TO: The Chief Executive Officer of each
financial institution and bank holding company
in the Eleventh Federal Reserve District

SUBJECT
Final Rule Allowing a
Financial Holding Company to Act as a “Finder”

DETAILS
The Board of Governors, in consultation with the Secretary of the Treasury, and after seeking
public comment, has determined by rule that acting as a finder is an activity that is incidental to a financial activity and, therefore, permissible for a financial holding company. The Board’s final rule amends Subpart I of Regulation Y by adding acting as a finder to the list of activities that a financial holding company may conduct using the streamlined post-transaction notice procedure authorized by the Gramm-Leach-Bliley Act.

The rule
• allows a financial holding company to bring together buyers and sellers of products and services for transactions that the buyers and sellers themselves negotiate and consummate;
• provides examples of specific services that a financial holding company may and may not perform when acting as a finder under the rule; and
• requires a financial holding company that acts as a finder to provide appropriate disclosures to distinguish products and services that are offered by the financial holding company from those that are offered by a third party using the financial holding company’s finder service.

ATTACHMENT
A copy of the Board’s notice as it appears on pages 80735–41, Vol. 65, No. 247 of the Federal Register dated December 22, 2000, is attached.

MORE INFORMATION
For more information, please contact Rob Jolley, Banking Supervision Department, at (214) 922-6071. For additional copies of this Bank’s notice, contact the Public Affairs Department at (214) 922-5254 or access District Notices on our web site at http://www.dallasfed.org/banking/notices/index.html.
Federal Reserve System

12 CFR Part 203

[Regulation C; Docket No. R–1093]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The Board is required to adjust annually the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers. The present adjustment reflects changes for the twelve-month period ending in November 2000. During this period, the index increased by 3.4 percent; as a result, the threshold is increased to $31 million. Thus, depository institutions with assets of $31 million or less as of December 31, 2000, are exempt from data collection in 2001.

EFFECTIVE DATE: January 1, 2001. This rule applies to all data collection in 2001.

FOR FURTHER INFORMATION CONTACT: Kathleen C. Ryan, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) only, contact Janice Simms at (202) 872–4984.

SUPPLEMENTARY INFORMATION: The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 et seq.) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must file reports with their federal supervisory agencies and make disclosures available to the public. The Board’s Regulation C (12 CFR part 203) implements HMDA.

Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. Prior to 1997, HMDA exempted depository institutions with assets totaling $10 million or less, as of the preceding year end. The statutory amendment increased the asset-size exemption threshold by requiring a one time adjustment of the $10 million figure based on the percentage by which the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW) for 1996 exceeded the CPIW for 1975, and provided for annual adjustments thereafter based on the annual percentage increase in the CPIW. The one-time adjustment increased the exemption threshold to $28 million for 1997 data collection.

Section 203.3(a)(1)(ii) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Board raised the threshold to $30 million for 1999 data collection, and kept it at that level for data collection in 2000.

During the period ending November 2000, the CPIW increased by 3.4 percent. As a result, the threshold is increased to $31 million. Thus, depository institutions with assets of $31 million or less as of December 31, 2000, are exempt from data collection in 2001. An institution’s exemption from collecting data in 2001 does not affect its responsibility to report the data it was required to collect in 2000.

The Board is amending comment 3(a)–2 of the staff commentary to implement the increase in the exemption threshold. Under the Administrative Procedure Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary or would be contrary to the public interest. 5 U.S.C. 553(b)(B).

Regulation C establishes the formula for determining adjustments to the exemption threshold, if any, and the amendment to the staff commentary merely applies the formula. This amendment is technical and not subject to interpretation. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary and would be contrary to the public interest. Therefore, the amendment is adopted in final form.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:


2. In Supplement I to part 203, under Section 203.3—Exempt Institutions, under 3(a) Exemption based on location, asset size, or number of home-purchase loans, paragraph 2 is revised to read as follows:

Supplement I to Part 203—Staff Commentary

Section 203.3 Exempt Institutions

3(a) Exemption based on location, asset size, or number of home-purchase loans.

