and the maximum charge shall be $2,755. The minimum charge also applies where an approved application is in effect and no product is handled.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 5. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $60.00 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $69.32 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00037, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,755. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: December 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–30596 Filed 12–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 11 and 16

[Docket No. 03–25]

RIN 1557–AC12

Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its regulations to reflect amendments to the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act). These amendments to the Exchange Act give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act. We are also revising our securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of Securities Act of 1933.

EFFECTIVE DATE: This rule is effective on January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Ann Nash, Counsel, 202–874–5090; or Martha Clarke, Counsel, Legislative & Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Exchange Act vests the OCC with the powers, functions, and duties otherwise vested with the Securities and Exchange Commission (SEC) to administer and enforce certain provisions of the Exchange Act as they apply to national banks that have a class of securities registered under the Exchange Act (registered national banks).[1]

Prior to the enactment of the Sarbanes-Oxley Act,[2] section 12(i) gave the OCC the authority to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. The Sarbanes-Oxley Act amended some of those sections of the Exchange Act to impose additional requirements and, as a result, the OCC will administer and enforce these new requirements as they apply to registered national banks. In addition, the Sarbanes-Oxley Act amended section 12(i) to add new sections of the securities laws to the list of provisions that are enforced and administered by the OCC.

Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g) of the Exchange Act or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public issuers). All registered national banks are public issuers for purposes of the law.

Pursuant to the amendments to section 12(i) made by the Sarbanes-Oxley Act, the OCC administers and enforces the following new provisions of the Act with respect to registered national banks in addition to any new requirements that were added through amendments to sections of the Exchange Act that were enforced by the OCC prior to the enactment of the Sarbanes-Oxley Act.

- Section 301[3] establishes certain oversight, independence, funding, and other requirements for the audit committees of certain public issuers. It requires the SEC to issue implementing rules that prohibit any national securities exchange or national securities association from listing the securities of an issuer that fails to comply with these audit committee requirements. The SEC issued final rules to implement section 301 on April 9, 2003.[4] The rules took effect on April 25, 2003. In the rules, the SEC applies section 301 only to public issuers listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association.[5] Thus, section 301 applies only to registered national banks that are so listed.
- Section 302 requires the SEC to adopt rules that require the principal executive officers and principal financial officers of public issuers to

[1] Under section 12(i), the OCC and the other Federal banking agencies have the power to issue rules that are necessary to carry out their functions under the Exchange Act. These rules are required to be substantially similar to the SEC's rules unless a Federal banking agency determines that substantially similar regulations with respect to the insured depository institutions that it supervises are not necessary or appropriate in the public interest or for the protection of investors and the agency publishes its findings in the **Federal Register** within 60 days after the SEC issues regulations.

[2] Pub. L. 107–204, 116 Stat. 745 (July 30, 2002).

[3] 15 U.S.C. 78j–1(m).

[4] 68 FR 18788 (April 16, 2003).

[5] *Id.* at 18790; 17 CFR 240.10A–3(e)(9).

include certain certifications in the issuer's annual and quarterly reports filed under the Exchange Act. The SEC issued final rules implementing this section on August 29, 2002.[6] The rules took effect on the same day.

• Section 303 requires the SEC to issue rules prohibiting the officers and directors of public issuers, and persons acting under their direction, from fraudulently influencing, coercing, manipulating, or misleading the issuer's independent auditor for purposes of rendering the issuer's financial statements materially misleading. The SEC published a final rule implementing this section on May 28, 2003.[7] The rule took effect on June 27, 2003.

• Section 304 requires the chief executive officer and chief financial officer of public issuers to reimburse the issuer for certain compensation and profits received if the issuer is required to restate its financial reports due to material noncompliance, as a result of misconduct, with any financial reporting requirements under the Federal securities laws. The requirements of section 304 took effect on July 30, 2002. No implementing regulations are required.

• Section 306(a) prohibits the directors and executive officers of any public issuer of equity securities from purchasing, selling, or transferring any equity security acquired by the director or executive officer in connection with his or her service as a director or executive officer during any ''blackout period'' with respect to the security. A ''blackout period'' generally is a period of three consecutive business days during which trading in the issuer's securities is suspended for 50% or more of the beneficiaries of the issuer's individual account plans. The SEC adopted final regulations pursuant to section 306(a) on January 26, 2003.[8] The rules took effect on the same day.

• Section 401(b) requires the SEC to issue rules that prohibit issuers from including misleading *pro forma* financial information in their reports under the securities laws or in any public release. Issuers also must reconcile any *pro forma* financial information included in such filings or public releases with the issuer's financial statements prepared in accordance with generally accepted accounting principles (GAAP). The SEC has issued final implementing regulations,[9] which apply to releases and disclosures made after March 28, 2003, and to annual and quarterly reports filed with respect to fiscal periods ending after March 28, 2003.

