

affiliate of the bank, and not as a subsidiary of the bank, for purposes of section 106.<sup>4</sup> Accordingly, a financial subsidiary of a national or state member bank is not subject to the anti-tying restrictions of section 106. However, tying arrangements imposed by a financial subsidiary of a national or state member bank, like tying arrangements imposed by any other affiliate of a bank, remain subject to the tying restrictions contained in the Federal antitrust laws.<sup>5</sup>

Federal law also authorizes state nonmember banks that meet certain eligibility requirements to own or control a financial subsidiary.<sup>6</sup> The Board proposes to adopt an exception under section 106 that would allow a financial subsidiary of a state nonmember bank to be treated as an affiliate of the parent bank, and not as a subsidiary of the bank, for purposes of section 106. The Board believes that providing equal treatment of all financial subsidiaries of banks under section 106 is appropriate to ensure competitive equality and would not be contrary to the purposes of section 106.<sup>7</sup> The Board invites comment on all aspects of the proposed exception.

#### Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000.<sup>8</sup> In light of this requirement, the Board has sought to present the proposed rule in a simple and straightforward manner. The Board invites comment on whether the Board could take additional steps to make the proposed rule easier to understand.

#### Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this proposed rule. The proposed rule, if adopted, would exempt financial subsidiaries of state nonmember banks

from the anti-tying restrictions in section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972). A description of the reasons for the Board's decision to issue the proposed rule and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary information provided above.

The proposed rule would apply to all state nonmember banks regardless of their size. The proposed rule would exempt any financial subsidiary of a state nonmember bank (including a small state nonmember bank) from the restrictions of section 106 and, thus, should reduce the regulatory burden imposed on state nonmember banks with financial subsidiaries. The proposed rule also would equalize the treatment of financial subsidiaries of national and state banks under section 106 and, thus, promotes competitive equality. The Board specifically seeks comment on the likely burden the proposed rule would have on banks, especially small banks.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget. The proposed rule contains no collections of information pursuant to the Paperwork Reduction Act.

#### List of Subjects in 12 CFR Part 225

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

#### Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 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 continues 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(1), 3106, 3108, 3310, 3331-3351, 3907, and 3909; and 15 U.S.C. 6801 and 6805.

2. Section 225.7 is amended as follows:

- a. By revising the introductory sentence of paragraph (b);
- b. By redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; and

c. By adding a new paragraph (c).

#### § 225.7 Exceptions to tying restrictions.

\* \* \* \* \*

(b) *Exceptions to statute.* Subject to the limitations of paragraph (d) of this section, a bank may—

\* \* \* \* \*

(c) *Financial subsidiaries of state banks.* A financial subsidiary of a state member bank held in accordance with section 9 of the Federal Reserve Act (12 U.S.C. 335) and a financial subsidiary of a state nonmember bank held in accordance with section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) shall be deemed to be a subsidiary of a bank holding company of the bank and an affiliate of the bank, and not a subsidiary of the bank, for purposes of section 106 and this section.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, August 25, 2003.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 03-22090 Filed 8-28-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

#### 15 CFR Part 801

[Docket No. 030815201-3201-01]

RIN 0691-AA50

#### International Services Surveys: BE-85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth a proposed rule to institute a new survey, BE-85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce.

The proposed survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988. The first survey conducted under this proposed rule will cover transactions in the first quarter of 2004. Data from the proposed BE-85 survey are needed to monitor

<sup>4</sup> See 12 U.S.C. 1971; 12 CFR 208.73(e).

<sup>5</sup> 15 U.S.C. 1 *et seq.* (Sherman Act); 15 U.S.C. 12 *et seq.* (Clayton Act).

<sup>6</sup> See 12 U.S.C. 1831w.

<sup>7</sup> As noted above, section 208.73(e) of the Board's Regulation H currently provides that a financial subsidiary of a state member bank is treated as an affiliate (and not a subsidiary) of the bank for purposes of section 106. 12 CFR 208.73(e). In order to consolidate the regulatory provisions relating to the treatment of financial subsidiaries of state banks under section 106, the Board also is proposing to include in section 225.7 of Regulation Y the provision that states that a financial subsidiary of a state member bank is treated as an affiliate of the bank for purposes of section 106.

<sup>8</sup> Pub. L. 106-102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.

trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The proposed survey will cover the same financial services presently covered by the BE-82, Annual Survey of Financial Service Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, which the proposed quarterly survey would replace, following a final annual data collection for 2003.

