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### III. COLLECTED QUESTIONS ON GLBA AND TEXAS LAW

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#### Preliminary Notes:

1. Please consult the **Glossary** on page ii to identify acronyms and other short form references used throughout this Report.
2. Questions submitted to the Agencies have been reworded and multi-part questions have been divided as necessary for clarity. The responses are (i) highly condensed summaries relating generally to the topics presented, (ii) not intended as legal advice adequate to any circumstances, and (iii) provided solely for informational purposes. Therefore, the responses should not be relied upon as a complete record for purposes of regulatory compliance. Readers are urged to consult their attorneys, advisors, and appropriate state and federal regulators regarding specific questions they may have.
3. Responses have been prepared jointly by staff of the Agencies; however, DOB and TSLD have provided responses involving the Texas Finance Code, TDI has provided responses involving the Texas Insurance Code, and SSB has provided responses involving the Texas Securities Act. In addition, DOB provided responses involving federal banking laws and GLBA as it relates to federal banking law.

For ease of reference, the questions and responses have been organized under eight general topics of interest:

- A. Financial Holding Company (FHC) Elections
- B. Depository Institution Financial Subsidiaries
- C. Banks and Affiliates Conducting Securities Activities
- D. Insurance Agent Licensing for Depository Institutions and Affiliates
- E. Regulation of Insurance Activities
- F. Commissions and Referral Fees from Insurance

**or Securities Activities****G. Merchant Banking****H. Miscellaneous Questions****A. Financial Holding Company (FHC) Elections*****A-1. Must a bank holding company (BHC) meet any special qualifications to elect to become a FHC?***

A BHC may become a FHC by submitting a declaration to the FRB electing FHC status, together with a certification that each of the BHC's depository institution subsidiaries is well capitalized and well managed, and has a satisfactory or better Community Reinvestment Act ("CRA") rating. The election will be denied effect if the qualifications stated in the certification are untrue. (12 U.S.C. §§1843(k)(6) and 1843(l)(1); 12 C.F.R. §225.82).

***A-2. What are the advantages and disadvantages of filing a FHC election?***

The determination of whether to become a FHC is a business decision the board of directors of a BHC should make in consultation with its own counsel. The primary advantage of an election is the increased authority to engage in additional activities, including insurance, securities, and merchant banking. Disadvantages arise from additional enforcement remedies applicable to a FHC that does not maintain the initial qualifications of a FHC election.

The nonbanking activities of a BHC are limited to activities determined by the FRB "by regulation or order . . . as of the day before the date of the enactment of the Gramm-Leach-Bliley Act, to be so closely related to banking as to be a proper incident thereto. . . ." (12 U.S.C. §1843(c)(8); 12 C.F.R. §225.28(b); also see Appendix H).

A FHC may engage in nine listed financial activities (one of which incorporates "closely related to banking" activities by reference) plus any additional activity the FRB determines is "financial in nature or incidental to such financial activity" or that 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." (12 U.S.C. §1843(k)(1) and (4); 12 C.F.R. §225.86). The nine listed activities, which contain some overlap with prior

"closely related to banking" determinations, are summarized as follows:

- Lending and related activities;
- Insurance activities, as principal, agent, or broker;
- Financial, investment, or economic advisory services, including as an investment company;
- Issuing or selling instruments representing a pool of assets;
- Underwriting, dealing in, or making a market in securities;
- "Closely related to banking" activities;
- In the United States, engaging in BHC activities that are permissible outside the United States and are usual in connection with banking or other financial operations abroad;
- Merchant banking activities; and
- Owning non-financial firms through insurance or securities affiliates if not directly involved in the management of these firms.

In determining whether an activity is financial in nature or incidental to a financial activity, the FRB must consider:

- the purposes of the BHC Act and GLBA;
- changes or reasonably expected changes in the marketplace in which FHCs compete and in the technology for delivering financial services; and
- whether the activity is necessary or appropriate to allow a FHC and its affiliates to:
  - compete effectively with any company seeking to provide financial services in the United States;
  - 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
  - offer customers any available or emerging technological means for using financial services or for the document imaging of data (12 U.S.C. §1843(k)(3)).

