FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 83-138
November 15, 1983

REGULATION L

MANAGEMENT OFFICIAL INTERLOCKS

(Amendments)

TO ALL MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

The Board of Governors of the Federal Reserve System has announced amendments, effective November 30, 1983, to its Regulation L to reflect changes made by Congress to the Depository Institutions Management Interlocks Act.

The Interlocks Act prohibits certain interlocking relationships among officials of financial institutions, including depository holding companies and their affiliates. These amendments, which were proposed in Circular No. 82-148 dated November 16, 1982, were designed to ease the current regulatory burden while furthering the Act's goal of fostering competition among depository institutions.

Attached are copies of the Board's press releases and the material as submitted for publication in the Federal Register. Questions regarding the material contained in this circular should be directed to the Legal Department, Extension 6171.

Additional copies of this circular will be furnished upon request to the Public Affairs Department, Extension 6289.

Sincerely yours,

William H. Wallace

William H. Wallace
First Vice President

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

FEDERAL RESERVE press release

For immediate release August 31, 1983

The Federal Reserve Board today announced adoption of amendments to its Regulation L -- Interlocking Bank Relationships -- which implements the Depository Institution Management Interlocks Act, to reflect changes in the Act adopted by Congress.

The Board acted after consideration of comment on proposals published late in 1982. The other Federal financial institutions regulators are preparing similar changes in their regulations.

The Interlocks Act prohibits certain interlocking relationships among officials of financial institutions, including depository holding companies and their affiliates.

The amendments adopted by the Board, substantially as proposed for comment, revise Regulation L to:

(1) Simplify procedures for obtaining exceptions to the Act and extensions of time to permit compliance with the Act, by requiring only one agency's approval;

(2) Ease the burden of compliance by redefining terms to avoid covering holding companies located in the same geographic area when neither company has an affiliated depository institution in the area;

(3) Broaden the exclusion from the prohibitions of the Act for management officials whose functions relate exclusively to retail merchandising and manufacturing;

(4) Broaden the circumstances under which the exception to the prohibitions of the Act is available on grounds of disruptive management loss;

(5) Clarify the circumstances that require termination -- due to changes in circumstances -- of non-grandfathered management official interlocks, and provide that the 15-month grace period for compliance following such changes applies whether the change in circumstances is voluntary or involuntary.

The five Federal financial institutions regulators (Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, Federal Reserve Board and the National Credit Union Administration) are preparing a joint Federal Register notice of revisions in their regulations implementing the Depository Institutions Interlock Act, to be published shortly.

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FEDERAL RESERVE press release

For immediate release October 25, 1983

The Federal Reserve Board today announced that the effective date of amendments to its Regulation L (Interlocking Bank Relationships) approved in August will be November 30, 1983.

Although the Board approved its amendments earlier, the effective date could not be set until the other federal regulators of depository institutions had approved corresponding changes in their regulations. The five federal regulators (Office of the Comptroller of the Currency, Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board and National Credit Union Administration) have now published a joint set of amendments affecting management interlocks among depository organizations and establishing the effective date of the amendments. The joint rules do not alter the amendments to Regulation L approved by the Board in August.

The amendments implement the Depository Institutions Management Interlocks Act, which generally, but with certain exceptions, prohibits specified management official interlocks between depository institutions, depository holding companies and their affiliates. The amendments simplify procedures for obtaining exceptions and extensions of time under the Act, ease the burden of the Act on depository institution holding companies, broaden exclusions for certain management officials, broaden circumstances under which exemptions are available due to disruptive management loss, clarify circumstances requiring termination of grandfathered interlocks and provide rules for termination of interlocks between depository institutions and nondepository organizations that become diversified savings and loan holding companies (or their subsidiaries).

The official notice of the agencies' actions is attached.