2. Adjustment of exemption threshold for depository institutions. For data collection in 2001, the asset-size exemption threshold is $31 million. Depository institutions with assets at or below $31 million are exempt from collecting data for 2001.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 19, 2000.

Jennifer J. Johnson, Secretary of the Board.

[FR Doc. 00–32749 Filed 12–21–00; 8:45 am]

BILLING CODE 6210–01–P
transaction notice procedure authorized by the Gramm-Leach-Bliley Act.

The final rule allows a financial holding company to bring together buyers and sellers of products and services for transactions that the buyers and sellers themselves negotiate and consummate. The rule provides examples of specific services that a financial holding company may and may not perform when acting as a finder under the rule. The rule also requires a financial holding company that acts as a finder to provide appropriate disclosures to distinguish products and services that are offered by the financial holding company from those that are offered by a third party using the financial holding company’s finder service.


FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Kieran J. Fallon, Senior Counsel (202/452–5270), or Adrianne G. Thrett, Senior Attorney (202/452–3554), Legal Division; 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

The Gramm-Leach-Bliley Act (Pub. L. 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 or foreign bank that qualifies as a financial holding company to engage in a broad range of activities that the GLB Act defined as financial in nature or incidental to a financial activity. The GLB Act also provides that the Board, in consultation with the Secretary of the Treasury ("Secretary"), may determine that additional activities are financial in nature or incidental to a financial activity and, thus, permissible for a financial holding company.

Earlier this year, the Board, after consulting with the Secretary, requested public comment on a proposal to determine that acting as a finder is an activity that is incidental to a financial activity and, therefore, permissible for a financial holding company. Under the proposal, a financial holding company could act as a finder that brings together one or more buyers and sellers of any type of products and services for transactions that the parties themselves negotiate and consummate. The proposed rule noted that the services provided by a finder could include: (1) identifying potential parties to a transaction, making inquiries as to interest, introducing and referring potential parties to each other, and arranging contacts between and meetings of interested parties; (2) conveying between interested parties expressions of interest, bids, offers, orders, and confirmation related to a transaction; and (3) transmitting information concerning products and services to potential parties in connection with the activities described in items (1) and (2) above. To illustrate some of the services of a finder, the proposed rule included examples of specific services that a finder could provide under the proposed rule, including hosting an Internet marketplace on the finder’s web site, hosting the Internet web site of a seller, and operating an Internet web site that allows multiple buyers and sellers to enter into transactions between themselves.

The proposed rule also included specific parameters designed to ensure that a finder did not engage in any nonfinancial activity. In addition, the proposed rule required a finder to use disclosures or other means to distinguish the products and services offered by the financial holding company from those offered by a third party through the finder service.

Overview of Public Comments

The Board received 18 public comments on the proposal. Commenters included financial holding companies and other bank holding companies; trade associations representing the banking, securities, and real estate industries; a state banking and insurance department; and a law firm.

Nearly all of the commenters supported the proposal. Many of these commenters praised the scope of the proposed rule or stated that adoption of the proposal would increase the ability of financial holding companies to compete effectively with other financial service providers in a manner consistent with the purposes of the GLB Act. Some commenters that supported the proposal suggested that the Board determine acting as finder to be a financial activity, rather than an activity that is incidental to a financial activity. Two commenters opposed the proposal, commenting that it would allow financial holding companies to engage in commercial activities and would expose financial holding companies to additional risks.

Commenters also requested that the Board make certain changes to the proposed rule. For example, some commenters requested that the Board expand, modify, or clarify the examples of permissible finder services included in the proposed rule. In addition, while some commenters supported the limitations included in the proposed rule on the finder activities of financial holding companies, other commenters requested that the Board modify or eliminate some of these limitations, including the limitations that prevent a financial holding company from binding a buyer or seller to a specific contract, negotiating the terms of a specific transaction on behalf of a buyer or seller, or engaging in any activity that would cause the company to register or obtain a license as a real estate agent or broker. Other commenters urged that the limitations on real estate agency and brokerage activities be retained.

