holding companies to submit supporting information with their FHC elections and that the Board should amend the definition of the term "well managed."

Commenters asked for guidance about the application of various aspects of the rule, including the interplay between Regulation Y and Regulation K with respect to activities conducted abroad by a FHC and the procedures for requesting to become a FHC as part of a section 3 proposal to become a bank holding

company. A number of commenters suggested that the Board allow public comment on FHC declarations and condition the effectiveness of a FHC election on compliance with CRA-related requirements not enumerated in the GLB Act.

After carefully reviewing the public comments, the Board has adopted a final rule that largely incorporates the framework contained in the interim rules. The Board has made a number of revisions in response to the public comments as well as revisions based on the experience of the Federal Reserve System in administering the interim rules since March 11, 2000. The suggestions made by commenters, the Board's responses thereto, and the Board's revisions are discussed in greater detail below.

Explanation of Final Rule

Section 225.81 -- What is a FHC?

Consistent with the GLB Act, the interim rules defined a FHC as a bank holding company that meets the following requirements: (1) the company has made an effective election to become a FHC, and (2) all depository institutions controlled by the bank holding company are at the time of election and remain both well managed and well capitalized.[10] One commenter suggested that the Board allow a

[10] Section 225.81 also sets forth the provisions that apply to a foreign bank that controls a depository institution in the United States, as well as U.S. bank

bank holding company that controls multiple banks to become a FHC if a depository institution representing a small percentage of the company's assets was not well managed. However, the GLB Act explicitly provides that a bank holding company may become a FHC only if each depository institution controlled by the company is well managed, and the Board cannot alter this requirement by regulation. Accordingly, the Board has adopted section 225.81 of the interim rule without amendment.

Definitions of Well Capitalized and Well Managed

As noted above, a bank holding company may become a FHC only if each of its subsidiary depository institutions is both well capitalized and well managed. The final rule, like the interim rule, provides that an uninsured depository institution is considered well capitalized if it meets or exceeds the capital ratios that its appropriate Federal banking agency has established under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) ("FDI Act") for insured depository institutions.[11]

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holding companies that control a foreign bank with U.S. operations. These provisions are described in more detail below in the discussion of sections 225.90 to 225.93.

[2] The final rule also defines the term "depository institution" at section 225.2(t) using the definition provided at section 2 of the BHC Act as amended by the GLB Act. For purposes of Regulation Y, the term "depository institution" has the same

The final rule also amends and simplifies the existing definition of "well managed" in Regulation Y so that it can be used both for purposes of determining whether expedited processing of a bank holding company's application is appropriate and for determining whether a bank holding company qualifies to be a FHC. The final rule eliminates the requirement that a depository institution receive at least a satisfactory compliance rating to be deemed well managed, because the compliance criterion applies only to the availability of the expedited application process and not to an organization's status as a FHC. The rule amends the expedited processing procedures to adjust for these changes and to provide that a bank holding company's depository institutions must satisfy a compliance requirement for the bank holding company to qualify for expedited processing.[12] This revision does not change in any substantive way the application of the previous well managed criteria.

The FDI Act allows the appropriate Federal banking agency for a depository institution to use an examination conducted by a state banking agency in lieu of a Federal examination, provided the state examination meets the criteria at section

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meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

[12] See 12 C.F.R. 225.14 and 225.23, as amended by this rule.

10(d) of the FDI Act (see 12 U.S.C. 1820(d)). To reflect this, the final rule allows the Board to rely on examinations conducted by the appropriate state agency where applicable in determining whether an institution is well managed.

Where a depository institution has not yet been examined, the final rule retains the provision of the interim rule that allows the Board to determine that the institution is well managed after reviewing the institution's managerial and other resources and consulting with the appropriate Federal banking agency for the institution. Moreover, the final rule provides that a depository institution resulting from the merger of two or more well managed depository institutions would be considered well managed unless the Board determined otherwise after consulting with the appropriate Federal banking agency. Commenters supported both these provisions.

Commenters requested additional guidance on whether a depository institution would remain well managed if it merged with an institution that was not well managed. In these circumstances, the Board believes that the managerial status of the combined institution likely would depend on the particular facts and circumstances. Accordingly, the final rule provides that an institution resulting from the merger of a well managed institution with an institution that is not well managed or that has not been examined will be considered well managed if the Board

determines, after a review of managerial and other resources and after consulting the appropriate Federal banking agency, that the resulting institution is well managed.

Section 225.82 – How does a bank holding company elect to become a FHC?

Section 225.82 sets forth the procedures that a bank holding company must follow to elect to become a FHC and describes when an election will and will not become effective. The rule allows a bank holding company to elect to become a FHC by filing a simple declaration with the appropriate Federal Reserve Bank. The declaration must contain a statement that the bank holding company elects to be a FHC; provide the name and head office addresses of the company and each of the depository institutions it controls; certify that each depository institution controlled by the company is well capitalized as of the date the company submits its declaration; provide the capital ratios as of the close of the previous quarter for each depository institution controlled by the company; and certify that each depository institution controlled by the company is well managed as of the date the company submits its declaration. In light of its experience with declarations under the interim rule, the Board has amended section 225.82 to clarify that a declaration is not deemed complete and the 30-day processing period for the declaration does

not commence until the declaration contains all of the information required by section 225.82(b).

Several commenters requested that the Board eliminate the requirement that a declaration include capital ratio information because the Board already has access to capital data about depository institutions. However, the Board has retained this requirement for several reasons. The Board's experience administering the interim rule indicated that the capital data received from bank holding companies at times is different than the capital data otherwise available to the Board, particularly in the weeks immediately following the end of a quarter. In several cases, the capital information provided by a bank holding company was more favorable than the data otherwise available to the Board and thus resulted in an effective FHC election that the Board's data alone would not have supported. Moreover, the Board's experience suggests that requiring a bank holding company to submit the capital data may improve the quality of declarations submitted to the Board because it aids the company in determining whether it can in fact certify that all of its subsidiary depository institutions are well capitalized.

Section 225.82(f) of the final rule provides that a bank holding company's election to become a FHC becomes effective on the 31st day after the date that the declaration was received unless the Board notifies the company prior to that time

the election is ineffective. The rule also provides that the Board or the appropriate Federal Reserve Bank affirmatively may notify a company that its election is effective prior to the expiration of the 30-day review period.

CRA Requirement

For a bank holding company's FHC election to be effective, the final rule requires the Board to determine that each insured depository institution controlled by the bank holding company has achieved a rating of at least "satisfactory record of meeting community credit needs" at its most recent examination under the CRA. Consistent with the GLB Act, the final rule also allows the Board, when evaluating the CRA criterion, to exclude an insured depository institution that a bank holding company acquired in the 12 months prior to submitting its FHC declaration. To qualify for this exclusion, the company must submit and the appropriate Federal banking agency for the insured depository institution must accept a plan to restore the institution's CRA rating to a satisfactory level.

Commenters asked for clarification about how the Board in practice would apply the CRA requirement. In particular, commenters requested guidance on whether a bank holding company that controls an institution that has not been examined may make an effective FHC election. The GLB Act states that the Board must find a FHC election to be ineffective if not all of the subsidiary insured

depository institutions of the company have achieved at least a satisfactory CRA rating at its "most recent examination." In light of this statutory language, the final rule allows a bank holding company to qualify as a FHC if it controls an institution that has not been examined for CRA compliance and thus has not yet achieved any CRA rating, provided that the company meets all other applicable criteria. As with any other insured depository institution, if an unrated institution does not achieve at least a satisfactory rating at its next CRA examination, the FHC would be subject to the limitations that apply under section 225.84.

A number of commenters requested the Board, when determining whether the insured depository institutions controlled by a bank holding company have met the CRA requirement, to (1) publish FHC declarations for comment, particularly when the Board excludes a recently acquired institution; (2) take into account additional facts related to the CRA record of a bank holding company and the insured depository institutions it controls; and (3) condition the effectiveness of a FHC election on a company's compliance with various CRA-related criteria not mentioned in the GLB Act.

The GLB Act establishes the requirements that a bank holding company must meet to become a FHC and sets forth a detailed framework that limits the Board's evaluation of the CRA criterion. The GLB Act provides that the Board

must find a bank holding company's election to be ineffective only if all of the insured depository institutions controlled by the company, except for an institution that qualifies for the limited exclusion discussed above, have not achieved an overall CRA rating that was at least satisfactory.[13] The GLB Act specifically ties the CRA requirement to the CRA examination rating of each insured depository institution and neither provides for public comment on FHC elections nor authorizes the Board to condition the effectiveness of an election based on the CRA criterion. The Board therefore believes that incorporating the suggestions mentioned above would be inconsistent with the terms of the GLB Act and, accordingly, has not amended the rule as suggested.

Proposals to Become a Bank Holding Company and a FHC

The final rule allows a company that is not a bank holding company to submit simultaneously an application under section 3(a)(1) of the BHC Act to become a bank holding company and a request to become a FHC on consummation of that transaction. The process applicable to simultaneous filings

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[4] The Board notes that it cannot exclude a recently acquired institution with a poor CRA rating unless the appropriate Federal banking agency for the institution has accepted an affirmative correction plan to restore the institution's CRA rating to at least a satisfactory level. Thus, the company's CRA correction plan for the institution must be reviewed carefully by both the institution's primary Federal regulator and the Board.

to become both a bank holding company and a FHC is included in a new section 225.82(f). The FHC request must (1) state that the company seeks to become a FHC on consummation of its section 3 proposal to become a bank holding company and (2) certify that each depository institution that would be controlled by the company on consummation of the section 3 proposal will be both well capitalized and well managed on the date of consummation.

In order to coordinate action on these two requests, the final rule delays the official acceptance of the FHC declaration to the date the company consummates its section 3 proposal and becomes a lawful bank holding company. The Board generally will find this declaration effective on the date the company becomes a bank holding company through consummation of its section 3 proposal to become a bank holding company. However, the rule provides that a declaration will not be effective if the Board determines that (1) a depository institution that would be controlled by the company on consummation of its section 3 proposal is not both well capitalized and well managed; or (2) any insured depository institution to be controlled by the company on consummation did not achieve at least a satisfactory rating at its most recent CRA examination. The Board may make this determination at any time prior to the date the company becomes a bank holding company. Unless the Board determines otherwise based on the specific facts of the case, a

company that becomes a bank holding company by acquiring an insured depository institution with a poor CRA rating cannot attain an effective FHC election until the acquired institution achieves at least a satisfactory CRA rating.

