FEDERAL RESERVE BANK OF NEW YORK

[Circular No. 8515
February 7, 1979]

Comment Invited on Proposed New Regulation

To Implement Depository Institution Management Interlocks Act

*To All State Member Banks and Bank Holding Companies,
and Others Concerned, in the Second Federal Reserve District:*

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 have announced proposed regulations to carry out the new Depository Institution Management Interlocks Act, which becomes effective March 10, 1979. Following is the text of the announcement:

The Government agencies that supervise federally insured depository institutions today [*January 30*] proposed regulations to carry out the new Depository Institution Management Interlocks Act, (Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978).

Public comment on the proposal should be received by March 5, 1979.

The Act, which becomes effective March 10, 1979, prohibits certain interlocking relationships of management officials—including officers and directors—among nonaffiliated depository institutions, including bank holding companies and savings and loan holding companies.

The proposed regulation would establish four classes of exemptions from the Act's prohibitions against interlocks, where competition is not present and where public benefits would outweigh competitive factors. The proposed regulation also defines key terms used in the Act.

The draft regulation is identical for all the agencies concerned, with the exception of technical variations (such as the names of the agencies and designations of the depository institutions they supervise).

The Act generally prohibits the following types of interlocks:

—Except for institutions with assets of less than $20 million, a management official of a depository institution or a depository holding company may not serve as a management official of a nonaffiliated depository institution or holding company with an office in the same standard metropolitan statistical area (SMSA).

—Regardless of the size of the depository institution or holding company, a management official of one such institution may not serve in a similar capacity with another such institution if the institutions have offices in the same or a contiguous or an adjacent city, town or village.

—Whatever the geographic location, a management official of a depository institution or holding company with assets exceeding $1 billion may not serve at the same time as a management official of a nonaffiliated depository institution or holding company with assets exceeding $500 million, or an affiliate of such an institution.

The Act makes an exception permitting a management official interlock between two credit unions.

The agencies proposed that the following four exemptions to the above prohibitions could be granted by the appropriate regulators, with their specific prior approval.

1. Exceptions could be granted, for up to five years, in the case of institutions that:

—Are located in low income or economically depressed areas;

—Are controlled or managed by members of minority groups, or

—Are controlled or managed by women.

The purpose of these exceptions is to provide temporary assistance from experienced management, if it appears to be needed and is desired, in order to encourage development of financial institutions in low income areas and broaden management opportunities available to minorities and women.

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2. In the case of new institutions, temporary exceptions—up to two years—could be granted by the agencies, where necessary and desired, to provide new institutions with experienced management to help them get started, with the expectation that such new institutions would increase the convenience and other benefits to the public of added competition.

3. The agencies could also grant exceptions to depository institutions in a deteriorating condition, to help prevent any decrease in public benefits and convenience resulting from further deterioration.

4. The agencies could grant exceptions to credit unions sponsored by depository institutions or depository holding companies primarily to serve the employees of the sponsoring institution or its affiliates. This exception is proposed on the ground that in these circumstances no competition would exist.

The Act defines *management official* as an employee or officer who has management functions, a director (including an honorary director or an advisory director) or anyone who has a representative or nominee serving as a management official.

Any individual whose service as a management official began before November 10, 1978 and who was not in violation of section 8 of the Clayton (anti-trust) Act, would be allowed to continue in that position until November 10, 1988. Where a change in circumstances makes service by a management official contrary to the provisions of the new Act, the agencies could grant delays up to 15 months for compliance.

The Act defines *depository institutions* as including commercial banks, savings and loan associations, savings banks, trust companies, building and loan associations, homestead associations, cooperative banks, industrial banks and credit unions. *Depository holding companies* are defined as including bank holding companies and savings and loan holding companies.

Those parts of the Clayton Act affecting interlocking management relationships between banks are left unchanged by the new Act, and the Federal Reserve Board's Regulation L, which implements section 8 of the Clayton Act, continues in effect at least for the time being.

The proposed five-agency regulation would make the following key definitions:

—*Adjacent:* Cities, towns or villages that are within 10 miles of one another at their closest point.

