

FEDERAL RESERVE BANK  
OF NEW YORK

[ Circular No. 8818 ]  
May 5, 1980

MANAGEMENT OFFICIAL INTERLOCKS

Regulatory Amendments To Implement the Depository Institution Management Interlocks Act

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

The Board of Governors of the Federal Reserve System, in conjunction with similar actions by the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration, has amended its Regulation L, "Management Official Interlocks," to implement the provisions of the Depository Institution Management Interlocks Act. The Act prohibits certain management official interlocks between depository institutions, depository holding companies, and their affiliates. The amendment is effective May 9, 1980.

At the same time, the Board of Governors has amended its "Rules Regarding Delegation of Authority" in order to delegate to the Federal Reserve Banks the authority to extend the grace period for the termination of management official interlocks that become prohibited as a result of Regulation L as amended.

The following is quoted from a statement issued by the Board on behalf of the five Federal regulatory agencies:

The Board issued final rules—Regulation L—under the Interlocks Act in July [1979], but said it would accept further comment on them. The revisions announced today reflect consideration of comment received.

In July the Board also proposed four amendments to the final rules. The Board today made public the amendments in final form, after consideration of comment on them.

The Board made the following revisions of Regulation L:

Requests were received for relief from depository institutions facing loss of a large part of their directors or other management officials through application of the provisions of the Interlocks Act. Accordingly, and in view of the intent of the Congress to avoid undue disruptions in the operations of depository institutions, the Board has provided in Regulation L that organizations experiencing the loss of half or more of their directors or of other management personnel under provisions of the Act may have up to 30 months to come into compliance with the Act, provided that:

1. The depository institution submits a written proposal for orderly termination of the services of the affected management officials, and
2. The officials agree to sever their relationships with the institution not later than 30 months after the change in circumstances requiring termination.

Most of the changes to the final rules were clarifications in response to comment. These include:

- Adoption of a 10-mile rule—measured by road miles—for defining "adjacent."
- Defining the "office" of a depository holding company as its principal corporate office.

The Board took the following actions on its July proposals for amendments to Regulation L:

1. *Grandfathering of interlocks*

The Board adopted without substantive change its proposal stating that those eligible for grandfathered interlocking relationships include those whose service began before November 10, 1978 and was not then in violation of the Clayton Antitrust Act. Such grandfathered interlocks may continue, absent a change in circumstances, until November 10, 1988. The Board withdrew a proposal to apply certain restraints to the service of a

(OVER)



management official with a corporation that became a depository holding company after November 9, 1978 by acquiring shares of the depository institution.

2. *Representative or nominee*

The July proposal would have made certain relationships of an official, including family, employment or agency relationships, normally sufficient to establish an express or implied duty of the official to act as a representative or nominee. In the final form of this amendment these are relationships that "may" establish such obligations, but that will not of themselves create an express or implied obligation. The agencies added a provision specifying that whether such obligations exist will be decided on a case-by-case basis after the affected person or persons shall be given an opportunity to respond.

3. *"Persons"*

In July the Board offered for comment three alternatives as possible definitions of "persons." The amendment as adopted after consideration of comment received includes as "persons" corporations and other businesses as well as natural persons. But it excludes corporations and other businesses from the definition of representative or nominee. Thus, while corporations are considered persons for the purposes of the provisions of the Interlocks Act they will not, under Regulation L, be deemed to have representatives or nominees on boards.

4. *Change in circumstances affecting grandfathered interlocks*

The provisions of this proposal were retained generally. Increased management responsibility has been eliminated as a change in circumstances that would defeat grandfathered rights. An extended grace period has been provided for compliance by institutions experiencing changes in circumstance prior to the effective date of the amendments. An extended grace period has also been provided for compliance by institutions that must, as a result of a change in circumstances, terminate non-grandfathered interlocks.

Enclosed is a copy of the amendment to the Board's "Rules Regarding Delegation of Authority." The amendment sheet also contains a technical correction of Section 265.2(a) (2) of the Rules.

Also enclosed—for member banks, bank holding companies, and certain foreign institutions affected by the regulation—is a copy of the text of the Regulation L amendments, which has been reprinted from the *Federal Register* of April 9, 1980. The amendments will be incorporated in a revised pamphlet containing Regulation L; the pamphlet is expected to be available later this month and will be sent to you as soon as possible.

Questions on these matters may be directed to our Regulations Division (Tel. No. 212-791-5914).

ANTHONY M. SOLOMON,  
*President.*



**Board of Governors of the Federal Reserve System**  
**RULES REGARDING DELEGATION OF AUTHORITY**  
**AMENDMENT AND CORRECTION**

**Amendment**  
(Effective May 9, 1980)

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board is amending its Rules Regarding Delegation of Authority in order to delegate to the Reserve Banks the authority to grant an additional grace period for the termination of management official interlocks that become prohibited as a result of certain changes in circumstances as provided in the Board's regulations (12 C.F.R. Part 212) issued under the Depository Institution Management Interlocks Act (12 U.S.C. § 3201 *et seq.*). This action is intended to expedite reviews of requests for an extended grace period provided in the regulations.

**EFFECTIVE DATE:** May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** Bronwen Mason, Senior Attorney (202-452-3564), or Melanie Fein, Attorney (202-452-3594), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** The Depository Institution Management Interlocks Act ("Interlocks Act") authorizes the Board of Governors to provide up to 15 months for the termination of management interlocks between depository organizations that become prohibited as a result of certain changes in circumstances. The Board has issued regulations (12 C.F.R. 212.6) under the Interlocks Act that require the termination of management interlocks in certain instances after mergers, acquisitions, consolidations, or the establishment of branch offices. In most cases, section 212.6 requires that the affected interlock be terminated no later than the next regularly scheduled annual meeting of shareholders of the organizations involved, unless the appropriate supervisory agency upon request grants an additional grace

period of up to 15 months from the date of the change in circumstances. The additional grace period may be made available to avoid undue disruption of the annual shareholders' meetings of the depository organizations involved, particularly those that are well along in their preparations for annual meetings and which may have already sent out materials to shareholders nominating directors whose service would become prohibited as a result of the issuance of the regulations. In order to expedite review of requests for the extended grace period, the Board is delegating to the Federal Reserve Banks the authority to grant such requests, where appropriate, received from depository organizations in their districts.

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of these amendments because the changes involved are procedural in nature and do not constitute a substantive rule subject to the requirements of that section.

In order to implement this action, 12 C.F.R. 265.2(f) is amended by adding paragraph (f) (48) to read as follows:

**SECTION 265.2—SPECIFIC FUNCTIONS  
DELEGATED TO BOARD EMPLOYEES  
AND TO FEDERAL RESERVE BANKS.**

\* \* \*

(f) Each Federal Reserve Bank is authorized as to a member bank or other indicated organization for which the Reserve Bank is responsible for receiving applications or registration statements; as to its officers under subparagraph (23) of this paragraph; and as to its own facilities under subparagraph (26) of this paragraph:

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(48) Under the provisions of § 212.6 of this chapter (Regulation L relating to changes in

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For these Rules to be complete, retain:

- 1) Pamphlet amended "effective September 21, 1979."
- 2) Correction notice, dated December 13, 1979, indicating that the effective date of the pamphlet is October 24, 1979.
- 3) Amendment effective November 28, 1979.
- 4) This slip sheet.



circumstances requiring termination of interlocking management official relationships), to grant time for compliance with § 212.6 of up to an aggregate of 15 months from the date on which the change in circumstances as specified in that section occurs, if the granting of the additional time appears to be appropriate to avoid undue disruption of the annual shareholders' meetings of the depository organizations involved in the management interlocks.