The Board's Ability to Take Supervisory Action

Section 225.82(d) of the interim rule on elections noted that the Board retained authority to take supervisory actions against a bank holding company that had made an effective election to become a FHC. These actions could, for example, include imposing supervisory limits on the activities and acquisitions of a FHC. Although one commenter supported this provision, several commenters asserted that the Board did not have statutory authority to limit the operations of a FHC that met the applicable statutory criteria.

Section 8 of the BHC Act, section 8 of the Federal Deposit Insurance Act, and other applicable statutes long have given the Board supervisory authority to restrict the conduct of bank holding companies where necessary or appropriate to protect the safety and soundness of depository institutions or otherwise further the purpose of Federal banking laws. Although the GLB Act amended several of these provisions, it did not limit the general applicability of the Board's supervisory power over bank holding companies that become financial holding companies. Therefore, the final rule continues to provide that the Board may take appropriate

supervisory action against a FHC if the Board believes that the company does not have the appropriate financial and managerial resources to commence or conduct an activity, make an acquisition, or retain ownership of a company, or the Board believes such action is appropriate to enforce applicable Federal law.

Section 225.83 – What are the consequences of failing to continue to meet applicable capital and management requirements?

Under the GLB Act, a FHC is subject to special corrective action requirements if any depository institution controlled by the company ceases to be both well capitalized and well managed. Section 225.83 of the rule implements these provisions.

The Board received comments about a variety of aspects of section 225.83. Several commenters requested that the Board clarify when and under what circumstances a company must provide notice to the Board of a change in the capital or management status of a subsidiary depository institution. Some commenters questioned the Board's authority and decision to require a company that it is subject to a corrective action agreement to obtain the Board's prior approval to engage in an additional activity or acquires shares of any company under section 4(k). Other commenters suggested that a FHC should be allowed to acquire an institution that is less than well managed without thereafter being subject

to the prior approval requirement.

After carefully considering these comments and the Board's experience in administering the interim rule, the Board has adopted a final rule that retains the substantive provisions of section 225.83. This final rule contains the following modifications.

First, because a FHC may have access to capital and managerial data on its subsidiaries before the Board does, the final rule requires that a FHC notify the Board within 15 days of becoming aware that any of its subsidiary depository institutions has ceased to be well capitalized or well managed. The Board has amended section 225.83(b) to provide that a company becomes aware that a subsidiary depository institution is not well capitalized upon the occurrence of any material event that would change the capital category assigned to the institution for purposes of section 38 of the FDI Act (12 U.S.C. § 1831o). These are the same events that would trigger a depository institution to provide notice to its appropriate Federal banking agency under the prompt corrective action rules (see, e.g., 12 CFR 208.42(b) and (c)). A company is deemed to become aware that a subsidiary depository institution is no longer well managed at the time the depository institution receives written notice from its appropriate Federal banking agency that either the institution's composite rating or management rating is not at least

satisfactory. The final rule also provides that this notice may come from the state banking agency in an examination conducted in accordance with section 10(d) of the FDI Act.

As noted above, the GLB Act specifically authorizes the Board to impose limitations on the conduct or activities of a company that is subject to a corrective action agreement if the Board believes that such limitations are appropriate under the circumstances and consistent with the purposes of the BHC Act. The Board believes it is appropriate and consistent with the purposes of the BHC Act to require a FHC that ceases to meet applicable capital and management standards to obtain the Board's approval prior to conducting any of the activities that are newly authorized for FHCs by the GLB Act. This allows the Board to assure that the FHC is not inappropriately diverting resources from improving the condition of its subsidiary depository institutions. It also recognizes that the new powers and streamlined review process contained in the GLB Act were intended to be available only to companies that maintain strong capital and management at their subsidiary depository institutions. For these reasons, the final rule retains the prior approval requirement for companies subject to a corrective action agreement.

The Board may determine to grant approval to engage in additional activities on a general basis or only on a transaction-by-transaction basis as appropriate,

given the circumstances that caused the FHC to fail to meet the well capitalized and well managed requirements. For example, the Board has given general approval to a FHC that controlled only well capitalized and well managed institutions and then acquired a relatively small troubled institution and immediately developed a plan to improve the condition of the troubled institution. The final rule retains the requirement that a company that received notice from the Board that one or more of its subsidiary depository institutions is not both well capitalized and well managed execute an agreement with the Board to comply with the capital and management requirements applicable to financial holding companies (a "corrective action agreement"). This corrective action agreement must be executed within 45 days of the company's receipt of the notice or such additional time as the Board may allow if a company requests an extension of time, must explain the actions the company will take to correct all areas of noncompliance and the time frame within which each action will be take, must provide any other information the Board may require, and must be acceptable to the Board.

If a company subject to a corrective action agreement does not cause all of its subsidiary depository institutions to be well capitalized and well managed within 180 days (or such other time as the Board may permit) of receiving notice of a deficiency from the Board, the Board may order the company to divest ownership

or control of any depository institution the company owns or controls. The GLB Act and the final rule state that a company may comply with a Board order to divest by ceasing to engage in any activity that may be conducted only under sections 4(k), 4(n), or 4(o) of the BHC Act.[14]

Section 225.84 – What are the consequences of failing to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured depository institution subsidiaries?

The GLB Act requires the Board to prohibit a FHC from engaging in or acquiring control of a company engaged in any new activity under sections 4(k) and 4(n) of the BHC Act if any insured depository institution controlled by the FHC has received a rating of less than "satisfactory record of meeting community credit needs" in its most recent CRA examination. Section 225.84 implements this provision by providing that the statutory prohibitions apply upon receipt by the FHC of notice that any subsidiary insured depository institution has received a less-

[14] The interim rule provided that a company could choose to comply with an order to divest by ceasing to engage in any activity that would not be permissible for a bank holding company under section 4(c)(8) of the BHC Act. The Board has changed the statutory reference in order to clarify that a company that complies with a divestiture order by ceasing to engage in certain activities may continue to engage in any conduct permissible for a bank holding company under section 4(c), not just the conduct permitted by section 4(c)(8).

than-satisfactory CRA rating.

Section 225.84 provides that a FHC receives notice of a less-than-satisfactory CRA rating when (1) an insured depository institution controlled by the FHC receives written notice from its appropriate Federal banking agency that the institution has received a less-than-satisfactory CRA performance rating at its most recent examination; or (2) the FHC receives written notice from the Board that an insured depository institution it controls has received such a rating. The prohibitions imposed by section 225.84 remain in effect until each insured depository institution controlled by the FHC has received at least a satisfactory CRA rating at its most recent examination.

The Board also has considered the applicability of the CRA provisions to the situation in which a FHC acquires an insured depository institution with a poor CRA rating. The terms of the GLB Act require that the Board apply the prohibitions if "any insured depository institution subsidiary of such FHC . . . has received in its most recent examination under the CRA a rating of less than 'satisfactory record of meeting community credit needs.'" The Board believes that this language is best read to apply only when an insured depository institution receives a less-than-satisfactory CRA rating while it is under the control of the

FHC.[15] A FHC is responsible for the CRA rating of an insured depository institution only if the FHC controlled the institution during the period that the examination occurs. Moreover, it would discourage FHCs with well rated institutions from acquiring and correcting poorly rated institutions if a penalty were imposed on the FHC immediately upon acquiring the poorly rated institution. The Board believes that there are strong public benefits in allowing a bank holding company with a proven CRA performance record at its existing insured depository institutions to acquire a poorly rated insured depository institution.

Accordingly, the final rule retains the provisions of the interim rule that provide that the CRA prohibitions apply to a FHC when an insured depository institution that is controlled by the FHC receives notice from the appropriate Federal banking agency that the insured depository institution has received a less-than-satisfactory CRA rating. This notice typically will occur, if at all, at the first CRA examination after the poorly rated insured depository institution is acquired by the FHC. If the institution does not achieve at least a satisfactory CRA rating at its first CRA examination following the acquisition, the prohibitions would apply to

[15] Moreover, although the GLB Act requires the Board to impose prohibitions on the activities and acquisitions of a FHC if an insured depository institution of the FHC has received a less-than-satisfactory rating at its most recent CRA examination, the statute does not enumerate a specific procedure or time frame within which the Board must implement this requirement.

the FHC. This interpretation is consistent with the provision of the GLB Act that allows the Board when evaluating a FHC election to exclude the poor rating of any institution acquired by the company within the preceding 12 months.

The Board will monitor the FHC's progress in addressing the CRA performance of any recently acquired insured depository institution and reserves the right also to provide notice that the CRA prohibitions apply if the FHC is not taking appropriate action to improve the insured depository institution's CRA performance.

The rule states that a FHC's ability to engage in certain activities is not affected while the prohibitions are in effect. First, consistent with the GLB Act, a FHC that notified the Board it was engaged in merchant banking or insurance company investment activities prior to the time one of its subsidiary insured depository institutions received a less-than-satisfactory CRA rating may continue to make investments in the ordinary course of conducting such investment activities. Second, a FHC may engage in activities and make acquisitions under section 4(c)(8) of the BHC Act, subject to the applicable notice and approval requirements.

Section 225.85 – Is notice to or approval from the Board required prior to engaging in a financial activity?

Section 225.85 of the final rule generally permits a FHC to commence any financial activity or acquire control of a company engaged exclusively in one or more financial activities without the Board's prior approval.[16] The final rule specifically provides that a FHC may conduct any financial activity either in the United States or abroad, subject to the laws of the jurisdiction in which the activity is conducted.

Consistent with the GLB Act, section 225.85 of the final rule provides that a FHC must obtain prior Board approval to acquire more than 5 percent of the shares of a savings association. In addition, for the reasons explained above, the rule notes that the Board, in the exercise of its supervisory authority, may require a FHC to obtain prior Board approval to engage in or acquire a company engaged in a financial activity. In each of these cases, the final rule adopts the provisions of the interim rule with only minor, technical revisions.[17]

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[16] The term "financial activities" refers to activities that have been determined to be financial in nature or incidental to a financial activity either by the GLB Act or by the Board in consultation with the Secretary of the Treasury. A list of financial activities is included at section 225.86 of the rule.