**DATES:** Comments on this proposed rule will receive consideration if submitted in writing on or before October 28, 2003.

**ADDRESSES:** Direct all written comments to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230.

Because of slow mail, and to assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606-5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis, BE-50, Shipping and Receiving Section M100, 1441 L Street, NW., Washington, DC 20005, or (3) e-mail to [Obie.Whichard@bea.gov](mailto:Obie.Whichard@bea.gov). Comments will be available for public inspection in room 7006, 1441 L Street, NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Obie G. Whichard, Assistant Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; or via the Internet at [Obie.Whichard@bea.gov](mailto:Obie.Whichard@bea.gov) (Telephone (202) 606-9890).

**SUPPLEMENTARY INFORMATION:** This proposed rule would amend 15 CFR 801.9 to set forth the reporting requirements for the BE-85, Quarterly Survey of Financial Services Transactions Between Financial Services Providers and Unaffiliated Foreign Persons. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108), and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a

regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated that authority to BEA.

The major purposes of the survey are to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

As proposed, BEA will conduct the BE-85 survey on a quarterly basis beginning with the first quarter of 2004. BEA will send the survey to potential respondents in March of 2004, responses will be due by May 15, 2004. The survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons. Reporting is required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded \$20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded \$15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Financial services providers meeting any of these criteria must supply data on the amount of their sales or purchases for each covered type of service, disaggregated by country. U.S. financial services providers that do not meet the mandatory reporting requirements are requested to provide voluntary estimates of their total sales or purchases of each type of financial service.

#### **Executive Order 12866**

This proposed rule is not significant for purposes of E.O. 12866.

#### **Executive Order 13132**

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

#### **Paperwork Reduction Act**

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and has been submitted to the Office of Management and Budget for review under the PRA.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The BE-85 survey, as proposed, is expected to result in the filing of reports containing mandatory data from about 55 respondents on a quarterly basis, or 220 responses annually. The average burden for completing the BE-85 is estimated to be 10 hours. Thus, the total respondent burden of the survey is estimated at 2,200 hours (220 responses times 10 hours average burden). The actual burden will vary from reporter to reporter, depending upon the number and variety of their financial services transactions and the ease of assembling the data. Thus, for each quarter it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data to 100 hours for a very large reporter that engages in a large number and variety of financial services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; or faxed (202-395-7245) or e-mailed ([pbugg@omb.eop.gov](mailto:pbugg@omb.eop.gov)) to the Office of Management and Budget, O.I.R.A., (Attention PRA Desk Officer for BEA).

## Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international financial services transactions tend to be quite large. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The proposed BE-85 quarterly survey will be required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded \$20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded \$15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Thus, the exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction; therefore, the burden on them should be small.

### List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

**Rosemary D. Marcuss,**

*Deputy Director, Bureau of Economic Analysis.*

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

## PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

**Authority:** 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by adding new paragraph (c)(4) to read as follows:

### § 801.9 Reports required.

(c) *Quarterly surveys.* \* \* \*

(4) BE-85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE-85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering the first quarter of the 2004 calendar year and every quarter thereafter.

(A) *Who must report—(1) Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and that had sales of covered services to unaffiliated foreign persons that exceeded \$20 million for the previous fiscal year or expects sales to exceed that amount during the current fiscal year, or had purchases of covered services from unaffiliated foreign persons that exceeded \$15 million for the previous fiscal year or expects purchases to exceed that amount during the current fiscal year. These thresholds should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the thresholds are applied separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(i) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatory reporting requirement may be based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(ii) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(2) *Voluntary reporting.* If a financial services provider or intermediary, or all of a firm's subsidiaries or parts combined that are financial services providers or intermediaries, had covered sales of \$20 million or less, or covered purchases of \$15 million or less during the previous fiscal year, and if covered sales or purchases are not

expected to exceed these amounts in the current fiscal year, a person is requested to provide an estimate of the total for each type of service for the most recent quarter. Provision of this information is voluntary. The estimates may be based on the reasoned judgement of the reporting entity. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) *BE-85 definition of financial services provider.* The definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 2002. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers:

Depository credit intermediation and related activities (including commercial banking, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(C) *Covered types of services.* The BE-85 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage services, including foreign exchange brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; security lending services; electronic funds transfers; and other financial services.

(ii) [Reserved]

\* \* \* \* \*

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