#### Correction

On page 5 of the Rules pamphlet amended effective September 21, 1979," subparagraph (2) of Section 265.2(a) is corrected to read as follows:

(2) Under the provisions of §§ 18(c) and 18(c)(4) of the Federal Deposit Insurance Act

(12 U.S.C. 1828(c) and 1828(c)(4)), §§ 3(a) and 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(a) and 1843(c)(8)) and §§ 225.3(b) and (c), and §§ 225.4(a) and (b) of Regulation Y (12 CFR 225.3(b) and (c), and 225.4(a) and (b)), to furnish reports on competitive factors involved in a bank merger to the Comptroller of the Currency and the Federal Deposit Insurance Corporation and to approve applications the Reserve Bank could approve under **subparagraph (22)** of paragraph (f) of this section, except for the fact that condition (ii) of that subparagraph has not been met because a director or senior officer of any holding company, bank, or company to be acquired or retained, involved in the transaction, is a director of a Federal Reserve Bank or branch. (*correction printed in bold face*)



**FEDERAL RESERVE SYSTEM****12 CFR Part 212****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; Final Amendments to Existing Regulations**

**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:** Final amendments to existing regulations.

**SUMMARY:** On July 19, 1979, the agencies published regulations, as well as proposed amendments to those regulations, under the Depository Institution Management Interlocks Act (Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978) (the "Interlocks Act"). The Interlocks Act prohibits certain management official interlocks between depository institutions, depository holding companies, and their affiliates. The final amended regulations published in full below include certain clarifying and technical changes in the regulations published in July, and add a definition of the term "representative or nominee," as well as provisions concerning "grandfather" rights and "changes in circumstances." In addition, the final amendments add a provision that extends the compliance period for depository organizations experiencing a disruptive loss of management as a result of a change in circumstances. These amendments are considered to be significant within the meaning of Executive Order 12044 ("Improving Government Regulations"), *i.e.*, they will be of substantial interest to the financial institutions community and the public

because they include provisions that are determinative of whether or not certain interlocking relationships are prohibited.

**EFFECTIVE DATE:** May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** Bronwen Mason (202) 452-3564 or Melanie Fein (202) 452-3594, Board of Governors of the Federal Reserve System; Gwenn Hibbs (202) 447-1880 or Howard Finkelstein (202) 447-1880, Office of the Comptroller of the Currency; Pamela LeCren (202) 389-4433, Federal Deposit Insurance Corporation; Kathleen Topelius (202) 377-6444 or Kenneth Hall (202) 377-6443, Federal Home Loan Bank Board; Ross Kendall (202) 357-1030, National Credit Union Administration.

**SUPPLEMENTARY INFORMATION:** The Depository Institution Management Interlocks Act was enacted on November 10, 1978, as Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3201 *et seq.*). On July 19, 1979, the agencies published regulations implementing the Interlocks Act (44 FR 42152), effective immediately upon publication. At the same time, the agencies issued proposed amendments to complete the regulations (44 FR 42212) by clarifying certain issues not addressed in the regulations. In addition, comment was sought on whether or not the agencies should define "person" so as to exclude corporations or other business entities from being considered "management officials" for the purposes of the Interlocks Act. Public comment was invited for sixty days, until September 17, 1979, regarding both the regulations and the proposed amendments.

The agencies received approximately 15 comments concerning the regulations and approximately 65 comments concerning the proposed amendments. Upon careful review of the comments, as well as experience gained in administering the Interlocks Act regulations, the agencies have decided to make certain technical and clarifying changes in the July regulations and to adopt the proposed amendments with certain modifications.

The final amended regulations are designed to further the purpose of the Interlocks Act to foster competition among depository institutions. Because the Interlocks Act requires that exceptions from the Act's prohibitions be created by regulations, it is necessary for the agencies to issue these formal regulations. However, consistent with Executive Order 12044 ("Improving

Government Regulations," 43 FR 12661), the agencies have determined that no increased costs from recordkeeping or reporting will result from compliance with the regulations, and accordingly, no cost-benefit analysis of the regulations is necessary.

In accordance with section 553(d) of the Administrative Procedure Act (5 U.S.C. 500, *et seq.*), the final amendments to the regulations implementing the Interlocks Act will be effective May 9, 1980. An explanation of each of the changes to the regulations made by the final amendments and a discussion of the comments received are set forth below.

1. *Definition of "adjacent."* The regulations issued in July defined "adjacent" to mean cities, towns, or villages that are within ten miles of one another at their closest points. However, the agencies specifically solicited comment on whether a distinction should be made between adjacent areas in rural and urban locations. For example, consideration was given to treating as adjacent, cities, towns, or villages within ten miles of each other and located in an SMSA, and to treating as adjacent, cities, towns, or villages located within 25 miles of each other but not within an SMSA. The agencies received few comments on this proposal and therefore believe that a distinction between commuting and travel patterns in rural and urban areas is not warranted. Thus, the definition of adjacent has not been substantively amended at this time.

The final amendments do, however, clarify the definition of adjacent by specifying that the distance between cities, towns, or villages is measured by road miles. Thus, cities located on opposite banks of a river will not be considered adjacent if the distance between them via the nearest bridge is more than 10 miles.

2. *Definition of "affiliate."* The definition of "affiliate" has been clarified in two respects. Language has been added to the regulations to emphasize that, for the purposes of section 202(3)(B) of the Interlocks Act, the shares owned by a given individual include any shares that are owned by members of the individual's immediate family. In addition, the definition of "immediate family" has been amended to include specifically the spouse of an individual.

3. *Definition of "depository institution"—application of Interlocks Act to foreign banks.* The regulations are intended to subject only



management officials serving United States offices of foreign banks to the provisions of the Interlocks Act and not to prohibit certain interlocking relationships outside the United States between two foreign banks having subsidiary banks, branches or agencies located in the United States. The regulations issued in July may not have accurately reflected the agencies' determination in this respect. Accordingly, the agencies have amended the definition of "depository institution" to make clear that only institutions chartered in the United States and having a principal office located in the United States, as well as United States offices of foreign commercial banks, are depository institutions for the purposes of the Interlocks Act.

4. *Definition of "office."* The July regulations did not make any distinction in the definition of "office" between that of a depository institution and that of a depository holding company. Thus, in some cases, an office of a depository holding company could be interpreted to include a location at which the depository holding company conducts its operations, such as a plant or storage facility. The agencies do not believe that the provisions of section 203 of the Interlocks Act were intended to apply to locations of a depository holding company not involved in the conduct of depository business, and they did not intend the regulations to have that result. Accordingly, the agencies have added a technical amendment to clarify the scope of the definition of "office" with respect to a depository holding company. The regulation has been amended to define the office of a depository holding company (that is not also a depository institution) as its principal corporate headquarters.