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Attachment

DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY
[12 CFR Part 26]

FEDERAL RESERVE SYSTEM
[12 CFR Part 212]

FEDERAL DEPOSIT INSURANCE CORPORATION
[12 CFR Part 348]

FEDERAL HOME LOAN BANK BOARD
[12 CFR Part 563f]

NATIONAL CREDIT UNION ADMINISTRATION
[12 CFR Part 711]

Docket No. R-0431

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board, and National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration (collectively referred to as the "agencies") are amending their regulations implementing the Depository Institution Management Interlocks Act, which generally prohibit certain management official interlocks between depository institutions, depository holding companies, and their affiliates. These amendments will (1) simplify the procedure for obtaining exceptions to the Act's prohibitions and extensions of time to permit compliance with the Act, (2) ease the burden of the Act on depository institution holding companies by redefining the terms "office" and "total assets," (3) broaden the exclusion for management officials whose functions relate exclusively to retail merchandising and manufacturing, (4) broaden the circumstances under which the exception of the Act for disruptive management loss is available,

(5) clarify the circumstances that require termination of nongrandfathered management official interlocks, and (6) provide that interlocks between depository organizations and nondepository organizations that become diversified savings and loan holding companies, or their subsidiaries, need not be terminated until November 10, 1988, despite the occurrence of changes in circumstances. These amendments will streamline procedures for administration of the Interlocks Act, and provide the management of depository institutions and depository organizations with greater flexibility.

EFFECTIVE DATE: **November 30, 1983.**

FOR FURTHER INFORMATION CONTACT: Bronwen Mason Chaiffetz ((202) 452-3564) or Melanie Fein ((202) 452-3594), Board of Governors of the Federal Reserve System; James F. E. Gillespie, Jr. ((202) 447-1893) or Rosemarie Oda ((202) 447-1880), Office of the Comptroller of the Currency; Pamela E. F. LeCren or Barbara I. Gersten ((202) 389-4171), Federal Deposit Insurance Corporation; David J. Bristol ((202) 377-6461) or Cheryl A. Martin ((202) 377-6410) Federal Home Loan Bank Board; or Steven R. Bisker ((202) 357-1030), National Credit Union Administration.

SUPPLEMENTARY INFORMATION: On October 26, 1982, the agencies published proposed amendments to the regulations (47 FR 47406) implementing The Depository Institution Management Interlocks Act of 1978 ("Interlocks Act") which was enacted as Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. No. 95-630, 12 USC § 3201 et seq.) The proposed amendments would implement provisions of Pub. L. No. 97-110 which was signed into law on December 26, 1981, streamline procedures under existing regulations, and relieve certain regulatory burdens. The proposed changes were designed to ease the current regulatory burden while furthering the Interlocks Act's goal of fostering competition among depository organizations.

Summary of Comments

Eighteen comments were received in response to the publication of the proposed amendments. The overwhelming majority of the commenters favored the adoption of the proposed changes. However, some of those commenters favored clarifying changes. These comments are noted, where relevant, in the discussion of the specific provisions below.

1. Definition of "Management Official" - Exclusion of Certain Persons. Under the current regulations, a person whose management functions relate exclusively to the business of retail merchandising or manufacturing is not a management official for purposes of the prohibition based on major assets. Such a person is, however, considered a management official for purposes of the community and Standard Metropolitan Statistical Area ("SMSA") prohibitions. It had come to the agencies' attention that providing an exclusion only from the major assets prohibition creates an inconsistent result. A holding company employee with management functions relating solely to manufacturing or retailing activities may serve as a management official of a depository organization located anywhere in the country except in the SMSA or community where the holding company or its depository institution affiliates are located. Accordingly, the agencies proposed to amend the definition so that a person whose management functions relate exclusively to retail merchandising or manufacturing is not considered a management official for purposes of any of the general prohibitions of the regulation. Many commenters specifically favored this proposal. In the absence of adverse comments, the agencies are amending the definition of "management official," as proposed, to eliminate the inconsistency in the present definition.

2. Definition of "Office." The proposal suggested excluding from the definition of "office" an office of a depository holding company. This definitional change is necessary to reflect a substantive change in the prohibitions of the regulations discussed at length below under the heading "General Prohibitions." This change is being adopted as proposed.