Some commenters asked the Board to provide additional guidance concerning how a financial holding company could comply with the disclosure requirements of the proposed rule. A few commenters also asked that the Board clarify that the proposed limitations on the finder activities do not apply to other activities that a financial holding company is authorized to conduct.

Final Rule

National banks and many state banks are permitted to act and have acted as a finder in nonfinancial transactions for over a year. Opportunities to provide finder services and interest in acting as a finder have grown dramatically with advances in technology and the increased use of the Internet. Thus, banking organizations, which in the past largely have served as a finder by providing statement stuffers and other marketing materials of sellers of various products and services or by helping to
identify service providers as an accommodation to customers, have
to explore the opportunity to act as a finder electronically on a broader
scale. Financial holding companies have
argued that acting as a finder,
particularly electronically, offers
increased opportunities for financial
holding companies to cross sell
financial products and services or to
enhance the attractiveness to customers
of the financial holding company’s own
electronic web site. Commenters
asserted that authorizing FHCs to act as a
finder as proposed would facilitate
competition between FHCs and
nonbanking companies to provide
customers with a wide range of financial
services. One commenter stated that the
new authority particularly would
benefit FHCs affiliated with community
banks, which often are knowledgeable
about the business interests of third
parties with whom they deal. In this
way, finder services have become
incidental to financial activities.

After carefully reviewing the public
comments on the finder proposal, the
Board has adopted a final rule that
provides that acting as a finder, as
defined in the rule, is an activity that is
incidental to a financial activity and
therefore permissible for financial
holding companies to conduct. Under
the GLB Act, the Board may not
determine that an activity is financial in
nature or incidental to a financial
activity if the Secretary notifies the
Board in writing that the Secretary
believes the activity is not financial in
nature, incidental to a financial activity,
or otherwise permissible under section
4 of the BHC Act. The Secretary must
notify the Board of the Secretary’s
determination within 30 days of
receiving notice from the Board, or
within such longer period as the Board
may allow under the circumstances. The
Board has provided the Secretary with
notice of the proposed activity as
required by the GLB Act and the
Secretary has informed the Board in
writing that the Secretary does not
object to the final rule as adopted.

The Board made a number of changes
to the rule to respond to public
comments and to clarify the scope of the
proposed rule. These changes and the
comments on particular aspects of the
rule are discussed below.

**Detailed Description of Final Rule**

The rule adds “acting as finder” to the
list of activities in section 225.86 of
Subpart I of the Board’s Regulation Y
that are financial in nature or incidental
to a financial activity and, thus
permissible for a financial holding
company. Bank holding companies and
foreign banks that qualify as financial
holding companies may engage in finder
activities by using the post-transaction
notice procedure described in section
225.87 of Regulation Y. Bank holding
companies and foreign banks that do not
qualify as financial holding companies
may not engage in finder activities
under the rule.

**Section 225.86(d)(1)(i)—What Is the
Scope of Finder Activities?**

The activity of a finder is defined
under the rule as bringing together one
or more buyers and sellers of any
product or service for transactions that
the parties themselves negotiate and
consume. A financial holding
company may act as a finder under the
rule for financial and nonfinancial
products or services that are offered or
sold by third-party buyers and sellers.³

As the Board noted in the proposal,
the actual services provided by a finder
in a particular transaction may vary.
Under current practices, however,
finders perform two principal
functions—(1) locating and matching
third parties that are interested in
engaging in a business transaction
between themselves, and (2) acting as a
conduit for transaction-related
information between parties that may be
or are interested in conducting a
business transaction between
themselves.