—*Office:* The Act includes principal offices and branches of depository institutions or depository holding companies. Electronic terminals would be excluded from the definition of office by the proposed regulation.

—*Affiliates:* One of the statutory definitions of "affiliate" requires common beneficial ownership of more than 50 per cent of the voting shares of the corporations involved by groups claiming common ownership. The new Act permits interlocking relationships among affiliated corporations. To avoid circumvention of the intent of the Act, the agencies proposed a rebuttable presumption that an affiliate relationship does not exist unless each member of a group that asserts such common beneficial ownership owns at least 5 per cent of the voting shares of each corporation involved.

The agencies asked in particular for comment on the following:

—Comment that would help the agencies develop criteria for overcoming the presumption that an affiliate relationship does not exist if the proposed 5 per cent ownership standard is not met, and to determine in which circumstances the proposed presumption might not be applied.

—Whether the proposed exclusion of electronic terminals from the definition of "office" is appropriate.

—Whether the Act should be applied to foreign banks in the United States. Both the Act and its legislative history are silent on this point.

—Whether there should be other exceptions to the Act's prohibitions.

Printed on the following pages is an excerpt from the *Federal Register* of February 1, 1979, containing the text of the Board of Governors' proposed Regulation LL. Comments thereon should be submitted by March 5, 1979, and may be sent to our Regulations Division.

PAUL A. VOLCKER,
President.

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[6210-01-M]

FEDERAL RESERVE SYSTEM

[12 CFR Part 238]

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

[12 CFR Part 26]

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-0198]

MANAGEMENT OFFICIAL INTERLOCKS

Proposed Regulations for Implementation

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

ACTION: Proposed regulations.

SUMMARY: These proposed regulations would implement the Depository Institution Management Interlocks Act (Title II of the Financial Insitutions Regulatory and Interest Rate Control Act of 1978), which prohibits certain management official interlocks between depository institutions, depository holding companies, and their affiliates. Among other things, the regulations would permit, under certain circumstances, service by a management official that would otherwise be prohibited by the Act.

DATE: Comments must be received on or before March 5, 1979.

ADDRESS: Interested persons are invited to submit written data, views or arguments regarding the proposed regulations. Please send one copy of your comments to Theodore E. Allison, Secretary of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D,C, 20551. All material submitted should refer to F.R.B. Docket No. R-0198. All comments received will be made available for public inspection.

FOR FURTHER INFORMATION CONTACT:

John Walker (202) 452-2418, or Allan Schott (202) 452-3779, Board of Governors of the Federal Reserve System; David Roderer (202) 447-1880, Office of the Comptroller of the Currency; Pamela LeCren (202) 389-4433, Federal Deposit Insurance Corporation; Kathleen Topelius (202) 377-6444, Federal Home Loan Bank Board; Ross Kendall (202) 632-4870, National Credit Union Administration.

SUPPLEMENTARY INFORMATION: The Depository Institution Management Interlocks Act (the "Act") was enacted as Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. 95-630). The purpose of the Act is to foster competition among depository institutions, depository holding companies, and their affiliates. The Act provides that:

(1) Except with respect to institutions with assets of less than $20 million, a management official (defined as an employee or officer with management functions, a director, or any person who has a representative or nominee serving in such a capacity) of a depository institution, depository holding company, or depository institution affiliate of such institutions may not serve as a management official of a nonaffiliated depository institution, depository holding company, or depository institution affiliate of such institutions that has an office located in the same Standard Metropolitan Statistical Area (SMSA) (§ 203);

(2) Regardless of the size of the institutions involved, a management official of a depository institution, depository holding company, or depository institution affiliate of such institutions may not serve as a management official of a nonaffiliated depository institution, depository holding company, or depository institution affiliate of such institutions if both institutions have offices located in the same or a contiguous or an adjacent city, town or village (§ 203); and

Notwithstanding geographic location, interlocking management relationships are prohibited between any depository institution or depository holding company with total assets exceeding $1 billion, or any affiliate of such institutions, and any nonaffiliated depository institution or depository holding company with total assets exceeding $500 million, or any affiliate of such institutions (§ 204).