3. Definition of "Total Assets"--Total Assets of Certain Holding Companies. The agencies proposed to amend the definition of "total assets" to provide that the total assets of diversified savings and loan holding companies and bank holding companies exempt from the Bank Holding Company Act by virtue of § 4(d) of that Act ("diversified holding companies") equal only the assets of their depository institution affiliate. Currently, the total assets of a diversified holding company are defined to include the assets of the company's depository institution affiliates for the purposes of the SMSA prohibition and the assets of all affiliates for the purposes of the major asset prohibition. Thus, a management official of a diversified holding company with assets exceeding $1 billion is now prohibited from serving as a management official of a depository organization with assets exceeding $500 million, regardless of the size or location of the depository institution affiliate that causes the diversified holding company to be included as a depository organization under the regulations.

By adopting the amendment to the definition of total assets substantially as proposed, the agencies would key the interlocks prohibitions to the size of the diversified holding company's depository institution affiliate rather than to the size of the holding company system. The agencies believe that focusing on the depository institution affiliate is appropriate because the primary business activities of diversified holding companies do not normally involve competition among depository organizations of the type that the Interlocks Act is intended to foster. In addition, the depository institution affiliate generally represents a very small part of the assets and income of the holding company. Thus, it has been the experience of the agencies that, in the case of diversified holding companies, that the asset size of the holding company itself is not an accurate measure of the market in which its depository institution affiliate actually competes.

The effect of the amended definition is illustrated by the following example: X is a management official of Holding Company A and wishes to serve as a management official of Bank B. Holding Company A is a diversified bank holding company with consolidated assets, including the assets of all of its affiliates, in excess of $1 billion. Its only depository institution is located in SMSA 1. Bank B's total assets exceed $1 billion and all of its offices are located in SMSA 2. Under the proposed amendment the total assets of Holding Company A would equal the total assets of its depository institution affiliate. Thus, X's concurrent service would be prohibited only if the assets of A's depository institution affiliate exceeded $500 million.

One commenter requested that the definition be clarified to indicate that nondiversified subsidiary holding companies of diversified holding companies need not include assets of their parent companies when calculating "total assets." This clarification would avoid the unintended result of attributing the assets of an "upstream" affiliate or "sister" company (i.e., another company held directly by the parent) to a subsidiary nondiversified holding company. The agencies are inserting the word "subsidiary" before the word "affiliates" in the first clause of the second sentence of the definition to effect this change.

The agencies are also making technical changes in the definition of "total assets" to reflect the changes being made in the General Prohibitions discussed below. Under the current regulations, the total assets of a depository holding company include or exclude the assets of its nondepository institution affiliates depending on whether the SMSA or major assets prohibitions are to be applied. The change in definition being adopted would eliminate that distinction since the total assets of a depository holding company will be irrelevant for the purposes of the SMSA prohibitions.

4. General Prohibitions. The agencies are adopting, as proposed, a revision to the General Prohibitions section of the regulations to clarify the language of the section and, in conjunction with the redefinition of "office," effect a substantive change in its application. The general prohibitions of the current regulations provide that a management interlock may be prohibited due to the location of a depository holding company regardless of whether its depository institution affiliates are located in the same community or SMSA as the holding company parent. For example, the regulations currently prohibit two depository holding companies located in the same community from sharing management officials even though neither has depository institution affiliates located in that community or in the same community anywhere in the country. The agencies believe that this prohibition is unduly harsh, and the commenters supported this view.

As adopted the amendment will apply the community and SMSA prohibitions of the regulation solely with reference to the location and asset size of depository institutions and would eliminate from consideration the location or asset size of depository holding companies. This change will permit depository holding companies to interlock within the same community or SMSA unless the major assets prohibition would apply or unless the location and sizes of the depository institution affiliates would trigger application of the community or SMSA prohibitions.

5. Exemption Relating to Diversified Savings and Loan Holding Companies. On December 26, 1981, section 206 of the Interlocks Act was amended by adding new subsection (b), which provides that a person serving as a management official of a nondepository corporation and a depository organization is not prohibited from continuing to serve with both entities as a result of the nondepository corporation becoming a diversified savings and loan holding company, as defined in section 408(a) of the National Housing Act (12 USC § 1730a(a)(1)(F)). Without this express exemption, which expires on November 10, 1988, the transformation of a corporation into a depository organization would subject the official's dual service to the prohibitions of the Interlocks Act. Even if such dual service commenced prior to November 10, 1978, it would not be grandfathered under the Interlocks Act since section 206 grants grandfathered rights only to interlocks between depository organizations.