[17] For example, the rule clarifies that a FHC must obtain prior Board approval to acquire control or more than 5 percent of the shares of a company that

Section 225.85(a)(3) of the interim rule also allowed a FHC to control or acquire more than 5 percent of the voting shares of a financial company that engaged in limited nonfinancial activities if certain conditions were met, including the condition that the acquired company be substantially engaged in activities that are permissible for a FHC. The Board has revised this provision in several respects in light of its experience administering the interim rule. First, the Board has clarified that the acquired must be substantially engaged in activities that are financial in nature, incidental to a financial activity, or otherwise permissible for a FHC under section 4(c) of the BHC Act.[18] The final rule provides that a company generally is considered to be "substantially engaged" in permissible activities if at least 85 percent of the company's consolidated total annual gross revenues and 85 percent of the company's consolidated total assets are attributable to the conduct of financial and incidental activities and other activities that are permissible under section 4(c) of the BHC Act.

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owns, operates, or controls a savings association.

[18] Complementary activities are subject to prior approval on a case-by-case basis under section 4(j) of the BHC Act and, therefore, a company engaged in complementary activities generally could bot be acquired using the post-transaction notice procedure. Consequently, complementary activities have not been included for the purpose of determining whether a company with mixed activities meets the requirement that it be substantially engaged in permissible activities for FHCs.

Although a FHC may acquire any percentage of shares or control of a company engaged in limited impermissible activities, the FHC need only provide a post-transaction notice under section 225.87 if such an acquisition results in control of the company. The final rule continues to require that the FHC conform, terminate, or divest all of the acquired companies impermissible activities within two years of the acquisition. A commitment to terminate impermissible activities is unnecessary, because, under the final rule as written, an acquisition would be unauthorized if the activities of the company are not conformed to Regulation Y within two years of the acquisition.

Section 225.86 – What activities are permissible for a FHC?

Section 225.86 of the rule provides a list of the activities that the GLB Act defines as financial in nature and thus permissible for a FHC to conduct directly or indirectly.

Activities Previously Determined to be Closely Related to Banking

Subsection (a)(1) permits a FHC to conduct any activity that the Board had determined by regulation or order prior to November 12, 1999, to be so closely related to banking as to be a proper incident thereto under section 4(c)(8) of the BHC Act. These activities are listed in section 225.28 of Regulation Y, and the rule incorporates these activities through a cross-reference to that section.

Subsection (a)(2) specifically lists each of the activities the Board approved by order as closely related to banking prior to November 12, 1999, and provides a citation to the most recent or the most comprehensive Board order concerning the activity. These activities are: providing administrative and other services to mutual funds; owning shares of a securities exchange; providing employment histories to third parties; check cashing and wire transmissions services; providing notary public services, selling postage stamps and postage-paid envelopes; providing vehicle registration services, and selling public transportation tickets and tokens in connection with offering banking services; and real estate title abstracting. The interim rule on activities also authorized financial holding companies to act as a certification authority for digital signatures. The final rule clarifies that this activity includes authenticating the identity of persons conducting financial and nonfinancial transactions abroad, which is consistent with the scope of activities approved by the relevant Board order (See Bayerische Hypo-und Vereinsbank AG, et al., 86 Federal Reserve Bulletin 56 (2000)).

Financial holding companies that engage in any activity pursuant to paragraph (a) must conduct the activity in accordance with the terms and conditions contained in Regulation Y and the Board's orders authorizing the activity, unless such terms

and conditions are modified by the Board.[19] Some commenters requested that the Board amend the rule to include a description of the conditions and limitations governing the conduct of each activity listed in subsection (a). The Board notes that the conditions and limits governing the activities listed in subsection (a) are set forth in section 225.28 of Regulation Y or in the orders referenced in section 225.28(a)(2), and the Board believes that adding a list of conditions and limitations to the rule would lengthen the rule without significantly facilitating compliance with it. Where companies have questions concerning the conditions or limitations applicable to an activity, the company may contact the Board or appropriate Reserve Bank.

Activities Usual in Connection with the Transaction of Banking Abroad

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[19] The Board by order has authorized bank holding companies under section 4(c)(8) to underwrite and deal in bank-ineligible securities provided that the company does not derive more than 25 percent of its revenues from such activities. See J.P. Morgan & Co., Incorporated, 75 Federal reserve Bulletin 192 (1989). The list in subsection (a)(2) does not include underwriting and dealing in bank-ineligible securities, however, because financial holding companies may conduct these activities under section 4(k)(4)(E) of the BHC Act without regard to the 25-percent revenue limit. Some commenters requested that the Board also remove the 25-percent revenue limit applicable to the conduct of securities underwriting and dealing activities by bank holding companies under section 4(c)(8) of the BHC Act. In the GLB Act, Congress authorized only those bank holding companies that meet the capital, management and CRA standards applicable to financial holding companies to engage in expanded securities activities. The Board does not believe at this time that it would be appropriate to allow bank holding companies that do not meet these standards to engage in expanded securities activities.

The GLB Act also defined as financial in nature any activity that the Board had determined by regulation in effect on November 11, 1999, to be usual in connection with the transaction of banking or other financial operations abroad (see 12 C.F.R. 211.5(d)). Subsection (b) lists the three activities that the Board had determined to be usual in connection with the transaction of banking abroad that are not otherwise defined as financial in nature by other provisions of the GLB Act. These activities are management consulting (beyond that which is allowed under section 225.28 and incorporated by reference at section 225.86(a)(1)); operating a travel agency in connection with the offering of financial services; and organizing and sponsoring a mutual fund.[20] These activities must be conducted in accordance with the limitations set forth in Regulation K regarding the scope and conduct of the activity.[21]

The GLB Act authorizes financial holding companies to conduct the activities listed at section 211.5(d) of Regulation K that, prior to the GLB Act, a bank holding company could conduct abroad. One commenter stated that the

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[20] Section 4(k)(4)(G) and the rule do not authorize a FHC to engage in activities that the Board authorized a bank holding company to provide in individual orders issued under section 4(c)(13) of the BHC Act.

[21] As discussed more thoroughly below, the notice procedures in Regulation K do not apply to activities that are conducted under section 4(k)(4) of the BHC Act and Regulation Y.

activity list at section 225.86(b) should include "commercial and other banking activities," which is the activity described at section 211.5(d)(1) of Regulation K. As a general matter, the GLB Act was intended to expand the range of nonbanking activities that a FHC could conduct and was not meant to affect the provisions of the BHC Act relating to the conduct of banking activities. Specifically, the GLB did not amend the prior approval requirement at section 3 of the BHC Act that governs the acquisition by a bank holding company, including a FHC, of a domestic bank. The Board therefore believes that the GLB Act did not authorize a FHC to conduct commercial and other banking activities in the United States by using the post-transaction notice procedure. In addition, the Board believes that a FHC's acquisition of a foreign bank should continue to be subject to the procedures set forth in Regulation K in order to ensure that the Board fulfills its responsibilities as home country supervisor in relation to international expansion of U.S. banking organizations, consistent with the standards established by the Basle Supervision Committee. Accordingly, the Board has not included commercial and other banking activities on the activities list at section 225.86 that may be conducted by using the post-transaction notice procedure.

Other Activities Defined as Financial in Nature by the GLB Act

In addition to authorizing activities that the Board previously has authorized a

bank holding company to conduct, the GLB defines several other activities as financial in nature. These activities, which are listed at sections 4(k)(4)(A)-(E), (H), and (I) of the BHC Act, include acting as principal, agent or broker in the sale of insurance products (including annuities and reinsurance products); underwriting, dealing in, and making a market in securities without any limitation on revenues that can be derived from bank ineligible securities; and merchant banking an insurance company investment activities. Subsection 225.86(c) provides that a FHC may engage in any activity set forth in the above-referenced sections of the BHC Act. These activities must be conducted in accordance with applicable restrictions and limitations contained in the GLB Act and any implementing regulations or supervisory guidance adopted by the Board.[22]

Several commenters on the interim rule requested that the Board amend section 225.86 to eliminate cross references to the GLB Act and other sections of Regulation Y and to provide a complete description of each activity permissible for a FHC, including the conditions and limitations applicable to that activity. The Board believes the activities incorporated in the rule by reference are easily located

[22] For example, the Board, in conjunction with the Secretary of the Treasury, adopted and requested public comment on an interim rule implementing the merchant banking investment provisions of the GLB Act.
See 65 FR 16460 (March 28, 2000).

elsewhere in the Board's Regulation Y and the BHC Act, and that including the requested provisions in the rule would lengthen the rule without adding a commensurate level of convenience. Accordingly, the Board has not included the requested provisions in the final rule. The Board has, however, prepared a single list of all activities permitted under section 225.86 that may be obtained from the Reserve Banks.

The GLB Act directs the Board, by regulation or order, to define the extent to which three activities listed in section 4(k)(5) are financial in nature or incidental to a financial activity. The Board anticipates proposing a rule to implement section 4(k)(5) in the near future.

The GLB Act also permits the Board, in consultation with the Secretary of the Treasury, to determine that additional activities not listed in section 225.86 are financial in nature of incidental thereto. In this regard, the Board recently determined by rule that acting as a finder is an activity that is incidental to a financial activity (see 65 FR _____ (December xx, 2000)). In addition, the Board has requested comment on a proposal to determine that providing real estate brokerage and management services are activities that are financial in nature or incidental thereto (see 65 FR _____ (December xx, 2000)). The Board also has requested comment on a proposal to allow FHCs, as an activity that is complementary to a

financial activity, to invest in companies engaged in certain data processing and Internet-related activities (see 65 FR _____ (December xx, 2000)).

Interplay Between Section 225.86 and Other Authorities

Although the Board is not listing each limitation and condition that applies to the activities described at section 225.86, the Board believes that some general guidance on the how the limitations apply is warranted in light of a number of public comments and informal inquiries received by Board staff on this subject. As the Board previously has indicated in connection with issuing the interim rules, the various sections that authorize activities for bank holding companies and financial holding companies, most notably sections 4(c)(8), 4(c)(13), and 4(k), remain separate sources of authority under which a FHC may engage in various activities. If an activity is listed in more than one provision of section 4, the FHC may choose to conduct the activity under any applicable provision, subject only to the procedures and limitations that the chosen source of authority imposes on the activity.