• Section 404 mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting.[10] There is no statutory deadline for adoption of final rules implementing the requirements of section 404. The SEC adopted final regulations on June 5, 2003.[11]

• Section 406 mandates that the SEC adopt rules that require public issuers to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8-K any change to, or waiver of, the issuer's code of ethics. The SEC published a final rule implementing this section on January 31, 2003.[12] The requirements of that rule took effect on March 3, 2003.

• Section 407 mandates that the SEC adopt rules that require public issuers to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one financial expert and, if not, the reasons why the audit committee does not include such an expert. The SEC published a final rule implementing this section on January 31, 2003.[13] The requirements of that rule took effect on March 3, 2003.

Description of the Final Rule

On May 21, 2003, the OCC published in the **Federal Register** a notice of proposed rulemaking (NPRM) requesting comment on a proposed regulation implementing the provisions of the Sarbanes-Oxley Act. 68 FR 27753. The OCC did not receive any comments in response to the proposed rule. The OCC, therefore, is adopting the final rule as proposed with only technical changes.

Part 11 of the OCC's regulations, entitled ''Securities Exchange Act Disclosure Rules,'' currently implements the requirements of section 12(i) by applying to registered national banks, by means of cross-reference, the SEC's regulations implementing the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. Part 11 requires national banks to file with the OCC any reports or forms required by the SEC's regulations.

We are amending part 11 to reflect the new provisions of the Sarbanes-Oxley Act that the OCC is required to administer and enforce with respect to registered national banks. Accordingly, the final rule revises § 11.2 to cross-reference new subsection 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act. The effect of the final rule is to require registered national banks to comply with the rules issued by the SEC pursuant to those statutory provisions.

Part 16 of the OCC's regulations, entitled ''Securities Offering Disclosure Rules,'' sets forth rules governing the offer and sale of securities by national bank issuers that are not subject to the registration and reporting requirements of the Securities Act of 1933.[14] Section 16.20 of the regulation mirrors the requirements of section 15(d) of the Exchange Act.[15] It requires each national bank that files a registration statement that has been declared effective by the OCC pursuant to part 16 to file the current and periodic reports required by section 13 of the Exchange Act[16] in accordance with the SEC's

[6] 67 FR 57275 (Sept. 9, 2002). Section 906 of the Sarbanes-Oxley Act is a criminal statute and includes another certification requirement that is separate from the certification requirements of section 302. Section 906 provides that all periodic reports that contain financial statements and that are filed by public issuers under sections 13(a) or 15(d) of the Exchange Act must include a written certification by the chief executive officer and chief financial officer (or equivalent) that (1) the report complies with the requirements of section 13(a) or 15(d) of the Exchange Act, and (2) the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer. Section 906 became effective on July 30, 2002, and persons who knowingly or willfully make false certifications are subject to specified criminal penalties. *See* 18 U.S.C. 1350. The plain language of section 906 specifically refers to periodic reports filed by a public issuer with the SEC although Section 12(i) of the Exchange Act requires bank issuers to file periodic reports with their banking regulator. Because section 906 is a criminal statute, the Department of Justice has jurisdiction to determine whether the requirements of the statute apply to issuers that file their periodic reports with the Federal banking agencies rather than the SEC. Until the Department of Justice clarifies this issue, national bank issuers should continue to file their section 906 certifications as part of the periodic reports that they file with the OCC.

[7] 68 FR 31820 (May 28, 2003).

[8] 68 FR 4338 (Jan. 28, 2003).

[9] 68 FR 4820 (Jan. 30, 2003).

[10] Section 404 also requires the registered public accounting firm that prepares or issues the audit report for the issuer's annual report to attest to, and report on, the issuer's assessment of its internal control structures and procedures for financial reporting.

[11] 68 FR 36636 (June 18, 2003). The effective dates vary depending upon the type of filer and the particular requirement.

[12] 68 FR 5110 (Jan. 31, 2003).

[13] 68 FR 5110 (Jan. 31, 2003).

[14] As of December 31, 2002, there were approximately 20 national banks subject to the requirements of § 16.20.

[15] 15 U.S.C. 78o(d).

