

# BANK HOLDING COMPANY ACT

## SEC. 4.

### (k) ENGAGING IN ACTIVITIES THAT ARE FINANCIAL IN NATURE.--

(1) IN GENERAL.--Notwithstanding subsection (a), a financial holding company may engage in any activity, and may acquire and retain the shares of any company engaged in any activity, that the Board, in accordance with paragraph (2), determines (by regulation or order)--

(A) to be financial in nature or incidental to such financial activity; or

(B) is complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.

(2) Coordination between the board and the secretary of the treasury.--

(A) PROPOSALS RAISED BEFORE THE BOARD.--

(i) CONSULTATION.--The Board shall notify the Secretary of the Treasury of, and consult with the Secretary of the Treasury concerning, any request, proposal, or application under this subsection for a determination of whether an activity is financial in nature or incidental to a financial activity.

(ii) TREASURY VIEW.--The Board shall not determine that any activity is financial in nature or incidental to a financial activity under this subsection if the Secretary of the Treasury notifies the Board in writing, not later than 30 days after the date of receipt of the notice described in clause (i) (or such longer period as the Board determines to be appropriate under the circumstances) that the Secretary of the Treasury believes that the activity is not financial in nature or incidental to a financial activity or is not otherwise permissible under this section.

(B) PROPOSALS RAISED BY THE TREASURY.--

(i) TREASURY RECOMMENDATION.--The Secretary of the Treasury may, at any time, recommend in writing that the Board find an activity to be financial in nature or incidental to a financial activity.

(ii) TIME PERIOD FOR BOARD ACTION.--Not later than 30 days after the date of receipt of a written recommendation from the Secretary of the Treasury under clause (i) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate under the circumstances), the Board shall determine whether to initiate a public rulemaking proposing that the recommended activity be found to be financial in nature or incidental to a financial activity under this subsection, and shall notify the Secretary of the Treasury in writing of the determination of the Board and, if the Board determines not to seek public comment on the proposal, the reasons for that determination.

(3) FACTORS TO BE CONSIDERED.--In determining whether an activity is financial in nature or incidental to a financial activity, the Board shall take into account--

(A) the purposes of this Act and the Gramm-Leach-Bliley Act;

(B) changes or reasonably expected changes in the marketplace in which financial holding companies compete;

(C) changes or reasonably expected changes in the technology for delivering financial services; and

(D) whether such activity is necessary or appropriate to allow a financial holding company and the affiliates of a financial holding company to--

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) efficiently deliver 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

(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

(4) ACTIVITIES THAT ARE FINANCIAL IN NATURE.--For purposes of this subsection, the following activities shall be considered to be financial in nature:

(A) Lending, exchanging, transferring, investing for others, or safeguarding money or securities.

(B) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any State.

(C) Providing financial, investment, or economic advisory services, including advising an investment company (as defined in section 3 of the Investment Company Act of 1940).

(D) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly.

(E) Underwriting, dealing in, or making a market in securities.

(F) Engaging in any activity that the Board has determined, by order or regulation that is in effect

on the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in such order or regulation, unless modified by the Board).

(G) Engaging, in the United States, in any activity that--

(i) a bank holding company may engage in outside of the United States; and

(ii) the Board has determined, under regulations prescribed or interpretations issued pursuant to subsection (c)(13) (as in effect on the day before the date of the enactment of the Gramm-Leach-Bliley Act) to be usual in connection with the transaction of banking or other financial operations abroad.

(H) Directly, or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls), or otherwise, shares, assets, or ownership interests (include debt or equity securities, partnership interests, trust certificates, or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if--

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by--

(I) a securities affiliate or an affiliate thereof; or

(II) an affiliate of an insurance company described in subparagraph (I)(ii) that provides investment advice to an insurance company and is registered pursuant to the Investment Advisers Act of 1940, or an affiliate of such investment adviser;

as part of a bona fide underwriting or merchant or investment banking activity, including investment activities engaged in for the purpose of appreciation and ultimate resale or disposition of the investment;

(iii) such shares, assets, or ownership interests are held for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the activities described in clause (ii); and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company or entity except as may be necessary or required to obtain a reasonable return on investment upon resale or disposition.

(I) Directly or indirectly acquiring or controlling, whether as principal, on behalf of 1 or more entities (including entities, other than a depository institution or subsidiary of a depository institution, that the bank holding company controls) or otherwise, shares, assets, or ownership interests (including debt or equity securities, partnership interests, trust certificates or other instruments representing ownership) of a company or other entity, whether or not constituting control of such company or entity, engaged in any activity not authorized pursuant to this section if--

(i) the shares, assets, or ownership interests are not acquired or held by a depository institution or a subsidiary of a depository institution;

(ii) such shares, assets, or ownership interests are acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance) or providing and issuing annuities;

(iii) such shares, assets, or ownership interests represent an investment made in the ordinary course of business of such insurance company in accordance with relevant State law governing such investments; and

(iv) during the period such shares, assets, or ownership interests are held, the bank holding company does not routinely manage or operate such company except as may be necessary or required to obtain a reasonable return on investment.

(5) ACTIONS REQUIRED.--

(A) IN GENERAL.--The Board shall, by regulation or order, define, consistent with the purposes of this Act, the activities described in subparagraph (B) as financial in nature, and the extent to which such activities are financial in nature or incidental to a financial activity.

(B) ACTIVITIES.--The activities described in this subparagraph are as follows:

(i) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(ii) Providing any device or other instrumentality for transferring money or other financial assets.

(iii) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(6) REQUIRED NOTIFICATION.--

(A) IN GENERAL.--A financial holding company that acquires any company or commences any activity pursuant to this subsection shall provide written notice to the Board describing the activity commenced or conducted by the company acquired not later than 30 calendar days after commencing the activity or consummating the acquisition, as the case may be.

(B) Approval not required for certain financial activities.--Except as provided in subsection (i) with

regard to the acquisition of a savings association, a financial holding company may commence any activity, or acquire any company, pursuant to paragraph (4) or any regulation prescribed or order issued under paragraph (5), without prior approval of the Board.

(7) MERCHANT BANKING ACTIVITIES.--

(A) JOINT REGULATIONS.--The Board and the Secretary of the Treasury may issue such regulations implementing paragraph (4)(H), including limitations on transactions between depository institutions and companies controlled pursuant to such paragraph, as the Board and the Secretary jointly deem appropriate to assure compliance with the purposes and prevent evasions of this Act and the Gramm-Leach-Bliley Act and to protect depository institutions.

(B) Sunset of restrictions on merchant banking activities of financial subsidiaries.--The restrictions contained in paragraph (4)(H) on the ownership and control of shares, assets, or ownership interests by or on behalf of a subsidiary of a depository institution shall not apply to a financial subsidiary (as defined in section 5136A of the Revised Statutes of the United States) of a bank, if the Board and the Secretary of the Treasury jointly authorize financial subsidiaries of banks to engage in merchant banking activities pursuant to section 122 of the Gramm-Leach-Bliley Act.