For example, a FHC that wishes to engage in securities underwriting could choose to conduct that activity under section 4(c)(8). If it chose that source of authority, the FHC would be required to obtain prior Board approval under subpart C of Regulation Y and would be required to conduct the underwriting activity

subject to the revenue restrictions and other limitations applicable to securities underwriting activities conducted under section 4(c)(8). Alternatively, a FHC could engage in securities underwriting under section 4(k)(4)(E), in which case only a post-transaction notice would be required and the limitations of section 4(c)(8) would not apply to the activity.

As discussed above, the final rule states that a FHC may conduct any activity listed at section 225.86 either in the United States or abroad using the post-transaction notice procedure.[23] As with the conduct of financial activities in the United States, the limitations that apply to an activity conducted abroad by a FHC depend on the legal authority under which the FHC conducts the activity. If the FHC conducts an activity abroad under section 4(c)(13) of the BHC Act as

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[23] The GLB Act states that a FHC may conduct in the United States those activities previously authorized by the Board at section 211.5(d) of Regulation K (emphasis added). The Board has received several inquiries as to whether a FHC also may conduct these activities outside the United States using the post-transaction notice. The GLB Act generally intended to authorize FHCs to conduct all of the activities it defined as financial in nature in the United and abroad using the streamlined procedure. Moreover, all but the three Regulation K activities listed separately at section 225.86(b) have been authorized in the same form under Regulation Y. The preexisting Regulation Y activities authorized for FHCs do not have the "in the United States" reference and may be conducted abroad using the streamlined procedure. The Board has determined, as reflected in this final rule, that no regulatory purpose would be served by requiring a FHC to follow the more restrictive Regulation K procedures to conduct the remaining three listed activities abroad. An FHC therefore may conduct all activities listed at section 225.86 either in the United States or abroad using the post-transaction notice procedure.

implemented by section 211.5(d) of Regulation K, all the requirements and investment limitations described in section 211.5 would apply. If, however, a FHC conducts an activity listed at 4(c)(13) abroad using section 4(k)(4)(G) of the BHC Act, which incorporates by reference the activities authorized by the Board under section 4(c)(13), the Regulation K general consent procedures and investment limitations do not apply.

Section 225.87 – Is notice to the Board required after engaging in a financial activity?

Section 225.87(a) of the final rule describes when a FHC must provide notice to the Board after commencing or acquiring a company engaged in a permissible financial activity. As a general matter, the final rule states that a FHC may engage in any activity listed in section 225.86 by providing the appropriate Reserve Bank with a notice within 30 days of commencing the activity or acquiring control of a company engaged in the activity. The interim rule provided that this notice could take the form of a letter that contained information about the activity commenced and the company that conducts it. In response to public comments and to ensure that the post-transaction notices contain the basic information necessary for the Board to monitor a FHC's activities, the Board has designated forms that domestic and foreign financial holding companies must use to satisfy the

post-transaction notice requirement.[24] The authorized form requires limited information about the activity commenced or the company acquired, as well as information about the location of the company conducting the activity and its status within the FHC's organization structure. The appropriate form for submitting the post-transaction notice may be obtained from any Federal Reserve Bank or from the Board.

Section 225.87(b) of the final rule outlines the exceptions under which post-transaction notice is not required to engage in an activity or make an acquisition. Consistent with the GLB Act, no notice is required in connection with the acquisition of shares of a company if the FHC would not control the company after the acquisition. The final rule retains this provision.

The rule also provides that a FHC that properly has notified the appropriate Federal Reserve Bank that the FHC is engaged in securities underwriting and dealing, merchant banking, or insurance company investment activities generally is not required to provide an additional post-transaction notice when the FHC makes particular investments in the ordinary of course of conducting those activities. Notwithstanding this exception for individual investments, investments in more than

[24] Domestic financial holding companies should use the FR Y-6A, which soon will be replaced by the FR Y-10, and foreign banking organizations should use the FR Y-7A, which soon will be replaced by the FR Y-10F.

5 percent of the shares, assets, or other ownership interests of a company that have a cost that exceeds the lesser of

5 percent of the FHC's Tier I capital or $200 million must be reported under section 225.87. In response to comments that the provisions of the interim rule on activities related to merchant banking investments were difficult to understand, the Board has restructured those provisions to explain more succinctly when notice is and is not required for individual merchant banking investments.

The final rule also adds a new exception at section 225.87(b)(2) to the general post-transaction notice requirement. This new section provides that a FHC that has submitted a post-transaction notice in connection with a particular financial activity is not required to submit an additional notice under this section to commence the activity de novo through any other authorized subsidiary of the FHC without providing additional notice under section 225.87(a).[25] This exception applies only if the FHC already controls the company through which the activity will be commenced, and, thus, the acquisition by a FHC of control of a company engaged

[25] One commenter stated that a FHC should be allowed to commence the same financial activity in different subsidiaries using different sources of authority. As discussed above, some activities are authorized by more than one source of authority. A FHC therefore may commence the same activity in different subsidiaries using different sources of authority in accordance with the procedures applicable to the chosen authority.

in a listed activity does not qualify for this exception. In addition, this new exception is not available if the Board, in the exercise of its supervisory authority, informs the FHC that notice is required for the commencement de novo of a financial activity.

Section 225.88 – How to request the Board to determine that an activity is financial in nature or incidental to a financial activity?

Under the GLB Act, the Board, in consultation with the Secretary of the Treasury, may expand the list of activities that are permissible for a FHC by determining that an additional activity is financial in nature or incidental to a financial activity. Section 225.88 permits a FHC or other interested party to request such a determination.

The rule provides that a request for a determination that an activity is financial in nature or incidental to a financial activity must identify and define the activity for which a determination is sought, explain in detail why the activity should be considered financial in nature or incidental, and provide information supporting the requested determination and any other information requested by the Board. The rule requires the Board to provide the Secretary of the Treasury a copy of the request and consult with the Secretary in accordance with section 4(k)(4)(2) of the BHC Act. The rule also allows the Board, after

consultation with the Secretary, to publish a description of the proposal in the Federal Register with a request for public comment. The Board will attempt to make a final decision on a request filed under section 225.88 within 60 days of completion of both the consultative process and the public comment period, if any.

Like the interim rule, section 225.88 of the final rule also allows a FHC to request an advisory opinion from the Board regarding the scope an activity already determined to be financial and listed in section 225.86. Such a request must be in writing and provide a detailed description of the activity, product, or service about which the company is inquiring, an explanation supporting an interpretation regarding the scope of the permissible financial activity, and any other information required by the Board. The Board will respond to a requester within 45 days of receiving a complete written request.

Several commenters suggested that the Board, without waiting for a specific request, evaluate whether an activity is financial in nature or incidental to a financial activity if another Federal banking agency has authorized or authorizes depository institutions under its supervision to conduct the activity. The GLB Act allows the Board at its own initiative to propose authorizing an additional activity. In this regard, the Board anticipates monitoring developments in the banking and financial services industries in order to identify new activities that might be considered

financial in nature or incidental thereto. However, the Board does not believe it is appropriate to propose as financial in nature or incidental all activities that another Federal banking agency may have authorized. The standards the Board must consider when authorizing a financial activity under the GLB Act may differ from the standards governing the authorization of new activities under other Federal banking laws. In light of these differences, the requirement that the Board consult with the Secretary of the Treasury in connection with financial activities, and the potential impact of new activities on the depository institution subsidiaries of financial holding companies, the Board believes that it is important to evaluate each activity authorized by another Federal banking agency on a case-by-case basis before proposing that the financial holding companies be allowed to conduct the activity.

Section 225.89 – How to request approval to engage in an activity that is complementary to a financial activity?

The Board has adopted without amendment section 225.89 as originally proposed. This section includes a procedure for a FHC to obtain the Board's prior approval to engage in activity that the company believes is complementary to a financial activity in which the company is engaged. Generally, such a request must identify the proposed complementary activity and specifically discuss how it

would be conducted; identify the financial activity for which the proposed activity would be complementary and provide information to support why the proposed activity should be considered complementary to the identified financial activity; describe the scope and relative size of the proposed activity; discuss the risks that conducting the activity reasonably may be expected to post to the safety and soundness of the company's subsidiary depository institutions and the financial system generally; describe the potential adverse effects and potential public benefits that could result from conducting the activity; and provide any additional information requested by the Board.

In acting on a proposal to engage in a complementary activity, the Board will consider whether the activity is complementary to the identified financial activity, whether the proposed activity would pose a substantial risk to the safety or soundness of depository institutions or the financial system generally, and whether the proposal could be expected to produce benefits to the public that outweigh possible adverse effects. The Board will act on a request for prior approval to engage in a complementary activity within the time period described at section 4(j) of the BHC Act.

Regulatory Flexibility Act

The Board has reviewed the final rule in accordance with the Regulatory

Flexibility Act. This final rule implements provisions of Title I of the Gramm-Leach-Bliley Act that allow entities that qualify as FHCs to engage in a broad range of securities, insurance, and other financial activities by providing the Board with a simple, post-transaction notice. The rule should enable bank holding companies and foreign banks that qualify as financial holding companies to engage in an expanded range of activities by, in most cases, submitting a simple form to the appropriate Federal Reserve Bank describing the relevant activity.

The FHC election procedures described in this rule are voluntary, and the criteria set forth in the rule for an effective election filing are those established by the GLB Act. The rule implements this part of the GLB Act by requiring a simple, one-time procedure involving minimum paperwork to fulfill the statutory election requirement. In addition, the new powers described in the GLB Act and implemented by this rule should enhance the overall efficiency of bank holding companies and the other financial companies that seek to affiliate with them. The rule applies to all companies that attempt to qualify as financial holding companies, regardless of their size, and allows small organizations to take advantage of the broad new powers conferred by the GLB Act with minimal additional burden.

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 reviewed the 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, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0292.

The collection of information requirements in this final rulemaking are found in 12 CFR 225.82 (a) and (b), 225.83 (b) and (c); and 225.87, 225.88, and 225.89. This information is required to evidence compliance with the requirements of Title I of the Gramm-Leach-Bliley Act (Pub. L. No. 106-103, 113 Stat. 1338 (1999)) which amends section 4 of the Bank Holding Company Act (12 U.S.C. 1843). The respondents are current and future bank holding companies and foreign banking organizations; and financial holding companies, respectively.