[16] 15 U.S.C. 78m.

regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The final rule revises § 16.20 to continue to reference section 13 of the Exchange Act [17] and to add a cross-reference to the requirements of the revised § 11.2(a)(1)(ii). The effect of the final rule is to require banks filing registration statements pursuant to part 16 to continue to comply with section 13 of the Exchange Act and those sections of the Sarbanes-Oxley Act that are directly applicable to section 15(d) filers and that are administered and enforced by the OCC with respect to registered national banks. The final rule is thus consistent with the objectives of part 16, which we adopted in order to promote generally comparable treatment between national bank issuers of securities and other issuers that are directly subject to section 15(d).[18]

Sections 11.2 and 16.20 currently cross-reference both the statutory provisions that the OCC has the authority to administer and enforce and the SEC's regulations implementing those provisions. The final rule removes cross-references to the specific sections of the SEC's regulations in favor of a more general reference to the rules, regulations, and forms adopted by the SEC pursuant to the listed statutory provisions. The existing statutory cross-references in parts 11 and 16 are adequate, in our judgment, to alert registered national banks and national banks required by part 16 to make filings pursuant to section 15(d) of the Exchange Act of the requirements that apply to them and to prompt them to consult the appropriate SEC regulations.

National banks may also monitor the **Federal Register**, the SEC's Web site,[19] and other appropriate publications to ensure that they are aware of developments that affect them. If the rules or forms issued by the SEC under these sections require issuers to file documents with the SEC, national banks must make such filings with the OCC in accordance with the provisions of part 11 or part 16, as appropriate.

CDRI Act Delayed Effective Date

This final rule takes effect 30 days after the date of its publication in the **Federal Register,** consistent with the delayed effective date requirement of the Administrative Procedure Act. *See* 5 U.S.C. 553(d). Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), 12 U.S.C. 4802(b), provides that regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions may not take effect before the first day of the quarter following publication unless the agency finds that there is good cause to make the rule effective at an earlier date.[20] The requirements of the Sarbanes-Oxley Act that are applied to national banks by the final rule are already in effect for those entities that are directly subject to the Act. Comparable regulation for national banks and similarly situated non-bank entities is best achieved by minimizing additional delay in applying those requirements to national banks. Accordingly, the OCC has determined that there is good cause to dispense with the requirements of the CDRI Act.

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule. As of December 31, 2002, there were approximately 25 national banks that had a class of securities registered under sections 12(b) or 12(g) of the Exchange Act and therefore subject to the amendments to part 11. As of the same date, only 15 of these institutions have assets of less than $100 million and are considered small entities for purposes of the RFA. *See* 5 U.S.C. 601; 13 CFR 121.201. As of December 31, 2002, there were approximately 20 national banks subject to part 16 reporting requirements.

Based on the relatively small number of national banks affected by the final rule and the fact that the requirements will not materially change the operating environment for those banks, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Paperwork Reduction Act of 1995

In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in the notice of proposed rulemaking (68 FR 27753, May 21, 2003) were submitted to OMB for review and approved by OMB under OMB Control Numbers 1557–0106 ((MA)-Securities Exchange Act Disclosure Rules ''12 CFR 11) and 1557–0120 ((MA)-Securities Offering Disclosure Rules ''12 CFR 16).

The OCC solicited comments on the information collection requirements contained notice of proposed rulemaking. The OCC received no comments.

The collections contained in the final rule are unchanged from the proposed rule.

The OCC is amending 12 CFR part 11 to reflect amendments to section 12(i) of the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002. These amendments to section 12(i) give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act.

The OCC is also making conforming amendments to 12 CFR part 16, which prescribes securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of the Securities Act of 1933.

12 CFR part 11 references the applicable SEC regulations. The OCC does not maintain its own forms for collecting information and instead requires reporting banks to file SEC forms. Part 11 ensures that publicly owned national banks provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

Title: (MA)-Securities Exchange Act Disclosure Rules (12 CFR 11).

OMB Number: 1557–0106.

[17] The proposal also referenced section 10A(m) of the Exchange Act. That reference is removed from the final rule because the SEC has not applied the requirements of section 10A(m) to section 15(d) filers in its final rules. *See* 68 FR at 18790.

[18] *See* 59 FR 54789, 54790 (Nov. 2, 1994) (preamble to most recent substantive revisions to part 16).

[19] *See http://www.sec.gov.*

[20] Pub. L. 103–325, 12 U.S.C. 4802.

Form Numbers: SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C.

Estimated number of respondents: 65.

Estimated number of responses: 331.

Average hours per response: Varies.

Estimated total burden hours: 3,055 hours.

The likely respondents: National banks, individuals.

The information collection requirements in 12 CFR part 16 enable the OCC to perform its responsibilities relating to offerings of securities by national banks by providing the investing public with facts about the condition of a bank, the reasons for raising new capital, and the terms of securities offerings. Part 16 generally requires banks to conform to the Securities and Exchange Commission rules.