5. *Definition of "management official"—exclusion of certain persons.* A manager of a depository holding company's retail or manufacturing subsidiary might be precluded by section 204 of the Interlocks Act from serving as a management official of any depository organization with assets in excess of \$500 million, if the consolidated assets of the depository holding company exceed \$1 billion. Because the agencies do not believe that Congress intended to prohibit management service by individuals whose functions relate exclusively to retail merchandising or manufacturing, the July regulations excluded such persons from the definition of "management official." The preamble to the July regulations requested comment concerning whether other categories of

persons whose functions relate exclusively to nonfinancial business activities should also be excluded from the definition. While several commenters suggested that the agencies should broaden the class of persons excluded from the definition of "management official," no specific situations demonstrating the need for additional categories were cited. In the absence of any evidence of specific situations that would warrant further exclusions, the agencies have decided to retain the definition as originally promulgated. The agencies have made a technical amendment to the phrasing of the exclusionary sentence to clarify that the exclusion applies only to depository organizations subject to the prohibitions of section 204 of the Interlocks Act.

6. *Definition of "person."* Section 202(4) of the Interlocks Act defines the term "management official" to include "any person" who has a representative or nominee serving as an employee or officer with management functions or serving as a director. The term "any person" could be interpreted to include corporations and other businesses, and as a result, a nondepository corporation that has one officer serving as a director of one depository organization and another officer serving as a director of another depository organization could be regarded as a management official (through its "representatives" or "nominees") subject to the Interlocks Act prohibitions. The agencies requested comment concerning whether to define the term "person" for purposes of the Interlocks Act so as to exclude corporations or other businesses. Specifically, the agencies proposed three alternative approaches regarding this issue:

1. Define the term "any person" to mean only natural persons;
2. Define the term to mean corporations, other businesses, and natural persons; or
3. Define the term to mean corporations, other businesses, and natural persons, and in the case of corporations or other businesses to limit the applicability to those circumstances in which an individual acts in a demonstrably representative manner on behalf of the corporate or business principal.

The agencies received approximately 16 comments concerning this issue. A majority of the comments favored alternative 1, with a significant number also endorsing alternative 3 as a second choice, while one comment favored alternative 2. A number of commenters asserted that the inclusion of corporations in the definition of "person" would be anticompetitive since

depository organizations often compete for a nondepository company's business by inviting company officials to serve on the depository organization's board of directors. The commenters also asserted that the inclusion of corporations in the definition of "person" would deprive many depository organizations of individuals possessing valuable business experience and talent.

After careful evaluation of all the comments and review of the legislative history and relevant legal principles, the agencies have adopted a modified version of alternative 3. The regulations define the term "person" to include corporations, other businesses, and natural persons, but limit the application of the provision by excepting corporations and other businesses from the definition of "representative or nominee." The agencies believe that inclusion of corporations and other businesses in the term "person" is required by the language of the Interlocks Act, the absence of any evidence of legislative intent to narrow the term, and by the statutory purpose to foster competition in the banking industry. Indeed, the agencies are of the view that situations may arise in which the indirect interlock created when representatives of a third firm serve as management officials of two or more depository institutions could inhibit competition among those depository institutions. Thus, an interpretation of the statute that in effect denied the agencies regulatory authority to deal with such anticompetitive relationships would unnecessarily frustrate the purpose of the Interlocks Act. Accordingly, the agencies have adopted the second proposed definition of the term "person" as a matter of statutory construction.

The agencies nevertheless recognize that not all situations involving indirect interlocks among depository institutions would inhibit competition among depository organizations. The agencies currently lack sufficient empirical data, however, to identify with specificity those situations involving indirect interlocks that would not inhibit competition, or to assess accurately the effect on competition in the banking industry of banning indirect interlocks. Accordingly, the agencies have provided an exception from the prohibitions of the Act for nondepository corporations involved in indirect interlocks by defining the term "representative or nominee" to include only representatives or nominees of natural persons. As a result, corporations will not be regarded as "management officials." However, the agencies



reserve their authority pursuant to § 209 of the Act to prohibit some or all of such indirect interlocking relationships in the future should information become available indicating that such action is justified.

7. *Definition of "representative or nominee"—individuals.* Section 202(4) of the Interlocks Act defines "management official" to include a person who has a representative or nominee serving in the capacity of a director, an officer with management functions, or an employee with management functions. Thus, a person may be regarded as a management official of a depository organization without actually serving as a management official. The proposed definition of the term "representative or nominee" issued in July stated that a person would be considered to be the representative or nominee of another if the person had an express or implied duty to act on behalf of the other person with respect to management responsibilities. Certain relationships, including family, employment, and agency, were said "normally" to be "sufficient" to establish the existence of an express or implied duty.

The comments received were evenly divided among those that supported the proposed definition and those that did not. Many commenters who opposed the proposal interpreted it as creating an absolute presumption of representative or nominee status based on the listed relationships. Because the agencies did not intend to create an absolute presumption, the definition has been rewritten to clarify their intent. Thus, a family, employment, or agency relationship between two persons *may* be evidence of an express or implied obligation to act on the other's behalf with respect to management functions. Similarly, the ability to elect a director and the exercise of that ability *may* be evidence of an express or implied obligation by the elected official to the elector. However, neither the relationship nor the election of a director will in itself create an express or implied obligation. In addition, a provision has been added to the definition specifying that whether or not such an obligation exists will be determined on a case by case basis taking into consideration all relevant facts, and the determination will be made only after the affected person or persons are given an opportunity to respond.

The following is an example of how the agencies would apply the definition of representative or nominee. If A is a management official of a bank in town X and A's spouse B becomes a

management official at another bank in the same town, the appropriate supervisory agency may question whether B is the representative or nominee of A. If the facts indicate that B is not adequately qualified to be a management official and A was instrumental in placing B in the position, the agencies may determine that B is a representative or nominee of A, after A and B are given an opportunity to respond and fail to present facts or arguments to refute these findings.

Situations that could warrant special scrutiny by the agencies include those instances when a management official of a depository organization elects a director to the board of directors of another depository organization in the same community, or a major stockholder of two unaffiliated depository organizations in the same community elects directors to both organizations. These situations warrant careful review since the ability to elect or remove a director demonstrates potential ability to control the voting record and other conduct of management responsibilities by such director.

8. *Interlocking relationships permitted by agency order.* While the July regulations provide exceptions to the prohibitions contained in the Interlocks Act, the language of the exceptions could be read to imply that in order to apply for the exception, a person must be serving currently as a management official of the depository organizations involved. The agencies have amended the regulations to make clear that a person proposing to serve as a management official also may apply for the exceptions. For example, a proposed director of a State nonmember bank in the process of organization that has applied to the FDIC for deposit insurance may seek the approval of the Board of Directors of the FDIC to sit as a director of the newly-chartered institution while continuing to serve another bank in the same community.

9. *Interlocking relationships permitted by agency order—hardship resulting from change of circumstances.* Since the July regulations were published, the agencies have received requests for exceptions from the Act by depository organizations facing disruption of their operations by the loss of a substantial number of management officials due to the application of the Interlocks Act and the regulations. In view of the Congressional intent to avoid undue disruption to the operations of depository organizations, the agencies believe it is in keeping with the spirit of the Act to afford some relief in certain cases of undue hardship resulting from

management loss. Accordingly, the agencies have provided an extension of the compliance period for depository organizations experiencing the loss of 50 per cent or more of their directors or total management officials as a result of changes in circumstances requiring the termination of management interlocks. Under the new exception, a compliance period of up to 30 months may be granted by the agencies in order to minimize the disruption caused by the departure of management officials whose service is determined to be necessary to provide management or operating expertise to the depository organization. To qualify for the exemption, a depository organization must submit a proposal for the orderly termination of service by affected management officials, and such officials must agree to sever their interlocking relationships no later than 30 months after the event requiring termination of the interlock.