The notice cited in 12 CFR 225.82(a) provides that a bank holding company may elect to become a financial holding company by filing a simple written declaration with the Federal Reserve. The declaration must include information identifying the company's subsidiary depository institutions and their capital ratios, and a certification that each depository institution is well capitalized and well managed (for specific details, see 12 CFR 225.82 (b)). There will be no reporting

form for this information collection. The agency form number for this declaration will be the FR 4010. The Board estimates that approximately 500 bank holding companies will file this declaration during the first year and that it will take approximately 15 minutes to complete this information. This would result in estimated annual burden of 125 hours. Based on a rate of $20 per hour, the annual cost to the public for this information collection is estimated to be $2,500.

The notice cited in 12 CFR 225.83(b) provides that a financial holding company with subsidiary depository institutions that cease to be well managed or capitalized, must notify the Federal Reserve and execute an agreement acceptable to the Federal Reserve within 45 days. If the financial holding company would like to request additional time they must provide an explanation of why an extension is necessary. For specific details about what should be included in this agreement, see 12 CFR 225.83(c)(3). There will be no reporting form for this information collection. The agency form number will be the FR 4012. The Federal Reserve estimates that due to the new incentives, only 10 institutions will fall into this category per year and that it would take approximately 10 hours to complete this information. This would result in estimated annual burden of 100 hours. Based on a rate of $20 per hour, the annual cost to the public for this information collection

would be $2,000.

The post-transaction notice cited in 12 CFR 225.87(a) provides that a financial holding company that commences an activity or acquires shares of a company engaged in an activity listed in Sec. 225.86, must notify the appropriate Federal Reserve Bank in writing within 30 calendar days. See 12 CFR 225.87(a) for specific details on the content of the notice. The Federal Reserve estimates that financial holding companies will make 450 filings of this notice annually and that it would take approximately 1 hour to complete this notification. This would result in an estimated annual burden of 450 hours. Based on a rate of $20 per hour, the annual cost to the public for this information collection would be $9,000.

A bank holding company may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the

Office of Management and Budget, Paperwork Reduction Project (7100-0292), Washington, DC 20503.

Appendix B

Text of FHC Rule

List of Subjects in 12 CFR 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225 – BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is amended to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1843(k), 1844(b), 1972(*l*), 2903, 2905, 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. In subpart A, § 225.1(c), paragraphs (9), (10), (11), (12), and (13) are redesignated as paragraphs (10), (11), (12), (13), and (14), respectively, and a new paragraph (9) is added to read as follows:

§ 225.1 Authority, Purpose, and Scope

* * * * *

(c) * * *

(9) Subpart I establishes the procedure by which a bank holding company may elect to become a financial holding company, enumerates the consequences if a financial holding company ceases to meet a requirement applicable to a financial holding company, lists the activities in which a financial holding company may engage, establishes the procedure by which a person may request the Board to authorize additional activities as financial in nature or incidental thereto, and establishes the procedure by which a financial holding company may seek approval to engage in an activity that is complementary to a financial activity.

3. In subpart A, § 225.2 is revised to read as follows:

§ 225.2 Definitions

* * * * *

(r) * * *

(2) Insured and uninsured depository institution–(i) Insured depository institution. In the case of an insured depository institution, "well capitalized" means that the institution has and maintains at least the capital levels required to be well

capitalized under the capital adequacy regulations or guidelines applicable to the institution that have been adopted by the appropriate Federal banking agency for the institution under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

(ii) Uninsured depository institution. In the case of a depository institution the deposits of which are not insured by the Federal Deposit Insurance Corporation, "well capitalized" means that the institution has and maintains at least the capital levels required for an insured depository institution to be well capitalized.

* * * * *

(s) Well managed–(1) In general. Except as otherwise provided in this part, a company or depository institution is well managed if:

(i) At its most recent inspection or examination or subsequent review by the appropriate Federal banking agency for the company or institution (or the appropriate state banking agency in an examination described in section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)), the company or institution received:

(A) At least a satisfactory composite rating; and

(B) At least a satisfactory rating for management, if such rating is given.

(ii) In the case of a company or depository institution that has not received an inspection or examination rating, the Board has determined, after a review of the managerial and other resources of the company or depository institution and after consulting with the appropriate Federal and state banking agencies, as applicable, for the company or institution, that the company or institution is well managed.

(2) Merged depository institutions–(i) Merger involving well managed institutions. A depository institution that results from the merger of two or more depository institutions that are well managed shall be considered to be well managed unless the Board determines otherwise after consulting with the appropriate Federal and state banking agencies, as applicable, for each depository institution involved in the merger.

(ii) Merger involving a poorly rated institution. A depository institution that results from the merger of a depository institution that is well managed with one or more depository institutions that are not well managed or have not been examined shall be considered to be well managed if the Board determines, after a review of the managerial and other resources of the resulting depository institution and after consulting with the appropriate Federal and state banking agencies for the institutions involved in the merger, as applicable, that the resulting institution is well

managed.

(3) Foreign banking organizations. Except as otherwise provided in this part, a foreign banking organization is considered well managed if the combined operations of the foreign banking organization in the United States have received at least a satisfactory composite rating at the most recent annual assessment.

(t) Depository institution. For purposes of this part, the term "depository institution" has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

* * * * *

4. In subpart B, section 225.14(c)(2) is revised to read as follows:

§ 225.14 Expedited action for certain bank acquisitions by well-run bank holding companies

* * * * *

(c) * * *

(2) Well managed organization–(i) Satisfactory examination ratings. At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least

80 percent of the total risk-weighted assets of insured depository institutions controlled by the holding company are well managed and have received at least a satisfactory rating for compliance at their most recent examination if such rating was given;

* * * * *

5. In subpart C, section 225.23(c)(2) is revised to read as follows:

§ 225.23 Expedited action for certain nonbanking proposals by well-run bank holding companies

* * * * *

(c) * * *

(2) Well managed organization–(i) Satisfactory examination ratings. At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 80 percent of the total risk-weighted assets of insured depository institutions controlled by the holding company are well managed and have received at least a satisfactory rating for compliance at their most recent examination if such rating was given;

* * * * *

6. In subpart I, sections 225.81 through 225.94 are revised to read as follows:

§ 225.81 What is a financial holding company?

(a) Definition. A financial holding company is a bank holding company that meets the requirements of this section.

(b) Requirements to be a financial holding company. In order to be a financial holding company:

(1) All depository institutions controlled by the bank holding company must be and remain well capitalized;

(2) All depository institutions controlled by the bank holding company must be and remain well managed; and

(3) The bank holding company must have made an effective election to become a financial holding company.

(c) Requirements for foreign banks that are or are owned by bank holding companies.

(1) Foreign banks with U.S. branches or agencies that also own U.S. banks. A foreign bank that is a bank holding company and that operates a branch or agency or owns or controls a commercial lending company in the United States

must comply with the requirements of this section, § 225.82, and §§ 225.90 through 225.92 in order to be a financial holding company. After it becomes a financial holding company, a foreign bank described in this paragraph will be subject to the provisions of §§ 225.83, 225.84, 225.93, and 225.94.

(2) Bank holding companies that own foreign banks with U.S. branches or agencies. A bank holding company that owns a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States must comply with the requirements of this section, § 225.82, and §§ 225.90 through 225.92 in order to be a financial holding company. After it becomes a financial holding company, a bank holding company described in this paragraph will be subject to the provisions of §§ 225.83, 225.84, 225.93, and 225.94.

§ 225.82 How does a bank holding company elect to become a financial holding company?

(a) Filing requirement. A bank holding company may elect to become a financial holding company by filing a written declaration with the appropriate Reserve Bank. A declaration by a bank holding company is considered to be filed on the date that all information required by paragraph (b) of this section is received

by the appropriate Reserve Bank.

(b) Contents of declaration. To be deemed complete, a declaration must:

(1) State that the bank holding company elects to be a financial holding company;

(2) Provide the name and head office address of the bank holding company and of each depository institution controlled by the bank holding company;

(3) Certify that each depository institution controlled by the bank holding company is well capitalized as of the date the bank holding company submits its declaration;

(4) Provide the capital ratios as of the close of the previous quarter for all relevant capital measures, as defined in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o), for each depository institution controlled by the company on the date the company submits its declaration; and

(5) Certify that each depository institution controlled by the company is well managed as of the date the company submits its declaration.

(c) Effectiveness of election. An election by a bank holding company to become a financial holding company shall not be effective if, during the period provided in paragraph (e) of this section, the Board finds that, as of the date the

declaration was filed with the appropriate Reserve Bank:

(1) Any insured depository institution controlled by the bank holding company (except an institution excluded under paragraph (d) of this section) has not achieved at least a rating of "satisfactory record of meeting community credit needs" under the Community Reinvestment Act at the institution's most recent examination; or

(2) Any depository institution controlled by the bank holding company is not both well capitalized and well managed.

(d) Consideration of the CRA performance of a recently acquired insured depository institution. Except as provided in paragraph (f) of this section, an insured depository institution will be excluded for purposes of the review of the Community Reinvestment Act rating provisions of paragraph (c)(1) of this section if:

(1) The bank holding company acquired the insured depository institution during the 12-month period preceding the filing of an election under paragraph (a) of this section;

(2) The bank holding company has submitted an affirmative plan to the appropriate Federal banking agency for the institution to take actions necessary for

the institution to achieve at least a rating of "satisfactory record of meeting community credit needs" under the Community Reinvestment Act at the next examination of the institution; and

(3) The appropriate Federal banking agency for the institution has accepted the plan described in paragraph (2).

(e) Effective date of election–(1) In general. An election filed by a bank holding company under paragraph (a) of this section is effective on the 31st calendar day after the date that a complete declaration was filed with the appropriate Reserve Bank, unless the Board notifies the bank holding company prior to that time that the election is ineffective.

(2) Earlier notification that an election is effective. The Board or the appropriate Reserve Bank may notify a bank holding company that its election to become a financial holding company is effective prior to the 31st day after the date that a complete declaration was filed with the appropriate Reserve Bank. Such a notification must be in writing.