Title: (MA)-Securities Offering Disclosure Rules (12 CFR 16).

OMB Number: 1557–0120.

Description: Sections 16.3 and 16.5 require a national bank to file its registration statement with the OCC. Section 16.4 requires a national bank to submit certain communications not deemed an offer to the OCC. Section 16.5 provides an exemption for items that satisfy the requirements of SEC Rule 144, which, in turn, requires certain filings. Section 16.6 requires a national bank to file documents with the OCC and to make certain disclosures to purchasers in sales of nonconvertible debt. Section 16.7 requires a national bank to file a notice with the OCC. Section 16.8 requires a national bank to file offering documents with the OCC. Section 16.15 requires a national bank to file a registration statement and sets forth content requirements for the registration statement. Section 16.17 requires a national bank to file four copies of each document filed under part 16, and requires filers of amendments or revisions to underline or otherwise indicate clearly any changed information. Section 16.18 requires a national bank to file an amended prospectus when the information in the current prospectus becomes stale, or when a change in circumstances makes the current prospectus incorrect. Section 16.19 requires a national bank to submit a request to the OCC if it wishes to withdraw a registration statement, amendment, or exhibit. Section 16.20 requires a national bank to file current and periodic reports as required by sections 12 and 13 of the Exchange Act and SEC Regulation 15D. Section 16.30 requires a national bank to include certain elements and follow certain procedures in any request to the OCC for a no-objection letter.

Estimated number of respondents: 73.

Estimated number of responses: 73.

Average hours per response: Varies.

Estimated total burden hours: 2,333 hours.

Likely respondents: National banks.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement.

Executive Order 12866

The Comptroller of the Currency has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

List of Subjects

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, the OCC amends parts 11 and 16 of chapter I of title 12 of the Code of Federal Regulations as follows:

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

■ 2. Section 11.2 is revised to read as follows:

§ 11.2 Reporting requirements for registered national banks.

(a) *Filing, disclosure and other requirements*—(1) *General.* Except as otherwise provided in this section, a national bank whose securities are subject to registration pursuant to section 12(b) or section 12(g) of the 1934 Act (15 U.S.C. 78l(b) and (g)) shall comply with the rules, regulations, and forms adopted by the Securities and Exchange Commission (Commission) pursuant to:

(i) Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the 1934 Act (15 U.S.C. 78f(m), 78l, 78m, 78n(a), (c), (d) and (f), and 78p); and

(ii) Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002 (codified at 15 U.S.C. 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265).

(2) [Reserved.]

(b) *References to the Commission.* Any references to the ''Securities and Exchange Commission'' or the ''Commission'' in the rules, regulations and forms described in paragraph (a)(1) of this section shall with respect to securities issued by registered national banks be deemed to refer to the OCC unless the context otherwise requires.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

■ 2. Section 16.20 is revised to read as follows:

§ 16.20 Compliance with requirements of the securities laws.

(a) Each bank that files a registration statement that has been declared effective pursuant to this part shall comply with the rules, regulations, and forms adopted by the Commission pursuant to section 13 of the Exchange Act and those provisions of the Sarbanes-Oxley Act of 2002 that are listed in 12 CFR 11.2(a)(1)(ii) of this chapter as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l).

(b) Suspension of the duty to file current and periodic reports under this section will be in accordance with section 15(d) of the Exchange Act (15 U.S.C. 78o(d)).

(c) Paragraph (a) of this section does not apply if the bank is a subsidiary of a one-bank holding company, the financial statements of the bank and the parent bank holding company are substantially the same, and the bank's

parent bank holding company files current and periodic reports pursuant to section 13 of the Exchange Act (15 U.S.C. 78m).

(d) Paragraph (a) of this section does not apply if the bank files the registration statement in connection with a merger, consolidation, or acquisition of assets subject to 12 CFR 5.33(e)(8).

Dated: November 25, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–30442 Filed 12–8–03; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1092]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation Y to expand the ability of all bank holding companies, including financial holding companies, to process, store and transmit nonfinancial data in connection with their financial data processing, storage and transmission activities. Specifically, the Board is raising the revenue limit that currently applies to the nonfinancial data processing activities of bank holding companies from 30 percent to 49 percent. The Board also announced that it will consider proposals by a financial holding company to engage in, or acquire a company engaged in, other nonfinancial data processing, information portal, and technology-related activities that the financial holding company believes are complementary to financial activities on a case-by-case basis in accordance with the procedures established by section 4(j) of the Bank Holding Company Act.