10. *Grandfathered interlocking relationships.* Section 206 of the Interlocks Act grandfathers for a period of ten years management official interlocks in existence on November 10, 1978, that were not in violation of section 8 of the Clayton Act (15 U.S.C. § 19) immediately prior to that date. The proposed amendments included a provision that interpreted this section to mean that any person whose interlocking position as a management official meets these requirements may continue to serve in that position until November 10, 1988. While no comments were received in opposition to this proposed amendment, some comments indicated that some clarification is appropriate. In response, the agencies emphasize that, in order to be eligible for grandfather rights, it is not necessary that the person's interlocking service be otherwise prohibited under sections 203 or 204 of the Interlocks Act. It is sufficient that the interlock existed prior to November 10, 1978, and was not in violation of section 8 of the Clayton Act. The proposal has been incorporated with only a minor change.

Several commenters pointed out that the provision could be interpreted to grandfather service at a depository institution even when no interlock was involved. It was the agencies' intention rather to grandfather interlocking service in existence on November 10, 1978, at two or more depository institutions. The provision on grandfathered interlocking relationships has been amended to reflect this intent. It is not sufficient that a person served as a management official of only one depository institution or that a person



served as a management official of only one depository organization and a nondepository corporation. In this regard, the agencies will not consider a company to be a depository holding company by virtue of having entered into a binding contract to acquire a depository institution prior to November 10, 1978.

11. *Grandfathered interlocks—one-bank holding company formations.* Another provision in the proposed amendments provided that a person serving as a grandfathered management official of two or more unaffiliated depository organizations may not serve as a management official of a depository holding company created by the acquisition of one of the institutions while continuing to serve in an interlocking relationship at such institutions. The agencies have reviewed this provision and have determined to eliminate it. In effect, the provision would have prevented the formation of one-bank holding companies designed solely to effectuate a change in corporate form. In such cases where the management officials of the acquired depository institution are identical to that of the holding company and the majority ownership of the holding company is identical to that of the depository institution prior to the acquisition, the agencies do not believe that this type of internal reorganization and change of corporate form should affect grandfathered interlocks. For practical purposes, the agencies have determined that such reorganizations generally do not create new interlocks and do not affect competition among depository institutions. Therefore, grandfather rights are not affected and the management officials in question may serve the one-bank holding company and the other depository institution for the remainder of the grandfather period absent some other change of circumstances.

12. *Changes in circumstances—grandfathered interlocks.* Section 206 of the Interlocks Act provides that when a change in circumstances causes a particular interlocking relationship to become prohibited, the agencies may provide a period of up to fifteen months for the prohibited service to be terminated. The proposed amendments contained a provision defining the phrase "change in circumstances" as it applies to grandfathered, as well as nongrandfathered, interlocks. A majority of the total comments received on the regulations dealt with this provision as it applied to grandfathered interlocks.

A number of commenters objected to all or part of the proposed amendments

that enumerated events that would be considered a change in circumstances causing a loss of grandfather rights. In large part the commenters objected that the agencies lacked authority to terminate grandfather rights by applying changes in circumstances to grandfathered interlocks and that defining certain events as changes in circumstances would inhibit competition in some areas and penalize aggressive institutions. In view of these comments, the agencies have carefully reviewed the legislative history of the Interlocks Act, the statutory language, and the general law regarding administrative rulemaking. It remains the firm opinion of the agencies that the Interlocks Act requires the application of the phrase "change in circumstances" to grandfathered interlocks and that it is well within the agencies' regulatory authority to apply the phrase to such interlocks.

The literal language of the Interlocks Act indicates that the drafters contemplated the loss of grandfathered rights under certain circumstances. The second sentence of section 206 of the Act states that the appropriate Federal banking agencies may provide a reasonable period of time for compliance with the Act after any change in circumstances that makes "such service" prohibited by this title. "Such service" refers to grandfathered service in the immediately preceding sentence of section 206. Moreover, section 209 of the Act gives the agencies a broad mandate to write regulations to carry out the provisions of the Act and is broad enough to authorize regulations clarifying the prohibitions of the Act with respect to the loss of grandfather rights. The final amendments, therefore, retain the provisions that apply the change in circumstances language to grandfathered interlocks.

With the exception noted below, the agencies also have rejected general objections to provisions within the change in circumstances proposals. Several commenters asserted that defining change in circumstances to include mergers, acquisitions, consolidations, and branching would penalize aggressive institutions by forcing them to terminate valuable management talent when expanding their operations. The agencies note that the Interlocks Act itself contemplates that depository organizations must choose between consummating certain transactions and losing certain management officials inasmuch as the statutory prohibitions are keyed to asset size and the location of offices. Neither the Act nor the regulations prohibit

depository organizations from expanding by merger, acquisition, consolidation, or branching.

The proposed regulations included, as a change in circumstances that would defeat grandfather rights, a significant increase in the management responsibilities of a management official due to a change in position within an interlocked depository organization. Upon reconsideration, the agencies have concluded that the inclusion of this provision would have fostered uncertainty with respect to management officials of numerous depository institutions and that the provision would not be susceptible to consistent enforcement at this time. The agencies remain of the opinion, however, that the language of section 206 of the Interlocks Act could be correctly interpreted to require termination of grandfathered service due to any change in position and reserve the authority to adopt this interpretation in the future should it appear appropriate to do so for purposes of properly administering the Interlocks Act. It should be noted that deletion of the provision from the final regulation will not affect the manner in which the prohibitions of the Interlocks Act apply to management officials who shift positions among affiliated depository institutions.

A discussion of each type of change in circumstances that will affect grandfathered interlocks follows: (a) *Acquisitions, mergers, and consolidations.* Mergers, acquisitions, or consolidations will terminate grandfather rights for an interlocking relationship in those situations where one of the interlocked depository organizations is merged with, acquires or is acquired by, or is consolidated with another depository organization which, immediately prior to the transaction, was an organization for which the interlocking person could not have served as a management official under sections 203 or 204 of the Interlocks Act. The language of this provision has been simplified from that proposed in July and does not effect any substantive change. For the purposes of determining the date on which the change in circumstances occurs, a merger, acquisition, or consolidation is considered to have occurred upon consummation. Operation of this paragraph is illustrated by the following example:

Director X's service as a director of Bank A and Bank D, both located in SMSA 1, is grandfathered. Director Y's service as a director of Bank B and Bank C, both located in SMSA 1, is also grandfathered. All of the banks have assets of over \$20 million but under \$500 million. BHC I, which is located in



SMSA 1 and owns Bank B, acquires Bank A and merges it with Bank B.

Director X's grandfather rights are defeated for either of two reasons: (1) Under section 203, BHC I is a depository organization for which X could not have served as a management official immediately prior to the acquisition, or (2) under section 203, Bank B is a depository organization for which X could not have served as a management official immediately prior to the merger. Thus, X would have to decide whether to continue service with Bank A or Bank D.

Director Y's grandfather rights with respect to his service with Banks B and C are defeated because, under section 203, Bank A is a depository organization for which Y could not have served immediately prior to the merger. Y, thus, would have to decide whether to continue service with Bank B or Bank C.