(f) Requests to become a financial holding company submitted as part of an application to become a bank holding company–(1) In general. A company that is not a bank holding company and has applied for the Board's approval to become a

bank holding company under section 3(a)(1) of the BHC Act (12 U.S.C. 1842(a)(1)) may as part of that application submit a request to become a financial holding company.

(2) Contents of request. A request to become a financial holding company submitted as part of an application to become a bank holding company must:

(i) State that the company seeks to become a financial holding company on consummation of its proposal to become a bank holding company; and

(ii) Certify that each depository institution that would be controlled by the company on consummation of its proposal to become a bank holding company will be both well capitalized and well managed as of the date the company consummates the proposal.

(3) Request becomes a declaration and an effective election on date of consummation of bank holding company proposal. A complete request submitted by a company under this paragraph (f) becomes a complete declaration by a bank holding company for purposes of section 4(*l*) of the BHC Act and becomes an effective election for purposes of section 225.81(b) on the date that the company lawfully consummates its proposal under section 3 of the BHC Act, unless the

Board notifies the company at any time prior to consummation of the proposal and that:

(i) Any depository institution that would be controlled by the company on consummation of the proposal will not be both well capitalized and well managed on the date of consummation; or

(ii) Any insured depository institution that would be controlled by the company on consummation of the proposal has not achieved at least a rating of "satisfactory record of meeting community credit needs" under the Community Reinvestment Act at the institution's most recent examination.

(4) Limited exclusion for recently acquired institutions not available. Unless the Board determines otherwise, an insured depository institution that is controlled or would be controlled by the company as part of its proposal to become a bank holding company may not be excluded for purposes of evaluating the Community Reinvestment Act criterion described in this paragraph or in paragraph (d) of this section.

(g) Board's authority to exercise supervisory authority over a financial holding company. An effective election to become a financial holding company does not in any way limit the Board's statutory authority under the BHC Act, the

Federal Deposit Insurance Act, or any other relevant Federal statute to take appropriate action, including imposing supervisory limitations, restrictions, or prohibitions on the activities and acquisitions of a bank holding company that has elected to become a financial holding company, or enforcing compliance with applicable law.

§ 225.83 What are the consequences of failing to continue to meet applicable capital and management requirements?

(a) Notice by the Board. If the Board finds that a financial holding company controls any depository institution that is not well capitalized or well managed, the Board will notify the company in writing that it is not in compliance with the applicable requirement(s) for a financial holding company and identify the area(s) of noncompliance. The Board may provide this notice at any time before or after receiving notice from the financial holding company under paragraph (b) of this section.

(b) Notification by a financial holding company required–(1) Notice to Board. A financial holding company must notify the Board in writing within 15 calendar days of becoming aware that any depository institution controlled by the company has ceased to be well capitalized or well managed. This notification

must identify the depository institution involved and the area(s) of noncompliance.

(2) Triggering events for notice to the Board–(i) Well capitalized. A company becomes aware that a depository institution it controls is no longer well capitalized upon the occurrence of any material event that would change the category assigned to the institution for purposes of section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o). See 12 CFR 208.42(b) and (c).

(ii) Well managed. A company becomes aware that a depository institution it controls is no longer well managed at the time the depository institution receives written notice from the appropriate Federal or state banking agency that either its composite rating or its rating for management is not at least satisfactory.

(c) Execution of agreement acceptable to the Board–(1) Agreement required; time period. Within 45 days after receiving a notice from the Board under paragraph (a) of this section, the company must execute an agreement acceptable to the Board to comply with all applicable capital and management requirements.

(2) Extension of time for executing agreement. Upon request by a company, the Board may extend the 45-day period under paragraph (c)(1) of this section if the Board determines that granting additional time is appropriate under the circumstances. A request by a company for additional time must include an

explanation of why an extension is necessary.

(3) Agreement requirements. An agreement required by paragraph (c)(1) of this section to correct a capital or management deficiency must:

(i) Explain the specific actions that the company will take to correct all areas of noncompliance;

(ii) Provide a schedule within which each action will be taken;

(iii) Provide any other information that the Board may require; and

(iv) Be acceptable to the Board.

(d) Limitations during period of noncompliance–(1) General. Until the Board determines that a company has corrected the conditions described in a notice under paragraph (a) of this section:

(i) The Board may impose any limitations or conditions on the conduct or activities of the company or any of its affiliates as the Board finds to be appropriate and consistent with the purposes of the BHC Act; and

(ii) The company and its affiliates may not commence any additional activity or acquire control or shares of any company under section 4(k) of the BHC Act without prior approval from the Board or as provided in paragraph (d)(2) of this section.

(e) Consequences of failure to correct conditions within 180 days--(1) Divestiture of depository institutions. If a company does not correct the conditions described in a notice under paragraph (a) of this section within 180 days of receipt of the notice or such additional time as the Board may permit, the Board may order the company to divest ownership or control of any depository institution owned or controlled by the company. Such divestiture must be done in accordance with the terms and conditions established by the Board.

(2) Alternative method of complying with a divestiture order. A company may comply with an order issued under paragraph (e)(1) of this section by ceasing to engage (both directly and through any subsidiary that is not a depository institution or a subsidiary of a depository institution) in any activity that may be conducted only under section 4(k), (n), or (o) of the BHC Act. The termination of activities must be completed within the time period referred to in paragraph (e)(1) of this section and in accordance with the terms and conditions acceptable to the Board.

(f) Consultation with other agencies. In taking any action under this section, the Board will consult with the relevant Federal and state regulatory authorities.

§ 225.84 What are the consequences of failing to maintain a satisfactory or

better rating under the Community Reinvestment Act at all insured depository institution subsidiaries?

(a) Limitations on activities–(1) In general. Upon receiving a notice regarding performance under the Community Reinvestment Act in accordance with paragraph (a)(2) of this section, a financial holding company may not:

(i) Commence any additional activity under section 4(k) or 4(n) of the BHC Act; or

(ii) Directly or indirectly acquire control, including all or substantially all of the assets, of a company engaged in any activity under section 4(k) or 4(n) of the BHC Act.

(2) Notification. A financial holding company receives notice for purposes of this paragraph at the time that the appropriate Federal banking agency for any insured depository institution controlled by the company or the Board provides notice to the institution or company that the institution has received a rating of "needs to improve record of meeting community credit needs" or "substantial noncompliance in meeting community credit needs" in the institution's most recent examination under the Community Reinvestment Act.

(b) Exceptions for certain activities–(1) Continuation of investment activities.

The prohibition in paragraph (a) of this section does not prevent a financial holding company from continuing to make investments in the ordinary course of conducting merchant banking activities under section 4(k)(4)(H) of the BHC Act or insurance company investment activities under section 4(k)(4)(I) of the BHC Act if:

(i) The financial holding company lawfully was a financial holding company and commenced the merchant banking activity under section 4(k)(4)(H) of the BHC Act or the insurance company investment activity under section 4(k)(4)(I) of the BHC Act prior to the time that an insured depository institution controlled by the financial holding company received a rating below "satisfactory record of meeting community credit needs" under the Community Reinvestment Act; and

(ii) The Board has not, in the exercise of its supervisory authority, advised the financial holding company that these activities must be restricted.

(2) Activities that are closely related to banking. The prohibition in paragraph (a) of this section does not prevent a financial holding company from commencing any additional activity or acquiring control of a company engaged in any activity under section 4(c) of the BHC Act, if the company complies with the notice, approval, and other requirements of that section and section 4(j) of the BHC

Act.

(c) Duration of Prohibitions. The prohibitions described in paragraph (a) of this section shall continue in effect until such time as each insured depository institution controlled by the financial holding company has achieved at least a rating of "satisfactory record of meeting community credit needs" under the Community Reinvestment Act at the most recent examination of the institution.

§ 225.85 Is notice to or approval from the Board required prior to engaging in a financial activity?

(a) No prior approval required generally–(1) In general. A financial holding company and any subsidiary (other than a depository institution or subsidiary of a depository institution) of the financial holding company may engage in any activity listed in § 225.86, or acquire shares or control of a company engaged exclusively in activities listed in § 225.86, without providing prior notice to or obtaining prior approval from the Board unless required under paragraph (c) of this section.

(2) Acquisitions by a financial holding company of a company engaged in other permissible activities. In addition to the activities listed in § 225.86, a company acquired or to be acquired by a financial holding company under paragraph (a)(1) of this section may engage in activities otherwise permissible for a

financial holding company under this part in accordance with any applicable notice, approval, or other requirement.

(3) Acquisition by a financial holding company of a company engaged in limited nonfinancial activities–(i) Mixed acquisitions generally permitted. A financial holding company may under this subpart acquire more than 5 percent of the outstanding shares of any class of voting securities or control of a company that is not engaged exclusively in activities that are financial in nature, incidental to a financial activity, or otherwise permissible for the financial holding company under section 4(c) of the BHC Act if:

(A) The company to be acquired is substantially engaged in activities that are financial in nature, incidental to a financial activity, or otherwise permissible for the financial holding company under section 4(c) of the BHC Act;

(B) The financial holding company complies with the notice requirements of § 225.87, if applicable; and

(C) The company conforms, terminates, or divests, within 2 years of the date the financial holding company acquires shares or control of the company, all activities that are not financial in nature, incidental to a financial activity, or otherwise permissible for the financial holding company under section 4(c) of the

BHC Act.

(ii) Definition of "substantially engaged." Unless the Board determines otherwise, a company will be considered to be "substantially engaged" in activities permissible for a financial holding company for purposes of paragraph (a)(3)(A) of this section if at least 85 percent of the company's consolidated total annual gross revenues is derived from and at least 85 percent of the company's consolidated total assets is attributable to the conduct of activities that are financial in nature, incidental to a financial activity, or otherwise permissible for a financial holding company under section 4(c) of the BHC Act.

(b) Locations in which a financial holding company may conduct financial activities. A financial holding company may conduct any activity listed in § 225.86 at any location in the United States or at any location outside of the United States subject to the laws of the jurisdiction in which the activity is conducted.

(c) Circumstances under which prior notice to the Board is required–(1) Acquisition of more than 5 percent of the shares of a savings association. A financial holding company must obtain Board approval in accordance with section 4(j) of the BHC Act and either § 225.14 or § 225.24, as appropriate, prior to acquiring control or more than 5 percent of the outstanding shares of any class of

voting securities of a savings association or of a company that owns, operates, or controls a savings association.