In making a determination regarding a new financial activity, the FRB must consult with Treasury and the Treasury has a veto power (12 U.S.C. §1843(k)(2); 12 C.F.R. §225.88).

***A-3. Does a BHC that has no specific plans to directly or indirectly engage in an identified financial activity***

# A Texas Perspective Gramm-Leach-Bliley Financial Services Modernization Act of 1999

## APPENDIX H

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A FHC may engage in nine listed activities that are "financial in nature" plus any additional activity the FRB determines is "financial in nature or incidental to such financial activity" or that 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." (12 U.S.C. §1843(k)(1) and (4); 12 C.F.R. §225.86). The nine listed activities are summarized as follows, and in two instances expanded further below as indicated:

- Lending and related activities (12 U.S.C. §1843(k)(4)(A));
- Insurance activities, as principal, agent, or broker (12 U.S.C. §1843(k)(4)(B));
- Financial, investment, or economic advisory services, including as an investment company (12 U.S.C. §1843(k)(4)(C));
- Issuing or selling instruments representing a pool of assets (12 U.S.C. §1843(k)(4)(D));
- Underwriting, dealing in, or making a market in securities (12 U.S.C. §1843(k)(4)(E));
- "Closely related to banking" activities (12 U.S.C. §1843(k)(4)(F) (Detailed description of "closely related to banking" activities appears in Part A below);
- In the United States, engaging in BHC activities that are permissible outside the United States and are usual in connection with banking or other financial operations abroad (12 U.S.C. §1843(k)(4)(G)) (Detailed description of "BHC foreign" activities appears in Part B below);
- Merchant banking activities (12 U.S.C. §1843(k)(4)(H)); and
- Owning non-financial firms through insurance or securities affiliates if not directly involved in the management of these firms (12 U.S.C. §1843(k)(4)(I)).

### Expanded Descriptions of "Closely Related To Banking" and "BHC Foreign" Activities

A. "Closely Related To Banking" Activities. Specifically, 12 U.S.C. §1843(k)(4)(F) identifies as financial in nature "any activity that the [FRB] has determined, by order or regulation that is in effect on [November 12, 1999], 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 [FRB]."

This category is very broad, in essence incorporating most of the nonbanking activities permitted to a BHC. Many of these activities are also subsumed in other listed financial activities, creating some overlap and duplication. However, the category is important in a number of contexts and is expanded here.

Part A.1 below details closely related to banking activities "by regulation" and Part A.2 below details closely related to banking activities "by order."

**1. "By Regulation."** Any activity that the FRB has previously determined, by regulation in effect on November 12, 1999, to be so closely related to banking as to be a proper incident thereto. These activities are listed in 12 CFR §225.28(b). The numbered list below corresponds with the numbered paragraphs in §225.28(b):

(1) Extending credit and servicing loans: Making, acquiring, brokering, or servicing loans or other extensions of credit (including factoring, issuing letters of credit, and accepting drafts) for the company's account or the account of others

(2) Activities related to extending credit:

(a) Appraising

(1) Real estate appraising

(2) Personal property appraising

(b) Arranging commercial real estate equity financing

(c) Check-guaranty services

(d) Collection agency services

(e) Credit bureau services

(f) Asset management servicing and collection activities

(g) Acquiring debt in default

(h) Real estate settlement servicing

(3) Leasing personal or real property or acting as agent, broker, or adviser in leasing such property

(4) Operating nonbank depository institutions:

(a) Owning, controlling, or operating an industrial bank, Morris Plan bank, or industrial loan company so long as the institution is not a bank

(b) Owning, controlling, or operating a savings association, if

the savings association engages in deposit-taking activities, lending, and other activities that are permissible for bank holding companies

(5) Trust company functions or activities

(6) Financial and investment advisory activities: acting as an investment adviser or financial adviser to any person, including (without limiting these activities in any way)—

(a) Serving as an investment adviser to an investment company registered under the Investment Company Act of 1940, including sponsoring, organizing, and managing a closed-end investment company

(b) Furnishing general economic information and advice, general economic statistical forecasting services, and industry studies

(c) Providing advice in connection with mergers, acquisitions, divestitures, investments, joint ventures, leveraged buyouts, reorganizations, recapitalizations, capital structurings, financing transactions, and similar transactions, and conducting financial feasibility studies

