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12 CFR Ch. II (1-1-01 Edition)

in accordance with paragraphs (d)(1)(iii) 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 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]

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

(a) *Post-commencement notice is generally required to engage in a financial activity.* A financial holding company that commences an activity or acquires shares of a company engaged in an activity listed in § 225.86 must notify the appropriate Federal Reserve Bank in writing within 30 calendar days after commencing the activity or consummating the acquisition. The notice must describe, as relevant:

(1) The activity commenced and the identity of each subsidiary engaged in the activity; or

(2) The identity of the company acquired and the activities conducted by the company.

(b) *Are there any cases in which notice to the Board is not required?* (1) *Acquisitions that do not result in control of a company.* A notice under paragraph (a) of this section is not required to acquire shares of a company if, following the acquisition, the financial holding company does not control the company.

(2) *Conduct of certain investment activities.* Except as otherwise provided in this part or as determined by the Board in the exercise of its supervisory authority, no post-commencement notice is required as part of the conduct by a

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financial holding company or its subsidiary of:

(i) Securities underwriting, dealing, or market making activities as described in section 4(k)(4)(E) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(E));

(ii) Merchant banking activities conducted pursuant to section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)), except as provided in § 225.174(d); or

(iii) Insurance company investment activities conducted pursuant to section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(I)), so long as the financial holding company provides the notice described in § 225.174(d) in connection with any insurance company investment that meets the thresholds in that section.

(3) *Condition for exceptions.* The exception provided in paragraph (b)(2) of this section applies only if the financial holding company previously has provided notice to the Board under paragraph (a) of this section that the financial holding company has commenced or acquired control of a company engaged in the relevant activity for which an exception is claimed.

[Reg. Y, 65 FR 14439, Mar. 17, 2000]

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

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

(b) *What information must the request contain?* A request submitted under this section must be in writing and must:

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

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

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

(c) *What action will the Board take after receiving a request?* (1) *Consultation with the Secretary of the Treasury.* Upon receipt of the request, the Board will provide the Secretary of the Treasury a copy of the request and consult with the Secretary in accordance with section 4(k)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1843(k)(2)(A)).

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

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

(e) *What should a financial holding company do if it has a question about the scope of a financial activity?* (1) *Written request.* A financial holding company may request an advisory opinion from the Board about whether a specific proposed activity falls within the scope of an activity listed in § 225.86 as financial in nature or incidental to a financial activity. The request must be submitted in writing and must contain:

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

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

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

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

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