EFFECTIVE DATE: The final rule is effective January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202–452–3583), or Kieran J. Fallon, Managing Senior Counsel (202–452–5270), Legal Division; David Reilly, Senior Supervisory Financial Analyst (202–452–5214), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 For users of Telecommunications for the Deaf (''TDD'') *only,* call 202–263–4869.

SUPPLEMENTARY INFORMATION:

A. Background

The Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) (BHC Act), as amended by the Gramm-Leach-Bliley Act (GLB Act),[1] permits all bank holding companies to engage in any nonbanking activity that the Board had determined, by order or regulation 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.[2] The GLB Act requires bank holding companies to conduct these activities subject to the terms and conditions contained in the Board's regulation or order authorizing the activity, unless the Board modifies those terms or conditions.[3]

The GLB Act also permits a bank holding company or foreign bank that has made an effective election to become a financial holding company (FHC) to engage in a broader range of activities that the GLB Act defines as being financial in nature or incidental to a financial activity, including the sale of insurance as principal or agent, full-scope securities underwriting and dealing, and merchant banking.[4] FHCs also may engage in any other activity that the Board, in consultation with the Secretary of the Treasury, determines to be financial in nature or incidental to a financial activity.[5] The text and legislative history of the GLB Act indicate that the ''financial in nature'' test was intended to be broader and more flexible than the ''closely related to banking'' standard that previously governed the scope of permissible nonbanking activities under section 4(c)(8) of the BHC Act.[6] Moreover, the factors that the Board is directed to consider in determining whether an activity is financial in nature or incidental to financial activities indicates that the scope of financial and incidental activities may expand over time in light of, among other things, changes in the marketplace in which FHCs compete.[7]

The GLB Act also permits an FHC to engage in a nonfinancial activity if the Board determines that the activity is ''complementary to a financial activity and does not pose a substantial risk to the safety and soundness of depository institutions or the financial system generally.''[8] This authority was intended to permit the Board to authorize an FHC to engage, to a limited extent, in activities that appear to be commercial if a meaningful connection exists between the proposed commercial activity and the FHC's financial activities and the proposed commercial activity would not pose undue risks to the safety and soundness of the FHC's affiliated depository institutions or the financial system. The GLB Act requires an FHC to obtain the Board's approval under section 4(j) of the BHC Act prior to engaging in an activity that the FHC believes is complementary to financial activities.[9]

B. Board Proposal

Following passage of the GLB Act, several FHCs, represented by their trade associations, requested that the Board authorize FHCs to engage in, or invest in companies engaged in, a wide range of data processing, technology, communication and e:commerce-related activities. In response to these requests, the Board took several steps. In December 2000, the Board adopted a final rule that authorizes FHCs to act as a ''finder'' through electronic or other means and thereby bring together buyers and sellers of financial and nonfinancial products for transactions that the parties themselves negotiate and consummate.[10] The Board's Finder Rule addressed several of the activities requested by the FHCs and permits FHCs, among other things, to—

- Host an electronic marketplace on the FHC's Internet Web site that provides hypertext links to the Web sites of third parties;
- Host the Web site of a merchant that

[1] Pub. L. 106–102, 113 Stat. 1338 (1999).

[2] *See* 12 U.S.C. 1843(c)(8).

[3] *See* id.

[4] *See* 12 U.S.C. 1843(k)(4)(B), (E) and (H).

[5] *See* 12 U.S.C. 1843(k)(1)(A), (2) and (4).

[6] *See* H. Rept. No. 106–434 at 153 (1999) (''Permitting banks to affiliate with firms engaged in financial activities represents a significant expansion from the current requirement that bank affiliates may only be engaged in activities that are closely related to banking.'').

[7] The GLB Act directs the Board to consider a variety of factors in considering whether an activity is financial in nature or incidental thereto, including (1) The purposes of the BHC Act and the GLB Act; (2) changes and reasonably expected changes in the marketplace in which FHCs compete and in the technology for delivering financial services; and (3) whether the activity is necessary or appropriate to allow FHCs to compete effectively with other companies providing financial services, to deliver efficiently information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions, and to offer customers any available or emerging technological means for using financial services or for the document imaging of data. *See* 12 U.S.C. 1843(k)(3).

[8] *See id.* at section 1843(k)(1)(B).

[9] *See* 12 U.S.C. 1843(j)(1)(A) and (E).

[10] *See* 65 FR 80735, Dec. 22, 2000 (Finder Rule). The Board, in consultation with the Secretary of the Treasury, determined that acting as finder, as defined in the rule, is an activity that is incidental to financial activities.