Any management official who was serving as such prior to November 10, 1978, and whose service was not in violation of section 8 of the Clayton Act (15 U.S.C. 19) on that date, is not prohibited by the Act from continuing in that position until November 10, 1988 (§ 206).

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 (the "agencies") are designated to administer and enforce the Act with respect to the institutions they regulate (§ 207) and are authorized to promulgate rules and regulations which permit service otherwise prohibited under the Act (§ 209).

The agencies are proposing substantially identical regulations containing only those technical variations necessary to accomodate the different types of depository institutions regulated by each agency.

In order to provide clarity, the proposed regulations define the term "adjacent" as used in Section 203 of the Act. Similarly, the concept of a banker's bank is clarified in the proposed regulations. The term "office" has been defined to exclude electronic terminals.

The regulations would permit several types of interlocking relationships which may be appropriate in certain instances because of anticipated community benefits from the promotion of such institutions or because the institutions do not in fact compete with each other. It should be emphasized, however, that in each enumerated instance, specific approval must be obtained from each of the agencies charged with supervision of the institutions.

The proposed exceptions relating to institutions located in low income areas, or controlled or managed by persons who are members of minority groups or by women are substantially similar to existing exceptions contained in subparts 212.3(g) and (h) of Regulation L of the Board of Governors (12 CFR 212.3(g), (h)). These exceptions are designed to permit limited interlocking relationships for no more than five years. These exceptions may be permitted only with specific approval of the appropriate agencies and are subject to such other terms and

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conditions as may be imposed by the agencies.

Other exceptions would permit interlocking relationships, when determined by the appropriate agency or agencies to be necessary, to provide adequate management or operating expertise to a new or deteriorating institution. In the case of a new institution, no interlock would be permitted for more than two years after the institution commences business. In the case of either a new or a deteriorating institution, other terms and conditions that the agency or agencies believe necessary may be imposed.

Where a depository institution or depository holding company sponsors a credit union primarily to serve the needs of its employees and those of its affiliates, a specific exemption has been proposed which recognizes that the two institutions do not compete with each other.

Interlocking relationships between affiliated corporations are excluded from the prohibitions of the Act. One of the statutory definitions of the term "affiliate" requires common beneficial ownership of more than 50 per cent of the voting shares of corporations involved. In order to prevent circumvention of the intent of the Act, the proposed regulations would establish a rebuttable presumption that each member of a group that asserts such common ownership must own at least 5 per cent of the voting shares of each corporation. Comment is specifically requested to assist the agencies in developing criteria sufficient to overcome the presumption in those cases where an individual does not meet the 5 per cent qualifying standard, and to determine in which specific circumstances the presumption should not be applied at all.

The agencies particularly request specific comment on the application of the Act to nondepository affiliates of depository institutions, including diversified depository holding companies, in circumstances where such affiliates do not in fact compete with any nonaffiliated depository institution.

The proposed regulations do not attempt to interpret application of the Act to interlocking relationships involving foreign banks. Comment is specifically requested on the potential impact of the Act upon such relationships.

Finally, the proposed regulations provide for the exclusion of electronic fund transfer terminals from the term "office". Such an exclusion would help to prevent disruption and delay in the establishment of new payment systems where permitted by State law. However, the agencies are specifically requesting comment on the appropriateness of this approach or whether this issue should be resolved in another way, for example, by limiting the exclusion to terminals that are shared with another depository institution.

To aid in implementation of the Act, interested persons are also invited to submit relevant data, views, and comments on any other matter thought to be appropriate for further agency action, including other possible exceptions consistent with the purposes of the Act.

Although the agencies contemplate the adoption of a final regulation to be effective on March 10, 1979, subsequent amendments may be adopted as determined to be appropriate upon review of public comments. Interested persons are encouraged to file comments at the earliest possible date in order to facilitate prompt adoption of regulations.