Accordingly, the final rule provides
that the services provided by a finder
may include:

(1) Identifying potential parties that
may be interested in engaging in a
transaction between themselves;

(2) Making inquiries of third parties as
to their interest in engaging in a
transaction with another party;

(3) Introducing and referring potential
parties to each other;

(4) Arranging contacts and meetings
between interested parties;

(5) Conveying expressions of interests,
bids, offers, orders, and confirmations
relating to a transaction between third
parties;

(6) Transmitting information
concerning products and services to
potential parties in connection with the
activities described in paragraphs (1)
through (5) above, such as transmitting
to a buyer information concerning the
products and services offered by a seller
or transmitting to a seller the product
preferences of a buyer.

Some commenters requested that the
Board clarify that a finder may act
through a variety of media, including
through electronic means (such as the
Internet) or non-electronic means. The
final rule explicitly provides that a
finder may act through any means and
also clarifies that a finder may perform
one, all, or any combination of the
permissible finder services described in
the rule.

A few commenters contended that the
Board should expand the rule to allow a
finder to transmit or exchange any
type of information between any parties.
The final rule authorizes financial
holding companies to transmit any type
of information between potential parties
to a transaction, including information
about the buyer and seller and the
products and services sought or offered
by the buyer or seller, so long as the
information is related to the proposed
transaction. The Board believes that it is
not appropriate to expand this authority
to allow a finder to transmit between
parties information that is not related to
a proposed transaction. Allowing
financial holding companies to provide
information without limit goes beyond
what is necessary to bring transacting
parties together and could be
interpreted to allow a financial holding
company to engage in nonfinancial
activities, such as operating a
newspaper.

**Section 225.86(d)(1)(ii)—What Are
Some Examples of Finder Services?**

As noted above, the proposed rule
included examples of specific services
that a finder may provide under the
rule. Commenters generally favored the
Board’s decision to include examples of
permissible finder services in the rule
but were divided on the issue of
whether additional examples of
permissible finder services should be
provided. A number of commenters
requested that the Board modify or
clarify certain examples included in the
proposed rule, and several commenters
requested assurance that the examples
included in the rule were not
exhaustive.

In light of these comments, the Board
has revised and reorganized the
elements of permissible finder activities
included in the rule to illustrate more
fully the breadth of the rule. The
examples included in the final rule
illustrate that a finder may:

- *Host an electronic marketplace
  internet web site that provides hyper text
  or similar links to the web sites of third
  party buyers or sellers;*
• Host the Internet web site of a buyer (or seller) that provides information concerning the buyer (or seller) and the products or services it seeks to buy (or sell) and allows sellers (or buyers) to submit expressions of interest, bids, offers, orders, and confirmations relating to such products or services;
• Host the Internet web site of a government or government agency that provides information concerning the services or benefits made available by the government or government agency, assists persons in completing applications to receive such services or benefits from the government or agency, and allows persons to transmit their applications for services or benefits to the government or agency;
• Operate an Internet web site that allows multiple buyers and sellers to exchange information concerning the products and services that they are willing to purchase or sell, locate potential counterparties for transactions, aggregate orders for goods or services with those made by other parties, and enter into transactions between themselves; and
• Operate a telephone call center that provides permissible finder services.

The rule states that the examples of permissible finder services included in the rule are illustrative and not exclusive. Furthermore, while the Board expects that financial holding companies likely will engage in finder activities through electronic means, such as over the Internet or other electronic networks, a finder may act through any means available so long as the activity complies with the requirements of the rule. Financial holding companies that are uncertain whether a proposed activity is within the scope of the rule may contact Federal Reserve staff to discuss the proposal.

Section 225.86(d)(1)(iii)—What Limitations Are Applicable to a Financial Holding Company Acting as a Finder?

The rule prevents a finder from becoming a principal in the underlying transaction. In particular, a finder may not negotiate for or bind third parties; acquire or take title to, or provide distribution services for, products and services offered or sold through the finder service; or own or operate real property used to manufacture, store, transport, or assemble products offered or sold by a third party.