(d) Providing information, statistical forecasting, and advice with respect to any transactions in foreign exchange, swaps and similar transactions, commodities, and any forward contract, option, future, option on a future, and similar instruments, e.g.:

- Financial futures and options on futures
- Providing financial advice to:
  - state and local governments and
  - foreign governments; including foreign municipalities and agencies of foreign governments, such as with respect to the issuance of their securities
- Inclusion of any investment or financial advisory activity without restriction
- Discretionary investment advice to be provided to any person (includes investment advice regarding derivative transactions to institutional or retail customers as an investment, commodity trading, or other adviser) regarding contracts related to financial or nonfinancial assets (such advice is no longer restricted to institutional customers)
- Financial and investment advice (or any permissible nonbanking activity) can be provided in any combination of permissible nonbanking activities listed in Part A.1 of

this Appendix E.

(e) Providing educational courses and instructional materials to consumers on individual financial management matters

(f) Providing tax-planning and tax-preparation services

(7) Agency transactional services for customer investments (principal positions)

(a) Securities brokerage services (including securities clearing and/or securities execution services on an exchange) for the account of customers and does not include securities underwriting or dealing

(1) Securities brokerage services (including securities clearing and/or securities execution services on an exchange), whether alone or

(2) In combination with advisory services and incidental activities (including related securities credit activities and custodial services)

(b) Riskless-principal transactions

(c) Private-placement services

(d) Futures commission merchant activities (a nonbanking subsidiary may act as an FCM with respect to any exchange-traded futures contract and options on a futures contract based on a financial or nonfinancial commodity)

(e) Other transactional services such as providing to customers as agent transactional services with respect to the following:

(1) Swaps and similar transactions

(2) Investment transactions as principal

(3) Transactions permissible for a state member bank

(4) Any other transaction involving a forward contract, an option, futures an option on a future or a similar contract (whether traded on an exchange or not) relating to a commodity that is traded on an exchange

(8) Investment transactions as principal

(a) Underwriting and dealing in government obligations and money market instruments

(b) Investing and trading activities. Engaging as principal in the following:



(1) Foreign exchange

(2) Forward contracts, options, futures, options on futures, swaps, and similar contracts, based on any rate, price, financial asset (such as gold, silver, platinum, palladium, copper, or any other metal approved by the Board) or any other nonfinancial asset of group of assets, other than a bank-ineligible security

(3) Forward contract, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on an index of a rate or price, or the value of any financial asset, nonfinancial asset, or group of assets, other than a bank-ineligible security, if the contract requires cash settlement

(9) Management consulting and counseling activities

(a) Providing management consulting advice on any matter (financial, economic, accounting, or audit) to any other company, including unaffiliated banks (depository institutions), nonbank depository institutions, other unaffiliated depository institutions, or other companies

(b) Employee benefits consulting services

(c) Career counseling services

(10) Support services

(a) Courier services

(b) Printing and selling MICR-encoded checks and related documents

(11) Insurance agency and underwriting

(a) Credit insurance: acting as principal, agent, or broker for insurance (including home mortgage redemption insurance), including acting as insurance agent or broker primarily in connection with credit extensions, and underwriting credit life and credit accident and health insurance related to an extension of credit

(b) Finance company subsidiary: insurance agent or broker for extension or credit by finance company subsidiary

(c) Insurance agency activities in small towns

(d) Insurance agency activities conducted on May 1, 1982

(e) Supervision of retail insurance agents

(f) Insurance agency activities by small bank holding companies

(g) Insurance agency activities conducted before 1971

(12) Community development

(a) Financing and investment in community development activities

(b) Advisory and related services designed to promote community welfare

(13) Issuance and sale of payment instruments

(a) Issuance and sale of retail money orders

(b) Sale of savings bonds

(c) Issuance and sale of traveler's checks

(14) Data processing

(a) Providing data processing and data transmission services; facilities (including data processing and data transmission hardware, software documentation, or operating personnel); databases; advice; and access to services, facilities, or databases by any technological means. This category includes providing bookkeeping services, and providing data processing and transmission advice to anyone on processing and transmitting banking, financial, and economic data