The Administrator of the National Credit Union Administration would like to emphasize that the Act and Regulations affect Federally-insured credit unions differently, in some respects, than other depository institutions. First, the Act provides that its prohibitions on management official interlocks do not apply to a credit union being served by a management official of another credit union. Therefore, the Act will only affect credit unions when a management official of a credit union serves in a management capacity with another type of depository institution, or depository holding company, or with an affiliate of either such institution. Second, because each credit union member, regardless of the number of shares owned, has only one vote, a credit union will never be subject to the control of any one individual or holding company. An affiliate relationship based on common ownership by one or more individuals of two corporations will, therefore, never exist in the case of a credit union. And finally, while Federal law and regulations prohibit a Federally-chartered credit union from owning shares in another depository institution, some State statutes allow state-chartered credit unions to purchase stock in other depository institutions. A state-chartered credit union that is Federally-insured and holds enough stock in a depository institution to qualify as a depository holding company would be subject to the rules promulgated by the Federal Reserve Board pertaining to depository holding companies in addition to rules pertaining to credit unions.

In adopting the Act, Congress left untouched section 8 of the Clayton Act, which also contains prohibitions against certain interlocking relationships. While the two statutes overlap in many respects, there are significant differences. For example, although section 8 of the Clayton Act prohibits interlocks between a member bank and another bank, it does not prohibit interlocks between a member bank and a thrift institution. In proposing its regulation, the Federal Reserve Board has not attempted to reconcile its regulations under the two statutes for several reasons. First, the Federal Reserve Board wishes to propose regulations that are uniform among the other Federal regulatory agencies affected by the Act, and these other agencies do not have jurisdiction under the Clayton Act. Second, differing proposals at this time might lead to confusion that would make public comment less fruitful and interfere with the goal of inter-agency coordination. The Federal Reserve Board will consider reconciling the two sets of regulations at the time it takes final action on the regulations proposed herein. However, if it is not feasible to do so at that time, an individual would be bound by both sets of regulations and by whichever is the more restrictive. The Federal Home Loan Bank Board will similarly consider reconciling its final regulations based on this proposal with § 563.33 of the Regulations of the Federal Savings and Loan Insurance Corporation concerning composition of the board of directors of an insured institution. If it is not feasible to do so at that time, an individual would be bound by both sets of regulations and by whichever is the more restrictive.

In proposing these regulations, the Federal Reserve Board has not followed all of the expanded rulemaking procedures set forth in its policy statement of January 15, 1979. These regulations were initiated before the policy statement was adopted and expedited action is necessary to meet the effective date of the Act. Similarly, because the Act shall become effective on March 10, 1979, the Comptroller of the Currency has determined, in accordance with the existing procedures of the Department of Treasury regarding the issuing of regulations, that a 30-day time period for comment on the proposed regulation is appropriate in this instance in order to expedite the adoption of a regulation.

Some of the prohibitions of the Act depend upon whether a depository organization is located in a Standard Metropolitan Statistical Area (SMSA). For the benefit of those who may be unfamiliar with the current definitions of SMSAs, the Board will make available upon request, at no charge, a list of current SMSAs. Persons who are interested in this list should contact the Secretary of the Federal Reserve Board.

Accordingly, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Fed-

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eral Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration propose to amend 12 CFR by adding Parts 238, 26, 348, 563f, and 711, respectively, to read as set forth below:

FEDERAL RESERVE SYSTEM

[12 CFR Part 238]

[REGULATION LL]

PART 238—MANAGEMENT OFFICIAL INTERLOCKS

Sec.
238.1 Authority, purpose and scope.
238.2 Definitions.
238.3 Permitted relationships.
238.4 Common control.

AUTHORITY: Depository Institution Management Interlocks Act, 92 Stat. 3672 (12 U.S.C. 3201 et seq.).

§ 238.1 Authority, purpose and scope.

(a) *Authority.* This Part is based upon and issued pursuant to the provisions of the Depository Institution Management Interlocks Act ("Act") (92 Stat. 3672, 12 U.S.C. 3201 *et seq.*).

(b) *Purpose and scope.* The purpose of the Act and this Part is to foster competition among depository institutions, depository holding companies, and their affiliates. The Act provides, with certain exceptions, that a management official of a depository institution, depository holding company, or depository institution affiliate of either such institution, may not serve in such capacity with any other such institution that is not affiliated therewith if: (1) offices of such institutions are located within the same Standard Metropolitan Statistical Area ("SMSA") and either such institution has assets of $20 million or more; or (2) regardless of asset size, offices of such institutions are located within the same city, town, or village, or any city, town, or village contiguous or adjacent thereto. Notwithstanding geographic location, the Act also provides, with certain exceptions, that a management official of a depository institution or depository holding company having total assets exceeding $1 billion, or any affiliate of either such institution, may not serve in such capacity with any other nonaffiliated depository institution or depository holding company having total assets exceeding $500 million, or any affiliate thereof.