The statutory amendment left open the question of whether subsequent changes in circumstances could result in the termination of an individual's service prior to November 10, 1988. The agencies proposed amending their respective regulations to address that issue so as to provide that a person who was serving as a management official of a depository organization and a nondepository organization (or any subsidiary thereof) could maintain any interlocking service that existed when the nondepository organization became a diversified savings and loan holding company despite the occurrence of any subsequent changes in circumstances. This change would reflect the view of the agencies, which is supported by the legislative history, that section 206(b) of the Interlocks Act grants rights similar to those provided to grandfathered management officials by section 206(a). The commenters specifically urged the adoption of this amendment, and it is being adopted as proposed to satisfy the intent of Congress.

The amendment as adopted would permit a management official who is serving, for example, at Bank A and nondepository corporation B to continue to serve both A and B after B becomes a diversified savings and loan holding company whether or not the acquisition of the savings and loan is direct or accomplished through a subsidiary (operating or shell) of B. If the acquisition is accomplished through B's subsidiary corporation, and that subsidiary had a pre-existing management official interlock with Bank A, the interlock between the subsidiary corporation and Bank A may also continue.

The agencies in their earlier Federal Register notice indicated that pending consideration of the proposal no supervisory action would be taken with regard to section 206(b) interlocks arguably affected by changes in circumstances. In view of the fact that the agencies have determined that section 206(b) interlocks should receive similar treatment to grandfathered interlocks, i.e., not be subject to early termination due to changes in circumstances, the agencies are adding language that would expressly permit the continuance of interlocks that were the subject of changes in circumstances in the interim period prior to the effective date of this amendment.

6. Agency Approval of Exceptions. The proposal included an amendment revising the manner in which the agencies grant exceptions. Under the regulations, an exception must be approved by both the federal supervisory agency of the institution in need of the exception and the supervisory agency of the

other institution(s) involved in the interlocks. Frequently, the primary federal supervisory agency is not the same for each institution, and an applicant for the exception must apply to two or more agencies. In the interests of simplifying the procedure under the regulations and affording prompt relief to institutions in need of management expertise, the agencies proposed that approval by only the federal supervisory agency of the needy institution should be required for the exception to be granted, and the requirement for approval by the other supervisory agencies involved would be eliminated. In addition, the proposed amendment provided that if the depository institution seeking to qualify under one of the exceptions had no federal supervisory agency, the federal supervisory agency of the other institution involved in the proposed interlock would grant or deny the requested exception. This proposed amendment was supported by the commenters and is being adopted as proposed.

7. Extension for Disruptive Management Loss. Currently, the regulations provide that the agencies may extend for a period of up to 30 months the compliance period for depository organizations losing 50 percent or more of their directors or total management officials as a result of changes in circumstances requiring the termination of interlocks. Based on the agencies' experience with these provisions, the agencies solicited comments on the following proposed changes:

(a) The current provision becomes operative when a depository institution faces the loss of 50 percent of either its directors or total management officials. Recognizing that the loss of a smaller percentage of management officials may also cause significant disruption to a depository organization, the agencies propose to reduce to 30 percent the percentage necessary to qualify for the extension.

(b) Under current regulations, the 30-month extension becomes available only when the depository organization facing disruptive management loss experiences a change in circumstances. The proposal noted that it had come to the agencies' attention that a depository organization may experience a disruptive loss of management officials due to changes in circumstances involving other depository organizations but not the affected organization itself, or due to a series of changes in circumstances involving the organization and other depository organizations. Recognizing that these situations also may cause disruptive management loss, the agencies proposed to make the 30-month extension available when any change in circumstances or combination of changes in circumstances results in the potential loss of 30 percent or more of an organization's directors or total management officials. Under the amendments, which are being adopted as proposed, changes in circumstances that occur within a 15-month period will be viewed in the aggregate in order to determine whether the requisite percentage exists. The 30-month period would be measured from the date of the first change in circumstances that occurred within the 15-month period.