In addition, a provision has been added in the regulation issued by the Federal Home Loan Bank Board that affects the manner in which the provision will be applied to acquisitions by diversified savings and loan holding companies. The provision states that, for purposes of § 563f.6(a)(1)(i) of the Federal Home Loan Bank Board's regulation, the term "depository organization" includes a nondepository corporation that will become, as a result of an acquisition of a savings and loan association, a diversified savings and loan holding company. The amendment would terminate the grandfather rights of a management official of a savings and loan association that is acquired by a nondepository corporation for which the management official could not have served prior to the transaction had the corporation been a depository organization. The addition reflects the original intention of the Federal Home Loan Bank Board that the grandfathered rights of a management official of a savings and loan association that is acquired by a diversified savings and loan holding company should be terminated.

(b) *Branching.* Newly established branches will terminate grandfather rights in those situations where one of the depository organizations involved in the grandfathered interlocking relationship, or its depository institution affiliate, establishes an office in the same community as the other depository organization, or its depository institution affiliate, where no such office existed previously; or where both depository organizations, or their depository institution affiliates, establish an office in a community or SMSA where neither previously had an office. For example, if a person's service as a director of Bank A and Bank B located in different cities in the same SMSA is grandfathered and Bank A establishes its first branch in a

city where Bank B already has a branch or its main office, then the person's grandfathered rights would be terminated. However, if Bank A and Bank B each have a branch located in the same city, then the banks may establish additional branches in that city (and adjacent and contiguous cities thereto) without affecting the person's grandfather rights.

13. *Changes in circumstances—non-grandfathered interlocks.* The proposed amendments identified several events that would cause a non-grandfathered management official interlock to become prohibited. (A non-grandfathered interlock is any interlock created after November 10, 1978, or an interlock that was in violation of section 8 of the Clayton Act on that date.) In the case of certain involuntary events (for example, material growth in asset size, change in SMSA or community boundaries, designation of new SMSA), the organizations automatically would be given fifteen months to conform to the Interlocks Act unless the appropriate agency or agencies acted to establish a shorter period. In the event of certain voluntary events (mergers, acquisitions, consolidations, branching), the organizations would be given until the next annual shareholders' meeting to conform to the Interlocks Act. An extension of up to fifteen months would be available. It should be noted that the listed events are not exhaustive of all such events that may cause an interlock to become prohibited.

The agencies have relied on the rulemaking authority in section 209 of the Interlocks Act to apply the change in circumstances restrictions to non-grandfathered interlocks in addition to grandfathered interlocks. Inasmuch as the agencies received no unfavorable comments concerning these provisions, the agencies are retaining them in the final amendments with a minor change as noted in paragraph fourteen of the discussion below.

14. *Changes in circumstances—compliance period.* The proposed amendments listed changes in circumstances which, if they occurred after March 9, 1979, would require the termination of grandfathered interlocking service. The proposed amendments were based on section 206 of the Interlocks Act, which provides that when a change in circumstances causes a particular interlocking relationship between two depository organizations to become prohibited, the agencies may allow the relationship to continue for a period of time not exceeding 15 months from the date on which the relationship became

prohibited. The agencies proposed the March 9 date because March 10, 1979, was the effective date of the Interlocks Act and thus was the date upon which the prohibitions of the Interlocks Act became applicable to interlocking relationships. A number of commenters felt that the March 9 date was inappropriate since the proposed amendments were not published until July 19, 1979. The commenters asserted that many depository organizations would have structured various transactions in a different manner had they been aware of the exact nature of the events that would terminate grandfather rights. Some commenters also asserted that publication of the regulations at a time when many depository organizations are holding their annual meetings would cause hardship for some organizations which have already sent out notices to shareholders nominating directors and have annual meetings scheduled to occur shortly. The commenters therefore suggested that the agencies amend the date after which changes in circumstances would terminate grandfather rights.

In response to these comments, the agencies have amended the change in circumstances provision to provide an additional grace period for compliance in cases where a change in circumstance requiring termination of grandfather rights occurred prior to the effective date of these final amendments. The agencies do not believe it is appropriate to ignore changes that occurred prior to the date of the proposed amendments, as some commenters suggested, since to do so would permit uninterrupted service until 1988 contrary to the prohibitions of the Interlocks Act. Thus, an event falling within the categories of changes in circumstances will be considered a change that terminates grandfather rights. However, if that event occurred prior to the effective date of the final amendments, the grace period will commence on the effective date of the amendments. The regulations also grant a grace period to persons whose grandfathered service was prohibited on March 10, 1979, due to a change in circumstances occurring between November 10, 1978, and March 9, 1979. Without such a grace period, the Interlocks Act would necessitate immediate termination of such service. The provisions of the proposed amendments concerning non-grandfathered interlocks that become prohibited as a result of a change in circumstances also have been rewritten to apply the grace period to interlocking service that becomes prohibited as a



result of a change in circumstances. The agencies are making the above changes pursuant to their authority under section 209 of the Interlocks Act to permit service that is otherwise prohibited.

The proposed amendments stated that a person may continue to serve for a certain period as a management official of "both organizations" involved in the prohibited interlocking relationship. Since many interlocks involve more than two organizations, the language has been revised to make clear that the person may continue to serve as a management official of "all" organizations involved in the prohibited interlocking relationship.

Accordingly, 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 amend 12 CFR by revising Parts 212, 28, 348, 563f, and 711, respectively, to read as follows:

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 212

[Regulation L—Docket No. R-0198]

#### PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

- 212.1 Authority, purpose, and scope.
- 212.2 Definitions.
- 212.3 General prohibitions.
- 212.4 Permitted Interlocking Relationships.
- 212.5 Grandfathered Interlocking Relationships.
- 212.6 Changes in circumstances.
- 212.7 Effect of Interlocks Act on Clayton Act.
- 212.8 Enforcement.

**Authority:** Depository Institution Management Interlocks Act ("Interlocks Act") (12 U.S.C. 3201 et seq.)

##### § 212.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act ("Interlocks Act") (12 U.S.C. 3210 et seq.).

(b) *Purpose and scope.* The general purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official of a depository institution or depository holding company from also serving as a management official of another depository institution or depository holding company if the two organizations (1) are not affiliated and (2) are very large or are located in the same local area. This part applies to management officials of State member

banks, bank holding companies, and their affiliates.

##### § 212.2 Definitions.

For the purpose of this part, the following definitions apply:

(a) "Adjacent cities, towns, or villages" means cities, towns or villages whose borders are within ten road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is regarded as the boundary line of that city, town, or village for the purpose of this definition.

(b) "Affiliate" has the meaning given in section 202 of the Interlocks Act. For purposes of section 202, an individual's shares include shares of members of his or her immediate family. For the purpose of section 202(3)(B) of the Interlocks Act, an affiliate relationship based on common ownership does not exist if the appropriate Federal supervisory agency or agencies determine, after giving the affected persons the opportunity to respond, that the asserted affiliation appears to have been established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the agencies will consider, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate with that person's ownership of shares in the other organization. "Immediate family" includes spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(c) "Community" means city, town, or village, or contiguous or adjacent cities, towns, or villages.

(d) "Contiguous cities, towns, or villages" means cities, towns, or villages whose borders actually touch each other.

(e) "Depository holding company" means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act) having its principal office located in the United States.

(f) "Depository institution" means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered in the United States and having a principal office located in the United States. Additionally, a United

States office, including a branch or agency, of a foreign commercial bank is a "depository institution."

(g) "Depository organization" means a depository institution or a depository holding company.

(h) "Management official" means an employee or officer with management functions (including a branch manager), a director (including an advisory director or honorary director), a trustee of a business organization under the control of trustees (e.g., a mutual savings bank), or any person who has a representative or nominee serving in any such capacity. "Management official" does not mean a person whose management functions relate exclusively to the business of retail merchandising or manufacturing, for the purposes of section 212.3(c) of this Part, and does not mean a person whose management functions relate principally to the business outside the United States of a foreign commercial bank.

