

The background of the slide features a blurred image of financial charts and data, including candlestick patterns and line graphs in various colors like blue, green, and red, overlaid on a dark purple gradient.

# Core Concept #3: Bank Holding Company Powers & Activities

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# BHC Powers & Activities: A Brief History

- 1900 to 1956: Emergence of BHC structure, but no restriction/regulation of BHC activities (other than Glass-Steagall barriers and affiliate transaction rules)
- 1956: Bank Holding Company Act (“BHCA”) enacted, limits activities in which BHCs and their subsidiaries can engage
- 1970: BHCA amended to eliminate “one bank holding company” loophole, which has previously allowed bank holding companies to engage in commercial activities so long as they owned no more than one bank
- 1999: Gramm-Leach-Bliley Act (“GLBA”) enacted, creates new “financial holding company” designation and substantially expands permissible financial activities
  - Note: Title 5 of the GLBA also established a comprehensive Federal privacy framework that applies to banks and other financial institutions

# BHC Powers & Activities: Triggers & Implications of Regulation as a BHC

- BHCA applies to any company that controls a bank – including all of its subsidiaries
- Core implications of BHC status include:
  - Need Fed approval to become a BHC, acquire an interest in additional banks and engage in nonbanking activities
  - Limits on activities conducted throughout the BHC
  - Prudential regulation and supervision of entire BHC

# BHC Powers & Activities: What is a “Bank” for Purposes of the BHCA?

- NOT simply an insured depository institution
- Key exclusions:
  - Thrifts (but see S&L holding company regime);
  - Credit card banks;
  - Certain trust companies;
  - Edge Act/agreement corporations; and
  - Industrial loan companies (“ILCs”)
- We typically refer to the above excluded entities as “nonbank banks”

# BHC Powers & Activities: Scope

- BHCs can engage in banking and control or manage banks – § 3 of the BHCA
- BHCs can also engage in activities closely related to banking – § 4 of the BHCA:
  - Making/acquiring/brokering/servicing loans;
  - Leasing real/personal property;
  - Operating a thrift or trust company;
  - Acting as investment/financial advisor;
  - Securities – brokerage, private placement, underwriting/dealing in bank-eligible securities;
  - Management consulting;
  - Courier/check/payments services;
  - Community development; and
  - Processing banking/financial/economic data

# BHC Powers & Activities: Expanded powers for BHCs that qualify as “FHCs”

- As part of the GLBA in 1999, Congress created a new “type” of BHC, which is defined by statute as a “financial holding company” or FHC
  - In general, FHCs are authorized to engage in a wider range of financial activities
- In order for a BHC to become an FHC, it must be “well-capitalized” and “well-managed,” and have a satisfactory Community Reinvestment Act (“CRA”) record
- For qualifying FHCs, expanded powers include “activities that are financial in nature” under § 4(k) of the BHCA:
  - Full range of securities dealing and underwriting activity through a registered broker-dealer;
  - Insurance activities;
  - Merchant banking activities; and
  - Others as permitted by Fed over time
- Also includes activities deemed by the Fed to be “complementary” to a financial activity (e.g., commodities trading activities)