The following example illustrates how the new provision would operate: Bank A, located in SMSA 1, has ten directors. One of Bank A's directors serves as a director of Bank B in SMSA 2, one serves as director of Bank C in SMSA 3, and one serves as director of Bank D in SMSA 4. In Month 1, Bank B merges with a bank in SMSA 1. In Month 7, Bank A merges with a bank located in SMSA 4. In Month 13, Bank C merges with a bank in SMSA 1. As a result of these mergers, Bank A's interlocks with each of the other three banks become prohibited. Bank A's management officials may apply for an extension to terminate the prohibited interlocks, which would end 30 months from the first change in circumstance.

(c) Under the current regulations, an organization qualifying for the 30-month extension must experience a change in circumstances that "requires the termination of service" of its directors or management officials. When some of the directors whose interlocks become prohibited in fact intend to retain their positions with the depository organization experiencing the change in circumstances, the extension would not appear to be necessary to avoid unduly disrupting the affected organization. For this reason, the agencies proposed to limit the availability of the extension by requiring applicants to demonstrate the likelihood of disruptive management loss. The agencies do not believe this requirement would impose an undue regulatory burden; its purpose would be simply to ensure that the 30-month extension is granted only to organizations truly in need of relief. For purposes of demonstrating the likelihood of disruptive management loss, the agencies proposed to establish a rebuttable presumption that a director who is a full-time employee of the affected organization normally would not terminate interlocking service by resigning from that organization. The agencies believe that such a presumption is reasonable and would ease the regulatory burden in evaluating requests under this provision.

One commenter suggested a change in this proposed amendment. It was suggested that instead of using a percentage standard, the agencies process extensions for disruptive management loss on a case-by-case basis. The agencies believe that a 30-percent standard is a useful guideline which facilitates the delegation to staff of the authority to grant extensions thereby streamlining procedures. In addition, it is noted that the agencies can act pursuant to the exception for conditions endangering safety or soundness to alleviate problems caused when management loss of less than 30 percent threatens the viability of a depository institution or organization. Accordingly, as noted above, the agencies are adopting this provision as proposed.

8. Changes in Circumstances -- Nongrandfathered Interlocks. The Interlocks Act authorizes the agencies to grant a period of time, not in excess of 15 months, for compliance with the Interlocks Act following changes in circumstances that cause interlocks to become prohibited. The current regulations provide that a management official with a nongrandfathered interlock that becomes prohibited as a result of a voluntary change in circumstances may continue to serve until the next regularly scheduled annual meeting of the institutions involved following a change in circumstances, unless the agencies impose a shorter time period. The management official may request an extension of the grace period not in excess of 15 months from the date of the change in circumstances. However, if the management official's nongrandfathered service becomes prohibited due to an involuntary change in circumstances, such as natural growth or a change in community or SMSA boundaries, the maximum 15-month grace period applies.

To simplify the grace period provision, the agencies are adopting, as proposed, an amendment which provides a maximum 15-month grace period for all changes in circumstances, whether voluntary or involuntary. This change will eliminate the necessity for institutions to apply for extensions of time. Since this change eliminates the need to distinguish between voluntary and involuntary interlocks, that distinction is being deleted from the change in circumstances provisions.

Since adopting the regulations, it has been the agencies' experience that other changes in circumstances, such as the termination of an affiliate relationship between two or more depository organizations, may cause nongrandfathered interlocks to become prohibited. The list of changes in circumstances specified in the regulations was intended to reflect the most commonly occurring changes and, as indicated when the regulations were originally adopted, was not intended to be exhaustive. To clarify their intent in this regard, the agencies proposed to amend the regulations to indicate that nongrandfathered interlocks that become prohibited due to changes in circumstances other than those enumerated in the regulation also will be eligible for a grace period. The amendment also will specifically include disaffiliation as a change in circumstances.

9. Effect on Clayton Act. The Board of Governors of the Federal Reserve System is adopting its proposal to make a technical change in its regulation by eliminating section 212.7 pertaining to the effect of the Interlocks Act on the Clayton Act. This section states that the Board of Governors regards the provisions of the first three paragraphs of section 8 of the Clayton Act to have been supplanted by the Interlocks Act. The other agencies' regulations do not include this provision since only the Board of Governors had jurisdiction over management interlocks under the Clayton Act prior to enactment of the Interlocks Act. The substance of the section will be incorporated into the authority section of the regulation. This change will make the agencies' regulations more uniform in appearance.