(2) Supervisory actions. The Board may, if appropriate in the exercise of its supervisory or other authority, including under § 225.82(g) or § 225.83(d) or other relevant authority, require a financial holding company to provide notice to or obtain approval from the Board prior to engaging in any activity or acquiring shares or control of any company.

§ 225.86 What activities are permissible for any financial holding company?

The following activities are financial in nature or incidental to a financial activity:

(a) Activities determined to be closely related to banking. (1) Any activity that the Board had determined by regulation prior to November 12, 1999, to be so closely related to banking as to be a proper incident thereto, subject to the terms and conditions contained in this part, unless modified by the Board. These activities are listed in § 225.28.

(2) Any activity that the Board had determined by an order that was in effect on November 12, 1999, to be so closely related to banking as to be a proper incident thereto, subject to the terms and conditions contained in this part and those

in the authorizing orders. These activities are:

(i) Providing administrative and other services to mutual funds (Societe Generale, 84 Federal Reserve Bulletin 680 (1998));

(ii) Owning shares of a securities exchange (J.P. Morgan & Co, Inc., and UBS AG, 86 Federal Reserve Bulletin 61 (2000));

(iii) Acting as a certification authority for digital signatures and authenticating the identity of persons conducting financial and nonfinancial transactions (Bayerische Hypo- und Vereinsbank AG, et al., 86 Federal Reserve Bulletin 56 (2000));

(iv) Providing employment histories to third parties for use in making credit decisions and to depository institutions and their affiliates for use in the ordinary course of business (Norwest Corporation, 81 Federal Reserve Bulletin 732 (1995));

(v) Check cashing and wire transmission services (Midland Bank, PLC, 76 Federal Reserve Bulletin 860 (1990) (check cashing); Norwest Corporation, 81 Federal Reserve Bulletin 1130 (1995) (money transmission));

(vi) In connection with offering banking services, providing notary public services, selling postage stamps and postage-paid envelopes, providing vehicle registration services, and selling public transportation tickets and tokens (Popular,

Inc., 84 Federal Reserve Bulletin 481 (1998)); and

(vii) Real estate title abstracting (The First National Company, 81 Federal Reserve Bulletin 805 (1995)).

(b) Activities determined to be usual in connection with the transaction of banking abroad. Any activity that the Board had determined by regulation in effect on November 11, 1999, to be usual in connection with the transaction of banking or other financial operations abroad (see § 211.5(d) of this chapter), subject to the terms and conditions in part 211 and Board interpretations in effect on that date regarding the scope and conduct of the activity. In addition to the activities listed in paragraphs (a) and (c) of this section, these activities are:

(1) Providing management consulting services, including to any person with respect to nonfinancial matters, so long as the management consulting services are advisory and do not allow the financial holding company to control the person to which the services are provided;

(2) Operating a travel agency in connection with financial services offered by the financial holding company or others; and

(3) Organizing, sponsoring, and managing a mutual fund, so long as:

(i) The fund does not exercise managerial control over the entities in which

the fund invests; and

(ii) The financial holding company reduces its ownership in the fund, if any, to less than 25 percent of the equity of the fund within one year of sponsoring the fund or such additional period as the Board permits.

(c) Activities permitted under section 4(k)(4) of the BHC Act. Any activity defined to be financial in nature under sections 4(k)(4)(A) through (E), (H) and (I) of the BHC Act.

§ 225.87 Is notice to the Board required after engaging in a financial activity?

(a) Post-transaction notice generally required to engage in a financial activity. A financial holding company that commences an activity or acquires shares of a company engaged in an activity listed in § 225.86 must notify the appropriate Reserve Bank in writing within 30 calendar days after commencing the activity or consummating the acquisition by using the appropriate form.

(b) Cases in which notice to the Board is not required–(1) Acquisitions that do not involve control of a company. A notice under paragraph (a) of this section is not required in connection with the acquisition of shares of a company if, following the acquisition, the financial holding company does not control the

company.

(2) No additional notice required to engage de novo in an activity for which a financial holding company already has provided notice. After a financial holding company provides the appropriate Reserve Bank with notice that the company is engaged in an activity listed in § 225.86, a financial holding company may, unless otherwise notified by the Board, commence the activity de novo through any subsidiary that the financial holding company is authorized to control without providing additional notice under paragraph (a) of this section.

(3) Conduct of certain investment activities. Unless required by paragraph (b)(4) of this section, a financial holding company is not required to provide notice under paragraph (a) of this section of any individual acquisition of shares of a company as part of the conduct by a financial holding company of securities underwriting, dealing, or market making activities as described in section 4(k)(4)(E) of the BHC Act, merchant banking activities conducted pursuant to section 4(k)(4)(H) of the BHC Act, or insurance company investment activities conducted pursuant to section 4(k)(4)(I) of the BHC Act, if the financial holding company previously has notified the Board under paragraph (a) of this section that the company has commenced the relevant securities, merchant banking, or

insurance company investment activities, as relevant.

(4) Notice of large merchant banking or insurance company investments. Notwithstanding paragraph (b)(1) or (3) of this section, a financial holding company must provide notice under paragraph (a) of the section if:

(i) As part of a merchant banking activity conducted under section 4(k)(4)(H) of the BHC Act, the financial holding company acquires more than 5 percent of the shares, assets, or ownership interests of any company at a total cost that exceeds the lesser of 5 percent of the financial holding company's Tier 1 capital or $200 million;

(ii) As part of an insurance company investment activity conducted under section 4(k)(4)(I) of the BHC Act, the financial holding company acquires more than 5 percent of the shares, assets, or ownership interests of any company at a total cost that exceeds the lesser of 5 percent of the financial holding company's Tier 1 capital or $200 million; or

(iii) The Board in the exercise of its supervisory authority notifies the financial holding company that a notice is necessary.

§ 225.88 How to request the Board to determine that an activity is financial in nature or incidental to a financial activity?

(a) Requests regarding activities that may be financial in nature or incidental to a financial activity. A financial holding company or other interested party may request a determination from the Board that an activity not listed in § 225.86 is financial in nature or incidental to a financial activity.

(b) Required information. A request submitted under this section must be in writing and must:

(1) Identify and define the activity for which the determination is sought, specifically describing what the activity would involve and how the activity would be conducted;

(2) Explain in detail why the activity should be considered financial in nature or incidental to a financial activity; and

(3) Provide information supporting the requested determination and any other information required by the Board concerning the proposed activity.

(c) Board procedures for reviewing requests–(1) Consultation with the Secretary of the Treasury. Upon receipt of the request, the Board will provide the Secretary of the Treasury a copy of the request and consult with the Secretary in

accordance with section 4(k)(2)(A) of the BHC Act.

(2) Public notice. The Board may, as appropriate and after consultation with the Secretary, publish a description of the proposal in the Federal Register with a request for public comment.

(d) Board action. The Board will endeavor to make a decision on any request filed under paragraph (a) of this section within 60 calendar days following the completion of both the consultative process described in paragraph (c)(1) of this section and the public comment period, if any.

(e) Advisory opinions regarding scope of financial activities–(1) Written request. A financial holding company or other interested party may request an advisory opinion from the Board about whether a specific proposed activity falls within the scope of an activity listed in § 225.86 as financial in nature or incidental to a financial activity. The request must be submitted in writing and must contain:

(i) A detailed description of the particular activity in which the company proposes to engage or the product or service the company proposes to provide;

(ii) An explanation supporting an interpretation regarding the scope of the permissible financial activity; and

(iii) Any additional information requested by the Board regarding the activity.

(2) Board response. The Board will provide an advisory opinion within 45 calendar days of receiving a complete written request under paragraph (e)(1) of this section.

§ 225.89 How to request approval to engage in an activity that is complementary to a financial activity?

(a) Prior Board approval is required. A financial holding company that seeks to engage in or acquire more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in an activity that the financial holding company believes is complementary to a financial activity must obtain prior approval from the Board in accordance with section 4(j) of the BHC Act. The notice must be in writing and must:

(1) Identify and define the proposed complementary activity, specifically describing what the activity would involve and how the activity would be conducted;

(2) Identify the financial activity for which the proposed activity would be complementary and provide detailed information sufficient to support a finding that the proposed activity should be considered complementary to the identified financial activity;

(3) Describe the scope and relative size of the proposed activity, as measured by the percentage of the projected financial holding company revenues expected to be derived from and assets associated with conducting the activity;

(4) Discuss the risks that conducting the activity may reasonably be expected to pose to the safety and soundness of the subsidiary depository institutions of the financial holding company and to the financial system generally;

(5) Describe the potential adverse effects, including potential conflicts of interest, decreased or unfair competition, or other risks, that conducting the activity could raise, and explain the measures the financial holding company proposes to take to address those potential effects;

(6) Describe the potential benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that the proposal reasonably can be expected to produce; and

(7) Provide any information about the financial and managerial resources of the financial holding company and any other information requested by the Board.

(b) Factors for consideration by the Board. In evaluating a notice to engage in a complementary activity, the Board must consider whether:

(1) The proposed activity is complementary to a financial activity;

(2) The proposed activity would pose a substantial risk to the safety or soundness of depository institutions or the financial system generally; and

(3) The proposal could be expected to produce benefits to the public that outweigh possible adverse effects.

(c) Board action. The Board will inform the financial holding company in writing of the Board's determination regarding the proposed activity within the period described in section 4(j) of the BHC Act.

Appendix C

Comments on the Board's Proposed Rules Regarding FHC Elections and Activities

The Board received 48 public comments on the interim rule on FHC elections and 9 public comments on the interim rule on FHC activities.[26] Commenters included bank holding companies ("BHCs") and foreign banking organizations; state bank supervisory officials; representatives of foreign central banks and other foreign government officials; trade associations representing the banking, securities, and insurance industries; community groups; law firms; and individuals.

Many commenters supported the Board's interim rules and commended the Board for issuing them swiftly and in a user-friendly format. The majority of comments related to the procedures and requirements applicable to foreign banking organizations and are summarized in a document prepared by the International Section of the Legal Division.