Any person whose service as a management official of a depository institution, depository holding company, or any affiliate thereof, began prior to November 10, 1978, and was not immediately prior to that date in violation of section 8 of the Clayton Act (15 U.S.C. § 19), is not prohibited from continuing to serve in such capacity with such institution until November 10, 1988. The Board of Governors of the Federal Reserve System administers and enforces the Act with respect to State member banks, bank holding companies, and their affiliates, and may refer the case of a prohibited interlocking relationship involving any such institution to the Attorney General to enforce compliance with the Act and this Part.

§ 238.2 Definitions.

(a) "Depository institution", "depository holding company", "affiliate", and "management official" have the meanings provided in section 202 of the Act.

(b) "Adjacent", as used in section 203 of the Act,, means that cities, towns or villages are less than 10 miles apart at their closest points.

(c) "Office", as used with reference to a depository institution in section 202 of the Act, means either a principal office or a branch, but does not include an electronic terminal.

(d) "Any other bank organized specifically to serve depository institutions", or "banker's bank", as used in section 205 of the Act, means any bank engaged solely in serving depository institutions.

§ 238.3 Permitted relationships.

The Act authorizes the Board to prescribe regulations permitting service by a management official that would otherwise be prohibited by the Act with respect to State member banks, bank holding companies, and any affiliate thereof. Upon request for its prior approval, the Board may permit not more than one of the following classifications of relationships in the case of any one individual:

(a) *Institution in low income area; minority institution.* A management official of a State member bank, bank holding company, or any affiliate thereof, may serve at the same time as a management official of not more than one other depository institution or depository holding company located, or to be located, in a low income or other economically depressed area; or as a management official of not more than one other depository institution or depository holding company that is controlled or managed by persons who are members of minority groups or by women, subject to the following conditions: (1) The appropriate Federal regulatory agency or agencies determine such relationship to be necessary to provide management or operating expertise to such other institution; (2) no interlocking relationship permitted by this paragraph shall continue for more than five years; and (3) such other conditions as may be determined by the appropriate Federal regulatory agency or agencies in any specific case.

(b) *Newly-chartered institution.* A management official of a State member bank, bank holding company, or any affiliate thereof, may serve at the same time as a management official of not more than one other depository institution or depository holding company, subject to the following conditions: (1) no interlocking relationship permitted by this paragraph shall continue for more than two years after such other institution commences business; (2) the appropriate Federal regulatory agency or agencies determine such relationship to be necessary to provide management or operating expertise to such other institution; and (3) such other conditions as may be determined by the appropriate Federal regulatory agency or agencies in any specific case.

(c) *Conditions endangering safety or soundness.* A management official of a State member bank, bank, holding company, or any affiliate thereof, may serve at the same time as a management official of not more than one other depository institution or depository holding company if the Federal regulatory agency that regulates such other institution has reason to believe that conditions exist that may endanger the safety or soundness of such other institution, subject to the following conditions: (1) the appropriate Federal regulatory agency or agencies determine such relationship to be necessary to provide management or operating expertise to such other institution; and (2) such other conditions as may be determined by the appropriate Federal regulatory agency or agencies in any specific case.

(d) *Institution sponsoring credit union.* A management official of a State member bank, bank holding company, or any affiliate thereof, may serve at the same time as a management official of a Federally-insured credit union that is sponsored by the State member bank, bank holding company, or an affiliate thereof, primarily to serve employees of such institutions.

§ 238.4 Common control.

Unless otherwise demonstrated to the satisfaction of the appropriate Federal regulatory agency or agencies, it is presumed that an "affiliate" relationship does not exist under section 202(3)(B) of the Act unless each of the persons who beneficially own in the aggregate more than 50 per cent of the voting shares of each corporation beneficially owns 5 per cent or more of the voting shares of each corporation.

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