Several commenters requested that the Board modify or eliminate certain of these limitations. For example, some commenters requested that the Board remove the restrictions on binding parties or negotiating transactions or, alternatively, allow a financial holding company to take such actions within parameters established by the buyer or seller. A few commenters also contended that the Board should allow a finder to acquire an ownership interest in products as a “riskless principal.”

The Board has carefully reviewed the limitations included in the proposed rule in light of the comments received. As a general matter, the Board continues to believe that the restrictions included in the proposed rule are appropriate to ensure that a finder acts only as an intermediary in providing finder services and does not otherwise become involved in impermissible commercial activities. The Board recognizes, however, that technological developments in communications, computing, and the Internet have made the intermediary function more important and that further developments in these areas may alter the methods and manner of providing finder services. The Board intends to monitor future developments in technology, the financial services industry, and the market for finder services and to review periodically the limits in the rule to determine whether such limits continue to be necessary or appropriate.

For the foregoing reasons, the final rule continues to provide that a finder may act only as an intermediary and may not bind any buyer or seller to the terms of a specific transaction or negotiate the terms of a specific transaction on behalf of a buyer or seller. In response to comments, the final rule clarifies that these restrictions do not prevent a finder from establishing rules of general applicability governing the use and operation of the finder service. These operating rules may, for example, establish the parameters under which buyers and sellers may submit bids and offers to the finder service and the circumstances under which the finder service will match bids and offers submitted by buyers and sellers.

Similarly, the finder may establish rules of general applicability that govern the manner in which buyers and sellers bind themselves to the terms of a specific transaction entered into through the finder service. Under these provisions, a financial holding company may establish and operate an electronic exchange that assists buyers and sellers to locate potential counterparties, matches buyers and sellers that submit bids and offers within specified ranges established by the rules of the exchange, and requires buyers and sellers to accept transactions matched through the exchange.

The proposed rule also stated that the proposal did not prevent a financial holding company from arranging for buyers that use its finder services to receive preferred terms from sellers so long as the terms are not negotiated as part of any individual transaction, are made available to broad categories of customers, and are provided by the seller and not the financial holding company. Commenters generally supported this provision and it is retained in the final rule.

The final rule does not authorize a financial holding company to take title to, or acquire or hold an ownership interest in, any product or service offered or sold through the finder service or provide distribution services for physical products or services offered or sold through such service. In addition, a financial holding company may not own or operate any real or personal property that is used for the purpose of manufacturing, storing, transporting, or assembling physical products offered or sold by third parties, or that serves as a physical location for the physical purchase, sale, or distribution of products or services offered or sold by third parties. These limitations are consistent with the limited role of a finder as an intermediary and distinguish a finder, for example, from a company that owns or operates a physical shopping mall, retail store, a manufacturing plant, a product distribution center, or a transport or trucking company.

Acting As a Real Estate Agent or Broker

The proposed rule did not authorize a financial holding company to engage in any activity that would require the company to register or obtain a license as a real estate agent or broker under applicable law. While some commenters supported this provision, others requested that the Board remove the provision from the rule or amend the rule to only prohibit financial holding companies from engaging in “general” real estate agency or brokerage activities under the rule.
The Board has not to date determined whether real estate agency or brokerage activities are financial in nature or incidental to financial activities and, thus, permissible for financial holding companies. The Board has received a request to determine that real estate agency and brokerage services are financial in nature and separately has requested public comment on a proposal that would find those activities to be financial in nature or incidental to a financial activity. Accordingly, the final rule retains the limitation that prohibits a financial holding company from engaging in activities that require licensing or registration as a real estate broker.

Other Authorities Not Affected

As noted above, several commenters were uncertain whether the limits included in the rule applied to or restricted the conduct of other financial activities that a financial holding company is authorized to conduct. The Board confirms that authorization to act as a finder is in addition to, and separate from, the authority that a financial holding company has under other provisions of Regulation Y to conduct other financial activities. The restrictions contained in §225.86(d)(1)(iii) apply only to the finder activities conducted by a financial holding company under §225.86(d) of Regulation Y. These limitations do not restrict or otherwise limit the manner in which a financial holding company may conduct other activities that are permissible for a financial holding company, such as securities brokerage, insurance agency, investment advisory, or leasing activities.