"Management official" does not include persons described in the provisos of section 202(4) of the Interlocks Act.

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

(j) "Person" means a natural person, corporation, or other business.

(k) "Representative or nominee" means a person who serves as a management official and has an express or implied obligation to act on behalf of another person with respect to management responsibilities. Whether a person is a "representative or nominee" depends upon the facts in individual cases, and the appropriate Federal supervisory agency or agencies will determine, after giving the affected persons an opportunity to respond, whether a person is a "representative or nominee." Certain relationships, including family, employment, or agency relationships, or the ability and exercise of ability by a shareholder of a depository organization to elect a director may be evidence of such an express or implied obligation by the management official to another person. For the purposes of this definition, "person" shall include only natural persons.

(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 its depository institution affiliates for



the purposes of § 212.3(b) of this part, and include the total assets of all of its affiliates for purposes of § 212.3(c). Total assets of a United States branch or agency of a foreign commercial bank means total assets of such branch or agency itself exclusive of the assets of the other offices of the foreign commercial bank.

(m) "United States" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

#### § 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) Offices of both are located in the same community; (2) offices of depository institution affiliates of both are located in the same community; or (3) an office of one of the depository organizations is located in the same community as an office of a depository institution affiliate of the other.

(b) *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) Offices of both are located in the same Standard Metropolitan Statistical Area ("SMSA") and either has total assets of \$20 million or more; (2) offices of depository institution affiliates of both are located in the same SMSA and either of the depository institution affiliates has total assets of \$20 million or more; or (3) an office of one of the depository organizations is located in the same SMSA as an office of a depository institution affiliate of the other and either the depository organization or the depository institution affiliate has total assets of \$20 million or more.

(c) *Major Assets.* Without regard to location, a management official of a depository organization with total assets exceeding \$1 billion or a management official of any affiliate of the greater than \$1 billion depository organization may not serve at the same time as a management official of a nonaffiliated depository organization with total assets exceeding \$500 million or a management official of any affiliate of the greater than \$500 million depository organization.

#### § 212.4 Permitted interlocking relationships.

(a) *Interlocking relationships permitted by statute.* The prohibitions of § 212.3 do not apply in the case of any

one or more of the following organizations or their subsidiaries:

(1) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(2) A corporation operating under section 25 or 25(a) of the Federal Reserve Act ("Edge Corporations" and "Agreement Corporations");

(3) A depository organization that has been placed formally in liquidation, or that is in the hands of a receiver, conservator, or other official exercising a similar function;

(4) A credit union being served by a management official of another credit union;

(5) A State-chartered savings and loan guaranty corporation; or

(6) A Federal Home Loan Bank or any other bank organized solely for the purpose of serving depository institutions (commonly referred to as "bankers' banks") or solely for the purpose of providing securities clearing services and services related thereto for depository institutions, securities companies, or both.

(b) *Interlocking relationships permitted by Board order.* A management official or a prospective management official of a State member bank, bank holding company, or affiliate of either may apply for the Board's prior approval to enter into a relationship involving another depository organization that would otherwise be prohibited under § 212.3, if the relationship falls within any of the classifications enumerated in this paragraph. If the relationship involves a depository organization subject to the supervision of another Federal supervisory agency as specified in section 207 of the Interlocks Act, the management official or prospective management official must also obtain the prior approval of that other agency.

(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 appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the organization specified in Paragraph (b)(1)(i) or (ii) of this; (B) no interlocking relationship permitted by this paragraph 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 or agencies 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 appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the newly-chartered organization; (ii) no interlocking relationship permitted by this paragraph shall continue for more than two years after the newly-chartered organization commences; and (iii) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency or agencies in any specific case.

(3) *Conditions endangering safety or soundness.* A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if the primary Federal supervisory agency of one of the depository organizations believes that such depository organization faces conditions endangering the organization's safety or soundness, subject to the following conditions: (i) The appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the 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 or agencies in any specific case.

(4) *Organization sponsoring credit union.* A management official of a depository organization or its affiliate may serve at the same time as a management official of a Federally-insured credit union that is sponsored by the depository organization or its affiliate primarily to serve employees of the depository organization.

(5) *Loss of management officials due to changes in circumstances.* If a depository organization experiences a change in circumstances described in paragraphs (a)(1), (b)(1), or (b)(2) of § 212.6, and the change requires the termination of service at the depository organization of 50 per cent or more of the organization's directors or of 50 per cent or more of the total management officials of the depository organization, such management officials may continue to serve in excess of the time periods



provided in paragraphs (a)(2), (b)(1), and (b)(2) of § 212.6: *Provided, That:* (i) The appropriate Federal supervisory agency or agencies determines that the service by such management officials is necessary to provide management or operating expertise; (ii) each management official so affected agrees to sever the prohibited interlocking relationship no later than 30 months after the change in circumstances; (iii) the depository organization submits a proposal for the orderly termination of service by such management officials over the time period provided; and (iv) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency or agencies in any specific case.

#### § 212.5 Grandfathered Interlocking Relationships.

A person whose interlocking service in a position as a management official of two or more depository organizations 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 interlocking positions until November 10, 1988, except as provided in § 212.6(a).

#### § 212.6 Changes in circumstances.

(a)(1) *Grandfathered interlocks.* If a person's service as a management official is grandfathered under § 212.5 the person must terminate such service if the service becomes prohibited by the occurrence of any of the following changes in circumstances:

(i) *Acquisitions, mergers, and consolidations.* One of the depository organizations involved in the interlocking relationship acquires or is acquired by, is merged into or with, or is consolidated with another depository organization for which prior to the transaction the person could not have served as a management official under § 212.3; or

(ii) *Branching.* One of the depository organizations involved in the grandfathered interlocking relationship, or its depository institution affiliate, establishes an initial office in the same community as the other depository organization, or its depository institution affiliate, or both of the depository organizations, or their depository institution affiliates, establish offices in a community or SMSA where neither previously had an office.

(2) *Grace period.* If a person's grandfathered service becomes prohibited under paragraph (a)(1) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited

interlocking relationship through the date of the next regularly scheduled annual shareholders' meeting of any of the organizations involved, whichever occurs last, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period. However, the person may request the appropriate agency or agencies to grant an additional extension of time to continue the interlocking relationship, but the prohibited interlocking relationship may not continue for more than 15 months from the date of the change in circumstances. If the change in circumstances occurred prior to May 9, 1980, the change will be considered to have occurred on May 9, 1980, for purposes of this paragraph.

(b)(1) *Non-grandfathered interlocks; involuntary changes; grace period.* If a person's service as a management official is not grandfathered under § 212.5 and becomes prohibited as a result of an increase in the asset size of an organization due to natural growth, or as a result of a change in SMSA or community boundaries or the designation of a new SMSA, the person has 15 months from the date of the change in circumstances to comply with this part, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period. If the change in circumstances occurred prior to May 9, 1980, the change will be considered to have occurred on May 9, 1980 for purposes of this subparagraph.