In addition to the substantive changes described above, minor editorial changes were made in these final rules to improve clarity and readability.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. § 601 *et seq.*), the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration certify that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments will ease the application of the existing regulations and do not have any particular effect on small entities. The effect of the amendments is expected to be beneficial rather than adverse, and small entities are generally expected to share the benefits of the amendments equally with larger institutions.

Regulatory Impact Analysis. Pursuant to Section 3(g)(1) of Executive Order 12291 of February 17, 1981, it has been determined that the amendments do not constitute a major rule within the meaning of section 1(b) of the Executive Order. The amendments ease restrictions imposed by regulations implementing the Depository Institution Management Interlocks Act, 12 U.S.C. § 3201 *et seq.*, in instances where the easing of such restrictions has no anticompetitive effect. The amendments have no adverse effect on the operations of the depository institutions subject to them. As such, the amendments will not have an annual effect on the economy of $100 million or more, will not affect costs or prices for consumers, individual industries, government agencies, or geographic regions, and will not have adverse effects on competition, employment, investment, productivity, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Federal Register Index Terms Used: Antitrust; Banks, banking; Credit unions; Savings and loan associations; Federal Deposit Insurance Corporation; Federal Reserve System; Comptroller of the Currency; Federal Home Loan Bank Board; National Credit Union Administration; Holding companies; Management official interlocks.

Accordingly, pursuant to their respective authority under section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. § 3207), the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration hereby amend Title 12 of the Code of Federal Regulations, Parts 26, 212, 348, 563f, and 711, respectively, as follows:

FEDERAL RESERVE SYSTEM

[12 C.F.R. PART 212]

MANAGEMENT OFFICIAL INTERLOCKS

FINAL RULE

12 C.F.R. Part 212 is amended as follows:

1. The authority citation for Part 212 reads as follows:

Authority: 12 U.S.C. § 3201 et seq.

2. Section 212.1(h), (i) and (l) are revised as follows:

§ 212.2 Definitions.

* * * * *

(h)(1) "Management official" means (i) an employee or officer with management functions (including a branch manager); (ii) a director (including an advisory director or honorary director); (iii) a trustee of a business organization under the control of trustees (e.g., a mutual savings bank); or (iv) any person who has a representative or nominee serving in any such capacity. (2) "Management official" does not include (i) a person whose management functions relate exclusively to the business of retail merchandising or manufacturing; (ii) a person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or (iii) persons described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. § 3201(4)).

(i) "Office" means a principal or branch office, located in the United States, of a depository institution. "Office" does not include a representative office of a foreign commercial bank, an electronic terminal, a loan production office, or any office of a depository holding company.

* * * * *

(l) "Total assets" means assets measured on a consolidated basis as of the close of the organization's last fiscal year. The "total assets" of a depository holding company include the total assets of all of its subsidiary affiliates, except that "total assets" of a diversified savings and loan holding company, as defined in section 408(a)(1)(F) of the National Housing Act (12 U.S.C. § 1730a(a)(F)), or of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. § 1843(d)), means only the total assets of its depository institution affiliate. "Total assets" of a United States branch or agency of a foreign commercial bank means the total assets of such branch or agency itself exclusive of the assets of the other offices of the foreign commercial bank.

3. Section 212.3(a) and paragraph (b) and subparagraphs (b) (1) and (3) are revised to read as follows:

§ 212.3 General Prohibitions.

(a) Community. A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) both are depository institutions and each has an office in the same community;

(2) offices of depository institution affiliates of both are located in the same community; or

(3) one is a depository institution that has an office in the same community as a depository institution affiliate of the other.

(b) Standard Metropolitan Statistical Area ("SMSA"). A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:

(1) both are depository institutions, each has an office in the same SMSA, and either institution has total assets of $20 million or more;

* * * * *

(3) one is a depository institution that has an office in the same SMSA as a depository affiliate of the other and either the depository institution or the depository institution affiliate has total assets of $20 million or more.

4. Section 212.4 is amended by revising paragraph (b), subparagraphs (b)(1), (b)(2), (b)(3), and (b)(5), and paragraph (c) to read as follows:

§ 212.4 Permitted interlocking relationships.