(b) Conducting data processing and data transmission activities that are not described in (a) that are *not* financial, banking, or economic in nature

2. "By Order." Any activity that the FRB has determined by order in effect on November 12, 1999, to be so closely related to banking as to be a proper incident thereto. These activities include:

a. Operating "a pool-reserve plan" for the pooling of loss reserves of banks with respect to loans to small businesses (1971 Fed. Res. Bull. 1037).

b. Operating an article XII New York investment company (1977 Fed. Res. Bull. 595).

c. Underwriting and dealing in commercial paper to a limited extent (1987 Fed. Res. Bull. 367).

d. Underwriting and dealing in, to a limited extent, municipal revenue bonds, mortgage-related securities, and commercial paper (1987 Fed. Res. Bull. 473).

e. Underwriting and dealing in, to a limited extent, municipal revenue bonds, mortgage-related securities, consumer receivable-related securities, and commercial paper (1987 Fed. Res. Bull. 731).

- f. Issuing and selling mortgage-related securities backed by the guarantees of the Government National Mortgage Association (1988 Fed. Res. Bull. 573).
- g. Engaging in title insurance agency activities (approved under exemption G of the Garn-St Germain Depository Institutions Act of 1982) (1989 Fed. Res. Bull. 31).
- h. Underwriting and dealing in, to a limited extent, corporate debt and equity securities (1989 Fed. Res. Bull. 192, 196-197).
- i. Acting as a sales-tax agent (1990 Fed. Res. Bull. 860).
- j. Providing real estate settlement activities through a permissible title insurance agency (1990 Fed. Res. Bull. 1058) (generally, only for companies already engaged in insurance agency activities prior to 1971).
- k. Providing administrative and certain other services to mutual funds (1993 Fed. Res. Bull. 626).
- l. Acting as a dealer-manager in connection with cash-tender and exchange-offer transactions (1994 Fed. Res. Bull. 49).
- m. Privately placing limited partnership interests (1994 Fed. Res. Bull. 736).
- n. Engaging in real estate title abstracting (1995 Fed. Res. Bull. 805).
- o. Providing employment histories to third parties (1995 Fed. Res. Bull. 732).
- p. Underwriting "private ownership" industrial development bonds by a section 20 company (1995 Fed. Res. Bull. 1116).
- q. Servicing as a commodity pool operator of investment funds engaged in purchasing and selling futures and options on futures on certain financial and nonfinancial commodities (1996 Fed. Res. Bull. 569).
- r. Development of broader marketing plans and advertising, sales literature, and marketing materials for mutual funds (1997 Fed. Res. Bull. 679).
- s. Sale of government services involving postage stamps and postage-paid envelopes, public transportation tickets and tokens, vehicle registration services (including the sale and distribution of license plates and license tags for motor vehicles), and notary public services (1998 Fed. Res. Bull. 481).
- t. Operating a securities exchange (2000 Fed. Res. Bull. 61).
- u. Acting as a certification authority for digital signatures (2000 Fed. Res. Bull. 56).

B. "BHC Foreign" Activities. Specifically, 12 U.S.C. §1843(k)(4)(G) identifies as financial in nature, and permits a FHC to conduct in the United States, "any activity that (i) a [BHC] may engage in outside of the United States; and (ii) the [FRB] has determined, under regulations prescribed or interpretations issued pursuant to [12 U.S.C. §1843(c)(13) as in effect on November 11, 1999] to be usual in connection with the transaction of banking or other financial operations abroad."

Some overlap and duplication exists between these activities and other financial activities identified in GLBA. These activities are listed in 12 CFR §211.5(d). The numbered list below corresponds with the numbered paragraphs in §211.5(d):

(1) Providing management consulting services, including to any person with respect to nonfinancial matters, so long as the management consulting services are advisory and do not allow the financial holding company to control the person to which the services are provided;

(2) Operating a travel agency in connection with financial services offered by the financial holding company; and

(3) Organizing, sponsoring, and managing a mutual fund so long as the fund does not exercise managerial control over the entities in which the fund invests and the financial holding company reduces its ownership in the fund, if any, to less than 25 percent of the equity of the fund within one year of sponsoring the fund or additional period if the Federal Reserve Board permits.

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