Comments on FHC Election Procedures

A. Criteria to Become a FHC

To help the Board determine whether a BHC met the requirements to become a FHC, the interim rules required a BHC to submit with its election the capital ratios for each of its subsidiary depository institutions. Some commenters

[26] The Board also received comments on both interim rules from various Federal Reserve Banks, which were similar in nature to the public comments.

argued that the Board already had access to such data and should not require BHCs to submit it. The rule also required a BHC to provide "any other information that they Board may require" to evaluate the BHC's FHC declaration. A commenter asserted that the GLB Act does not allow the Board to require such additional information. Some commenters requested that the Board make FHC declarations public, while others argued that declarations should be confidential because they contain examination data. Other commenters asked that the Board also adopt procedures for a company voluntarily to decertify as a FHC.

1. The Well Capitalized and Well Managed Requirements

Commenters generally supported the rule's definition of "well capitalized." However, several commenters urged the Board to amend the definition of "well managed" to eliminate the requirement that a BHC's depository institutions have received at least a satisfactory compliance rating in order to be considered well managed.[27] One of these commenters, who represented a multibank BHC, also suggested that the Board allow a BHC to qualify as an FHC if substantially all, but not all, the BHC's subsidiary depository institutions were well managed.

The well managed definition in the interim rule provided that a depository institution resulting from the merger of two well managed institutions would be presumed to be well managed. Commenters supported this presumption and asked that it be extended to cases where a well managed depository institution acquires an institution that is not well managed.

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[27] The Board amended the definition of well managed to delete the compliance requirement on March 15, 2000, and subsequently received comments supporting that amendment.

2. The CRA Requirement

Several commenters urged the Board to take additional steps, such as soliciting public comment and conditioning the effectiveness of a BHC's election, when a BHC controls an insured depository institution that has not received a CRA rating or that has received a "low satisfactory" on a component test used to determine its overall CRA rating,[28] or when the Board excludes a recently acquired institution. Another commenter asked the Board to require a parent BHC and its insured depository institutions to demonstrate a commitment to the communities in which they operate in order for the BHC to become a FHC.

One commenter asked the Board to clarify that controlling a de novo insured depository institution that had not yet received a CRA rating would not preclude a BHC from becoming a FHC. Another commenter requested clarification about what happens when an institution excluded for purposes of determining the effectiveness of a FHC election subsequently fails to achieve at least a satisfactory rating. This commenter suggested that the Board impose sanctions on any FHC that controls an institution that receives a less-than-satisfactory rating while under the FHC's control.

B. The Board's Supervisory Authority Over FHCs

In the interim rule, the Board retained its authority to impose supervisory limitations on a FHC, including limitations on the activities and acquisitions by the FHC, if the Board had concerns about the consolidated organization. One commenter supported this provision and asserted that it would help protect the

[28] An insured depository institution's overall CRA rating is based on the institution's scores on the lending, investment, and service tests.

safety and soundness of a FHC's subsidiary depository institutions. This commenter and several others asked for the Board to provide more guidance about the circumstances under which the Board would invoke the provision and the specific types of actions it would take when doing so. By contrast, numerous commenters asserted that the Board had no statutory basis to impose supervisory limitations on a FHC that meets the applicable capital and management authority.[29] One commenter also stated that the Board was without authority to limit the activities that a company subject to a corrective action agreement conducts under section 4(c)(8) of the BHC Act.

C. Cure Procedures for FHCs that Cease to Meet Applicable Capital and Management Criteria

Several commenters requested guidance about when a FHC will be deemed to have become aware of a capital or management deficiency at a subsidiary depository institution for purposes of determining whether the FHC is subject to the limitations in the GLB Act on FHCs that fail to maintain the management ratings and capital of their subsidiary depository institutions. Commenters also requested clarification about when such a FHC must notify the Board of that fact.[30]

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[29] Several commenters suggested that any action by the Board to limit a FHC's insurance or securities activities would be contrary to the GLB Act's requirement that the Board rely on the "functional regulator" of such subsidiaries. Commenters representing the insurance industry also urged the Board to minimize its intrusion into the affairs of functionally regulated subsidiaries, including those that are top-tier FHCs.

[30] For example, one commenter suggested that the Board use the time triggers in the Board's prompt corrective action regulations, while another proposed that the Board rely on a FHC's quarter-end capital ratios for the entire

Another commenter requested that the Board establish a procedure to allow an FHC to acquire a depository institution that was not well managed without penalty. This commenter asserted that, without such a procedure, well-run FHCs would be reluctant to acquire and improve troubled institutions.

D. CRA Activity Prohibitions

Consistent with the GLB Act, the interim rule stated that a FHC would be prohibited from engaging in additional activities under section 4(k) of the BHC Act at the earlier of receipt by a subsidiary insured depository institution of a less than satisfactory CRA rating from the appropriate Federal banking agency or receipt by the FHC of notice from the Board. Several commenters suggested that the Board clarify what constituted "notice" from a primary regulator and suggested that it be written notification of a less-than-satisfactory CRA rating after exhaustion of the examination appeals process.

Another commenter asked the Board to allow state member banks that receive less than satisfactory ratings to request a CRA examination prior to the bank's next scheduled examination. This commenter asserted that unless each Federal banking agency adopted such an interim review process, FHCs could be subject to the prohibition on expanding their activities for up to three years.

Comments on FHC Activities

The interim rules listed the activities in which a FHC may engage (including activities previously authorized for the Board for BHCs under Regulations K and Y

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next quarter. Some commenters argued that a company should not be required to notify the Board until an institution received written notification of a poor rating from its primary Federal banking agency and exhausted the process for appealing that rating.

and by Board order, and activities that the GLB Act defined as financial),[31] described the procedures for engaging in those activities, and described procedures for requesting the Board to authorize additional activities as financial in nature or incidental or complementary to a financial activity. Commenters generally supported these provisions, although most either asked the Board to amend or clarify certain aspects of the rule.

A. The List of Permissible Activities

A number of commenters suggested that the Board expand or modify the list of permissible activities for FHCs.[32] One commenter also stated that the activity list should include any activity that any of the other Federal banking agencies has authorized for the depository institutions they regulate.

Commenters noted that some activities authorized by the rule also were permissible under another source of authority, such as other provisions of Regulations K and Y, and asked for clarification about the interplay between the different sources of authority. For example, commenters questioned whether the commitments a FHC

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[31] The rule incorporated the activities previously authorized by Regulation Y and those newly authorized by the GLB Act by references to the appropriate citations to the appropriate sources of authority. Several commenters asked the Board to eliminate the cross references and instead list each activity and the conditions that apply to it.

[32] For example, a commenter stated that the Board had excluded commercial banking, an activity authorized for a BHC to conduct abroad under Regulation K, from the list of permissible activities. Other commenters asked the Board to add activities, such as real estate brokerage and acting as a finder, and expand the scope of the existing data processing and future commission merchant activities. Another commenter suggested that the Board eliminate the 25 percent ineligible revenue limit for securities activities conducted by BHCs under 4(c)(8).

had made when conducting an activity under section 4(c)(8) of the BHC Act would continue to apply to the same activity if it were conducted under section 4(k)(4) of the BHC Act and the interim rule. Another commenter asked that the Board clarify whether Regulation K's general consent procedures and investment limits applied to activities conducted abroad under the interim rule.

B. Procedures for Engaging in Listed Activities

The interim rule generally provided that a FHC engaged in a listed activity need only provide the Board with a simple post-transaction notice within 30 days of commencing the activity. One commenter suggested that the Board provide more guidance about the content and preparation of such notices.

An exception to the post-transaction notice rule provided that the Board could require prior approval where it had supervisory concerns about the condition of a FHC. One commenter stated that the Board should require prior notice in supervisory cases but urged the Board to provide guidance about the circumstances under which it would do so.[33] Another commenter asserted that the Board lacked statutory authority to require prior approval even in circumstances involving a troubled FHC because the GLB Act did not allow the Board to limit in any way the activities of a FHC all of whose subsidiary depository institutions were well capitalized and well managed.

Another portion of the interim rule stated that no notice was required for individual merchant banking investments unless the investment's cost exceeded the

[33] This commenter also noted that the procedures in the interim rule allowed a FHC that met certain criteria to acquire a company engaged in limited commercial activities and urged the Board to monitor these "mixed acquisitions" very carefully.

lesser of $200 million or the FHC's total Tier 1 capital. One commenter found this portion of the rule difficult to decipher, although the commenter thought the Board otherwise had written the rule using "plain language."[34]

One commenter asked whether post-transaction notices were activity specific or subsidiary specific and opined that a FHC should be able to conduct the same activity in different subsidiaries under different sources of authority. This commenter also asked the Board to revisit the need for the standard joint venture commitments for joint ventures involving activities that are financial in nature. The commenter argued that the commitment prohibiting a BHC from soliciting business on behalf of its venture partner was unnecessary when the coventurer engaged in financial activities and asserted that the GLB Act's cross marketing restrictions were adequate to preserve the boundary between banking and commerce.

C. Procedures for Requesting the Board to Authorize Additional Activities

One commenter suggested that the Board, at its own initiative and without waiting for a specific request from the public, should propose that any activity authorized by another Federal banking agency be reviewed for a determination of whether the activity is financial in nature or incidental thereto. Another commenter requested that the Board seek public comment on any request to authorize as financial or incidental an activity that is novel or that may be especially risky. The interim rule stated that the Board would endeavor to act within 60 days of

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[34] This commenter also opined that phrasing section and subsection headings as questions would be confusing to persons who already were familiar with Regulation Y and suggested that, consistent with the rest of the Regulation, the Board instead phrase the headings with succinct captions that state the contents of each section.

consulting with Treasury on the activity or the close of the public comment period, if any, and one commenter urged the Board to notify the public when this 60-day period began.

One commenter stated that is was difficult to distinguish between activities that were "incidental" and "complementary" to a financial activity and urged the Board to provide guidance to help FHCs understand this distinction. This commenter stated that, if the Board did not receive sufficient comment on the appropriate definition of a complementary activity, the Board should solicit additional comment on that point. Another commenter urged the Board, when defining the term complementary, to pay attention to the temptation FHCs may have to engage in activities that are beyond their areas of experience and competency. This commenter asserted that the farther a complementary activity gets from the core set of skills required to manage a banking organization, the greater the risk to FHCs and their subsidiary depository institutions. Another commenter stated that, although it is not required to do so, the Board should seek public comment on requests to engage in complementary activities.