(2) *Non-grandfathered interlocks; voluntary changes; grace period.* If a person's service as a management official is not grandfathered under § 212.5 and becomes prohibited as a result of an acquisition, merger, consolidation, or the establishment of an office, the person may continue to serve as a management official of all organizations involved in the prohibited interlock through the date of the next regularly scheduled annual shareholders' meeting of any of the organizations involved, whichever occurs last, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period. However, the person may request the appropriate agency or agencies to grant an additional extension of time to continue the interlocking relationship, but the prohibited interlocking relationship may not continue for more than 15 months from the date of the change in circumstances. If the change in circumstances occurred prior to May 9, 1980, the change will be considered to

have occurred on May 9, 1980 for purposes of this paragraph.

#### § 212.7 Effect of Interlocks Act on Clayton Act.

The Board of Governors of the Federal Reserve System regards the provisions of the first three paragraphs of section 8 of the Clayton Act (15 U.S.C. 19) to have been supplanted by the revised and more comprehensive prohibitions on management official interlocks between depository organizations in the Interlocks Act.

#### § 212.8 Enforcement.

The Board of Governors of the Federal Reserve System administers and enforces the Interlocks 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 organization, regardless of the nature of any other organization involved in the prohibited relationship, to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a State member bank or bank holding company is primarily subject to the regulation of another Federal supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate.

Board of Governors of the Federal Reserve System, April 3, 1980.

Griffith L. Garwood,  
Deputy Secretary of the Board.



**FEDERAL RESERVE SYSTEM****12 CFR Part 212****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; Final Amendments to Existing Regulations**

**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:** Final amendments to existing regulations.

**SUMMARY:** On July 19, 1979, the agencies published regulations, as well as proposed amendments to those regulations, under the Depository Institution Management Interlocks Act (Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978) (the "Interlocks Act"). The Interlocks Act prohibits certain management official interlocks between depository institutions, depository holding companies, and their affiliates. The final amended regulations published in full below include certain clarifying and technical changes in the regulations published in July, and add a definition of the term "representative or nominee," as well as provisions concerning "grandfather" rights and "changes in circumstances." In addition, the final amendments add a provision that extends the compliance period for depository organizations experiencing a disruptive loss of management as a result of a change in circumstances. These amendments are considered to be significant within the meaning of Executive Order 12044 ("Improving Government Regulations"), *i.e.*, they will be of substantial interest to the financial institutions community and the public

because they include provisions that are determinative of whether or not certain interlocking relationships are prohibited. **EFFECTIVE DATE:** May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:**

Bronwen Mason (202) 452-3564 or Melanie Fein (202) 452-3594, Board of Governors of the Federal Reserve System; Gwenn Hibbs (202) 447-1880 or Howard Finkelstein (202) 447-1880, Office of the Comptroller of the Currency; Pamela LeCren (202) 389-4433, Federal Deposit Insurance Corporation; Kathleen Topelius (202) 377-6444 or Kenneth Hall (202) 377-6443, Federal Home Loan Bank Board; Ross Kendall (202) 357-1030, National Credit Union Administration.

**SUPPLEMENTARY INFORMATION:** The Depository Institution Management Interlocks Act was enacted on November 10, 1978, as Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3201 *et seq.*). On July 19, 1979, the agencies published regulations implementing the Interlocks Act (44 FR 42152), effective immediately upon publication. At the same time, the agencies issued proposed amendments to complete the regulations (44 FR 42212) by clarifying certain issues not addressed in the regulations. In addition, comment was sought on whether or not the agencies should define "person" so as to exclude corporations or other business entities from being considered "management officials" for the purposes of the Interlocks Act. Public comment was invited for sixty days, until September 17, 1979, regarding both the regulations and the proposed amendments.

The agencies received approximately 15 comments concerning the regulations and approximately 65 comments concerning the proposed amendments. Upon careful review of the comments, as well as experience gained in administering the Interlocks Act regulations, the agencies have decided to make certain technical and clarifying changes in the July regulations and to adopt the proposed amendments with certain modifications.

The final amended regulations are designed to further the purpose of the Interlocks Act to foster competition among depository institutions. Because the Interlocks Act requires that exceptions from the Act's prohibitions be created by regulations, it is necessary for the agencies to issue these formal regulations. However, consistent with Executive Order 12044 ("Improving

Government Regulations," 43 FR 12661), the agencies have determined that no increased costs from recordkeeping or reporting will result from compliance with the regulations, and accordingly, no cost-benefit analysis of the regulations is necessary.

In accordance with section 553(d) of the Administrative Procedure Act (5 U.S.C. 500, *et seq.*), the final amendments to the regulations implementing the Interlocks Act will be effective May 9, 1980. An explanation of each of the changes to the regulations made by the final amendments and a discussion of the comments received are set forth below.

1. *Definition of "adjacent."* The regulations issued in July defined "adjacent" to mean cities, towns, or villages that are within ten miles of one another at their closest points. However, the agencies specifically solicited comment on whether a distinction should be made between adjacent areas in rural and urban locations. For example, consideration was given to treating as adjacent, cities, towns, or villages within ten miles of each other and located in an SMSA, and to treating as adjacent, cities, towns, or villages located within 25 miles of each other but not within an SMSA. The agencies received few comments on this proposal and therefore believe that a distinction between commuting and travel patterns in rural and urban areas is not warranted. Thus, the definition of adjacent has not been substantively amended at this time.

The final amendments do, however, clarify the definition of adjacent by specifying that the distance between cities, towns, or villages is measured by road miles. Thus, cities located on opposite banks of a river will not be considered adjacent if the distance between them via the nearest bridge is more than 10 miles.

2. *Definition of "affiliate."* The definition of "affiliate" has been clarified in two respects. Language has been added to the regulations to emphasize that, for the purposes of section 202(3)(B) of the Interlocks Act, the shares owned by a given individual include any shares that are owned by members of the individual's immediate family. In addition, the definition of "immediate family" has been amended to include specifically the spouse of an individual.

3. *Definition of "depository institution"—application of Interlocks Act to foreign banks.* The regulations are intended to subject only



management officials serving United States offices of foreign banks to the provisions of the Interlocks Act and not to prohibit certain interlocking relationships outside the United States between two foreign banks having subsidiary banks, branches or agencies located in the United States. The regulations issued in July may not have accurately reflected the agencies' determination in this respect. Accordingly, the agencies have amended the definition of "depository institution" to make clear that only institutions chartered in the United States and having a principal office located in the United States, as well as United States offices of foreign commercial banks, are depository institutions for the purposes of the Interlocks Act.

4. *Definition of "office."* The July regulations did not make any distinction in the definition of "office" between that of a depository institution and that of a depository holding company. Thus, in some cases, an office of a depository holding company could be interpreted to include a location at which the depository holding company conducts its operations, such as a plant or storage facility. The agencies do not believe that the provisions of section 203 of the Interlocks Act were intended to apply to locations of a depository holding company not involved in the conduct of depository business, and they did not intend the regulations to have that result. Accordingly, the agencies have added a technical amendment to clarify the scope of the definition of "office" with respect to a depository holding company. The regulation has been amended to define the office of a depository holding company (that is not also a depository institution) as its principal corporate headquarters.

