

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

96-62

[Docket No. 95-31]

RIN 1557-AB39

FEDERAL RESERVE BOARD

12 CFR Part 212

[Docket No. R-0907]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064-AB71

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 96-62]

RIN 1150-AA95

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift

Supervision, Treasury.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) are revising their rules regarding management interlocks. This final rule conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements. In so doing, it reflects comments received on the proposed rule and the agencies' further internal considerations.

EFFECTIVE DATE: This joint rule is effective _____.

FOR FURTHER INFORMATION, CONTACT:

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Board: Thomas M. Corsi, Senior Attorney (202/452-3275), or Tina Woo, Attorney (202/452-3890), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for Deaf (TTD), Dorothea Thompson

(202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington DC 20551.

FDIC: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898-6759; or Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division, (202) 898-3854, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: David Bristol, Senior Attorney, Business Transactions Division, (202) 906-6461; or Donna Deale, Program Manager, Supervision Policy, (202) 906-7488.

SUPPLEMENTARY INFORMATION:

Background

Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act)

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the OCC, OTS, Board, and FDIC to review their regulations in order to streamline and modify the regulations to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The agencies have reviewed their respective management interlocks regulations with these purposes in mind and are amending the regulations in ways designed to meet the goals of section 303(a).

The agencies have made the following changes to their respective management interlocks rules in order to comply with the mandate of section 303(a):

- The final rules revise the definition of "senior management official" to eliminate uncertainty as to when an employee of a depository institution will be considered to be a senior management official for purposes of the Interlocks Act. Moreover, the final rules conform this definition to definitions of similar terms used elsewhere in the agencies' regulations.

- The final rules revise the definition of "representative or nominee" to clarify that the agencies will determine that a person is acting as a representative or nominee on behalf of another person only when there is an agreement, express or implied, obligating the first person to act on the second person's behalf with respect to management responsibilities.

- The final rules reflect a reinterpretation of the Interlocks Act by the agencies that *permits management interlocks within a relevant metropolitan statistical area (MSA) when either of the depository institutions in the MSA has assets of less than \$20 million (the agencies previously interpreted the Interlocks Act to permit interlocks between unaffiliated institutions in MSA only if both depository institutions have assets of less than \$20 million).* This expands the pool of available managerial talent for small depository institutions;

- In implementing the two statutory bases for granting exceptions to the Interlocks Act's prohibitions, the final rules contain certain presumptions and define key terms so as to eliminate unnecessary burdens.

- The final rules delete the provision concerning statutorily grandfathered management interlocks, given that it is unnecessary in light of the changes made to the

Interlocks Act by the CDRI Act.

The agencies believe that these changes will streamline and modify their respective management interlocks regulations, thus furthering the goals of section 303 of the CDRI Act. These changes are explained more fully in the discussion of the final rule and comments received.

Summary of statutory changes

The CDRI Act amended the Depository Institution Management Interlocks Act (12 U.S.C. 3201-3208) (Interlocks Act) by removing the agencies' broad authority to exempt otherwise impermissible interlocks and replacing it with the authority to exempt interlocks under more narrow circumstances. The CDRI Act also required a depository organization with a "grandfathered" interlock to apply for an extension of the grandfather period if the organization wanted to keep the interlock in place.¹

Pursuant to the changes made by the CDRI Act, a person subject to the Interlocks Act's restrictions seeking an exemption from those restrictions must qualify either for a "regulatory standards" exemption (the Regulatory Standards exemption) or an exemption under a "management official consignment program" (the Management Consignment exemption). An applicant seeking a Regulatory Standards exemption must submit a board resolution certifying that no other candidate from the relevant community has the necessary expertise to serve as a management official, is willing to serve, and is not otherwise prohibited by the Interlocks Act

¹ The agencies completed their review of requests for extensions by March 23, 1995, as directed by the statute. Therefore, the provision regarding extending the grandfather period is moot for purposes of this regulation.

from serving. Before granting the exemption request, the appropriate agency must find that the individual is critical to the institution's safe and sound operations, that the interlock will not produce an anticompetitive effect, and that the management official meets any additional requirements imposed by the agency. Under the Management Consignment exemption, the appropriate agency may permit an interlock that otherwise would be prohibited by the Interlocks Act if the agency determines that the interlock would improve the provision of credit to low- and moderate-income areas, increase the competitive position of a minority- or women-owned institution, or strengthen the management of a newly chartered institution or an institution that is in an unsafe or unsound condition (see text following "Management Consignment exemption" in this Preamble for a discussion regarding interlocks involving newly chartered institutions or institutions that are in an unsafe or unsound condition).

The Proposal

On December 29, 1995, the agencies published a joint notice of proposed rulemaking (proposal) (60 FR 67424) to implement these statutory changes. In addition, the proposal permitted interlocks involving two institutions located in the same relevant metropolitan

~~other persons with appropriate delegated authority; the Deputy Chief Counsel for Business Transactions, or his or her successors authorized to make any required technical~~

streamlined and clarified the agencies' interlocks rules in various respects.

ATTACHMENT IS AVAILABLE UPON REQUEST

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