In this regard, a financial holding company that acts as a finder for a buyer or seller may also provide the buyer or seller any combination of other services that are permissible under Regulation Y so long as the finder and other services are provided in accordance with any applicable limitations under the rule and Regulation Y. For example, a finder for a merchant may, in addition to acting as finder, make, acquire, broker, or service loans or other extensions of credit to or for the merchant or the merchant’s customers; provide the merchant with check verification, check guaranty, collection agency and credit bureau services; provide financial investment advice to the merchant or the merchant’s customers within the parameters of Regulation Y; act as a certification authority for digital signatures and thereby authenticate the identity of persons conducting business with the merchant over electronic networks; and process and transmit financial, economic, and banking data on behalf of the merchant, such as by processing the merchant’s accounts receivables and debit and credit card transactions, providing the merchant with bill payment and billing services, and processing order, distribution, accounting, settlement, collection and payment information for the merchant’s transactions.

Furthermore, a financial holding company may market and provide its own financial products and services in conjunction with acting as a finder for buyers and sellers of nonfinancial products and services. For example, a financial holding company may use its finder service to promote the company’s own products and services and, in connection with that activity, may negotiate on its own behalf and bind itself to transactions.

Section 225.86(d)(1)(iv)—What Disclosures Are Required?

The proposed rule required a finder to distinguish the products and services offered by the financial holding company from the products and services offered through the finder service by a third party. A number of commenters supported the disclosure requirement as an appropriate means of limiting potential customer confusion and reputational risk to financial holding companies. Some commenters requested that the Board provide additional guidance, such as identifying best practices in this area, as it gains experience with the disclosure practices of financial holding companies and may provide additional guidance, such as identifying best practices in this area, as it gains experience with the finder activities of financial holding companies.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Board is required to conduct an analysis of the effect this final rule would have on small institutions. The rule authorizes all financial holding companies regardless of their size to engage in a new activity—that of acting as a finder. Moreover, the rule enables such companies to commence the new activity by using the streamlined post-transaction notice procedure authorized by the GLB Act, which is the least burdensome notice procedure available to a financial holding company. This rule therefore should enhance the ability of financial holding companies, including small ones, to compete with other providers of financial services in the United States and to respond to technological and other changes in the marketplace in which financial holding companies compete. Moreover, the comments received by the Board did not indicate that the rule would impose a
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 authority delegated to the Board by the Office of Management and Budget ("OMB"). The Board 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.

A financial holding company may engage in the finder activities authorized by this rule by providing a post-transaction notice in accordance with §225.87 of Regulation Y. This information is mandatory to evidence compliance with the requirements of the GLB Act and Regulation Y, and the burden of the post-transaction notice requirement was reviewed in connection with the Board’s adoption of §225.87.

In addition, this rule requires a finder to distinguish the products and services offered by the financial holding company from those offered by a third party through the finder service. Provision of such disclosures, although not contained in a submission to the Board, does constitute a collection of information under the Paperwork Reduction Act. Financial holding companies, of which there are approximately 450, are the respondents/recordkeepers. Board staff anticipates that the majority of the burden on financial holding companies will be a one-time burden in the first year as a company engages in the finder activity, when the financial holding company must develop a mechanism to distinguish the products and services offered by the financial holding company from those offered by a third party through the finder service. The estimated one-time burden to develop such disclosures is one hour. Although financial holding companies may update their disclosures periodically, this will be a negligible burden on them. It is estimated that there will be 50 financial holding companies required to comply with the post-transaction notice with an average of 1 update per respondent each year. Therefore the total amount of annual burden is estimated to be 50 hours.

Board staff estimates that there would be nominal start up costs associated with operations of the financial holding company’s finder service to provide this notice. Thus, there is estimated to be no annual cost burden over the annual hour burden.