(b) Interlocking relationships permitted by agency order. A management official or a prospective management official of a state member bank, bank holding company, or an affiliate of either, may enter into an otherwise prohibited interlocking relationship with a depository organization that falls within one or the classifications enumerated in this paragraph (b) if the Federal supervisory agency (as specified in section 207 of the Interlocks Act) of the organization that falls within one of the classifications determines that the relationship meets the requirements set forth in this paragraph. If the depository organization that falls within one of the classifications is not subject to the interlocks regulations of any of the Federal supervisory agencies, then the Board shall determine whether the relationship meets the requirements of this paragraph.

(1) Organization in low income area; minority or women's organization. A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations is (i) located, or to be located, in a low income or other economically depressed area, or (ii) controlled or managed by persons who are members of minority groups or by women, subject to the following conditions: (A) the relationship is necessary to provide management or operating expertise to the organization specified in (i) or (ii) above; (B) no interlocking relationship permitted by this subparagraph shall continue for more than five years; and (C) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(2) Newly-chartered organization. A person may serve at the same time as a management official of two or more depository organizations if one of the depository organizations (or an affiliate thereof) is a newly-chartered organization, subject to the following conditions: (i) the relationship is necessary to provide management or operating expertise to the newly-chartered organization; (ii) no interlocking relationship permitted by this subparagraph shall continue for more than two years after the newly-chartered organization commences business; and (iii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(3) <u>Conditions endangering safety or soundness</u>. A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations faces conditions endangering the organization's safety or soundness, subject to the following conditions: (i) the relationship is necessary to provide management or operating expertise to such organization facing conditions endangering safety or soundness; and (ii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

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(5) <u>Loss of management officials due to changes in circumstances</u>. If a depository organization is likely to lose 30 percent or more of its directors or of its total management officials due to a change in circumstances described in section 212.6 of this Part, the affected management officials may continue to serve in excess of the time periods specified in section 212.6, provided that: (i) the depository organization's prospective loss of management officials or directors will be disruptive to the internal management of the depository organization; (ii) the depository organization demonstrates that, absent a grant of relief in accordance with this subparagraph, 30 percent or more of either its directors or management officials are likely to sever their interlocking relationships with the depository organization; (iii) if the prospective losses of management officials resulted from more than one change in circumstances, such changes in circumstances must have occurred within a fifteen-month period; and (iv) the depository organization develops a plan for the orderly termination of service by each such management official over a period not longer than 30 months after the change in circumstances which caused the person's service to become prohibited (but if the loss of management officials is the result of more than one change in circumstances, the 30-month period is measured from the first change in circumstances). Other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate Federal supervisory agency. In evaluating requests made pursuant to this subparagraph, the appropriate Federal supervisory agency will presume that a director who also is a paid, full-time employee of the depository organization, absent unusual circumstances, will not resign from the position of director with that depository organization. This presumption may, however, be rebutted by a showing that such unusual circumstances exist.

(c) Diversified savings and loan holding company. Notwithstanding section 212.3, a person who serves as a management official of a depository organization and of a nondepository organization (or any subsidiary thereof) is not prohibited from continuing the interlocking service when the nondepository organization becomes a diversified savings and loan holding company as that term is defined in Section 408(a)(1)(F) of the National Housing Act (12 U.S.C. § 1730a(a)(1)(F)), and may continue to serve until November 10, 1988, despite the occurrence of any subsequent changes in circumstances, whether or not those changes in circumstances occurred prior to November 30, 1983.

5. Section 212.6 is revised to read as follows:

§ 212.6 Changes in circumstances.

(a) Nongrandfathered interlocks. If a person's service as a management official is not grandfathered under section 212.5 of this Part, the person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth, a change in SMSA or community boundaries or the designation of a new SMSA, an acquisition, merger or consolidation, the establishment of an office, or a disaffiliation.

(b) Grace period. If a person's nongrandfathered service as a management official becomes prohibited under paragraph (a) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited interlocking relationship until 15 months after the date on which the change in circumstances that caused the interlock to become prohibited occurred, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period.

By order of the Board of Governors of the Federal Reserve System, effective October 21, 1983.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board