Because the disclosures would be maintained at and provided by financial holding companies and the disclosures are not submitted to the Federal Reserve System, no issue of confidentiality arises under the Freedom of Information Act. The Board has a continuing interest in the public’s opinions of its 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: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0292), Washington, DC 20503.

List of Subjects in 12 CFR Part 225

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

Authority and Issuance

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 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831, 1831p–1, 1843(c)(6), 1843(k), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.86 is amended by adding a new paragraph (d) to read as follows:

§225.86 What activities are permissible for financial holding companies?

(d) Activities determined to be financial in nature or incidental to financial activities by the Board—(1) Acting as a finder—Acting as a finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate.

(i) What is the scope of finder activities? Acting as a finder includes providing any or all of the following services through any means—

(A) Identifying potential parties, making inquiries as to interest, introducing and referring potential parties to each other, and arranging contacts between and meetings of interested parties;

(B) Conveying between interested parties expressions of interest, bids, offers, orders and confirmations relating to a transaction; and

(C) Transmitting information concerning products and services to potential parties in connection with the activities described in paragraphs (d)(1)(i)(A) and (B) of this section.

(ii) What are some examples of finder services? The following are examples of the services that may be provided by a finder when done in accordance with paragraphs (d)(1)(i) and (iv) of this section. These examples are not exclusive.

(A) Hosting an electronic marketplace on the financial holding company’s Internet web site by providing hypertext or similar links to the web sites of third party buyers or sellers.

(B) Hosting on the financial holding company’s servers the Internet web site of—

(1) A buyer (or seller) that provides information concerning the buyer (or seller) and the products or services it seeks to buy (or sell) and allows sellers (or buyers) to submit expressions of interest, bids, offers, orders and confirmations relating to such products or services; or

(2) A government or government agency that provides information concerning the services or benefits made available by the government or government agency, assists persons in completing applications to receive such services or benefits from the government or agency, and allows persons to transmit their applications for services or benefits to the government or agency.

(C) Operating an Internet web site that allows multiple buyers and sellers to engage in exchange information concerning the products and services that they are willing to purchase or sell, locate potential counterparties for transactions, aggregate orders for goods or services with those made by other parties, and enter into transactions between themselves.

(D) Operating a telephone call center that provides permissible finder services.

(iii) What limitations are applicable to a financial holding company acting as a finder?

(A) A finder may act only as an intermediary between a buyer and a seller.

(B) A finder may not bind any buyer or seller to the terms of a specific transaction or negotiate the terms of a specific transaction on behalf of a buyer or seller, except that a finder may—
(1) Arrange for buyers to receive preferred terms from sellers so long as the terms are not negotiated as part of any individual transaction, are provided generally to customers or broad categories of customers, and are made available by the seller (and not by the financial holding company); and

(2) Establish rules of general applicability governing the use and operation of the finder service, including rules that—

(i) Govern the submission of bids and offers by buyers and sellers that use the finder service and the circumstances under which the finder service will match bids and offers submitted by buyers and sellers; and

(ii) Govern the manner in which buyers and sellers may bind themselves to the terms of a specific transaction.

(C) A finder may not—

(1) Take title to or acquire or hold an ownership interest in any product or service offered or sold through the finder service;

(2) Provide distribution services for physical products or services offered or sold through the finder service;

(3) Own or operate any real or personal property that is used for the purpose of manufacturing, storing, transporting, or assembling physical products offered or sold by third parties; or

(4) Own or operate any real or personal property that serves as a physical location for the physical purchase, sale or distribution of products or services offered or sold by third parties.

(D) A finder may not engage in any activity that would require the company to register or obtain a license as a real estate agent or broker under applicable law.

(iv) What disclosures are required? A finder must distinguish the products and services offered by the financial holding company from those offered by a third party through the finder service.

(2) [Reserved]


By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,
Secretary of the Board.

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