5. *Definition of "management official"—exclusion of certain persons.* A manager of a depository holding company's retail or manufacturing subsidiary might be precluded by section 204 of the Interlocks Act from serving as a management official of any depository organization with assets in excess of \$500 million, if the consolidated assets of the depository holding company exceed \$1 billion. Because the agencies do not believe that Congress intended to prohibit management service by individuals whose functions relate exclusively to retail merchandising or manufacturing, the July regulations excluded such persons from the definition of "management official." The preamble to the July regulations requested comment concerning whether other categories of

persons whose functions relate exclusively to nonfinancial business activities should also be excluded from the definition. While several commenters suggested that the agencies should broaden the class of persons excluded from the definition of "management official," no specific situations demonstrating the need for additional categories were cited. In the absence of any evidence of specific situations that would warrant further exclusions, the agencies have decided to retain the definition as originally promulgated. The agencies have made a technical amendment to the phrasing of the exclusionary sentence to clarify that the exclusion applies only to depository organizations subject to the prohibitions of section 204 of the Interlocks Act.

6. *Definition of "person."* Section 202(4) of the Interlocks Act defines the term "management official" to include "any person" who has a representative or nominee serving as an employee or officer with management functions or serving as a director. The term "any person" could be interpreted to include corporations and other businesses, and as a result, a nondepository corporation that has one officer serving as a director of one depository organization and another officer serving as a director of another depository organization could be regarded as a management official (through its "representatives" or "nominees") subject to the Interlocks Act prohibitions. The agencies requested comment concerning whether to define the term "person" for purposes of the Interlocks Act so as to exclude corporations or other businesses. Specifically, the agencies proposed three alternative approaches regarding this issue:

1. Define the term "any person" to mean only natural persons;
2. Define the term to mean corporations, other businesses, and natural persons; or
3. Define the term to mean corporations, other businesses, and natural persons, and in the case of corporations or other businesses to limit the applicability to those circumstances in which an individual acts in a demonstrably representative manner on behalf of the corporate or business principal.

The agencies received approximately 16 comments concerning this issue. A majority of the comments favored alternative 1, with a significant number also endorsing alternative 3 as a second choice, while one comment favored alternative 2. A number of commenters asserted that the inclusion of corporations in the definition of "person" would be anticompetitive since

depository organizations often compete for a nondepository company's business by inviting company officials to serve on the depository organization's board of directors. The commenters also asserted that the inclusion of corporations in the definition of "person" would deprive many depository organizations of individuals possessing valuable business experience and talent.

After careful evaluation of all the comments and review of the legislative history and relevant legal principles, the agencies have adopted a modified version of alternative 3. The regulations define the term "person" to include corporations, other businesses, and natural persons, but limit the application of the provision by excepting corporations and other businesses from the definition of "representative or nominee." The agencies believe that inclusion of corporations and other businesses in the term "person" is required by the language of the Interlocks Act, the absence of any evidence of legislative intent to narrow the term, and by the statutory purpose to foster competition in the banking industry. Indeed, the agencies are of the view that situations may arise in which the indirect interlock created when representatives of a third firm serve as management officials of two or more depository institutions could inhibit competition among those depository institutions. Thus, an interpretation of the statute that in effect denied the agencies regulatory authority to deal with such anticompetitive relationships would unnecessarily frustrate the purpose of the Interlocks Act. Accordingly, the agencies have adopted the second proposed definition of the term "person" as a matter of statutory construction.

The agencies nevertheless recognize that not all situations involving indirect interlocks among depository institutions would inhibit competition among depository organizations. The agencies currently lack sufficient empirical data, however, to identify with specificity those situations involving indirect interlocks that would not inhibit competition, or to assess accurately the effect on competition in the banking industry of banning indirect interlocks. Accordingly, the agencies have provided an exception from the prohibitions of the Act for nondepository corporations involved in indirect interlocks by defining the term "representative or nominee" to include only representatives or nominees of natural persons. As a result, corporations will not be regarded as "management officials." However, the agencies



reserve their authority pursuant to § 209 of the Act to prohibit some or all of such indirect interlocking relationships in the future should information become available indicating that such action is justified.

7. *Definition of "representative or nominee"—individuals.* Section 202(4) of the Interlocks Act defines "management official" to include a person who has a representative or nominee serving in the capacity of a director, an officer with management functions, or an employee with management functions. Thus, a person may be regarded as a management official of a depository organization without actually serving as a management official. The proposed definition of the term "representative or nominee" issued in July stated that a person would be considered to be the representative or nominee of another if the person had an express or implied duty to act on behalf of the other person with respect to management responsibilities. Certain relationships, including family, employment, and agency, were said "normally" to be "sufficient" to establish the existence of an express or implied duty.

The comments received were evenly divided among those that supported the proposed definition and those that did not. Many commenters who opposed the proposal interpreted it as creating an absolute presumption of representative or nominee status based on the listed relationships. Because the agencies did not intend to create an absolute presumption, the definition has been rewritten to clarify their intent. Thus, a family, employment, or agency relationship between two persons *may* be evidence of an express or implied obligation to act on the other's behalf with respect to management functions. Similarly, the ability to elect a director and the exercise of that ability *may* be evidence of an express or implied obligation by the elected official to the elector. However, neither the relationship nor the election of a director will in itself create an express or implied obligation. In addition, a provision has been added to the definition specifying that whether or not such an obligation exists will be determined on a case by case basis taking into consideration all relevant facts, and the determination will be made only after the affected person or persons are given an opportunity to respond.

The following is an example of how the agencies would apply the definition of representative or nominee. If A is a management official of a bank in town X and A's spouse B becomes a

management official at another bank in the same town, the appropriate supervisory agency may question whether B is the representative or nominee of A. If the facts indicate that B is not adequately qualified to be a management official and A was instrumental in placing B in the position, the agencies may determine that B is a representative or nominee of A, after A and B are given an opportunity to respond and fail to present facts or arguments to refute these findings.

Situations that could warrant special scrutiny by the agencies include those instances when a management official of a depository organization elects a director to the board of directors of another depository organization in the same community, or a major stockholder of two unaffiliated depository organizations in the same community elects directors to both organizations. These situations warrant careful review since the ability to elect or remove a director demonstrates potential ability to control the voting record and other conduct of management responsibilities by such director.

8. *Interlocking relationships permitted by agency order.* While the July regulations provide exceptions to the prohibitions contained in the Interlocks Act, the language of the exceptions could be read to imply that in order to apply for the exception, a person must be serving currently as a management official of the depository organizations involved. The agencies have amended the regulations to make clear that a person proposing to serve as a management official also may apply for the exceptions. For example, a proposed director of a State nonmember bank in the process of organization that has applied to the FDIC for deposit insurance may seek the approval of the Board of Directors of the FDIC to sit as a director of the newly-chartered institution while continuing to serve another bank in the same community.

9. *Interlocking relationships permitted by agency order—hardship resulting from change of circumstances.* Since the July regulations were published, the agencies have received requests for exceptions from the Act by depository organizations facing disruption of their operations by the loss of a substantial number of management officials due to the application of the Interlocks Act and the regulations. In view of the Congressional intent to avoid undue disruption to the operations of depository organizations, the agencies believe it is in keeping with the spirit of the Act to afford some relief in certain cases of undue hardship resulting from

management loss. Accordingly, the agencies have provided an extension of the compliance period for depository organizations experiencing the loss of 50 per cent or more of their directors or total management officials as a result of changes in circumstances requiring the termination of management interlocks. Under the new exception, a compliance period of up to 30 months may be granted by the agencies in order to minimize the disruption caused by the departure of management officials whose service is determined to be necessary to provide management or operating expertise to the depository organization. To qualify for the exemption, a depository organization must submit a proposal for the orderly termination of service by affected management officials, and such officials must agree to sever their interlocking relationships no later than 30 months after the event requiring termination of the interlock.

10. *Grandfathered interlocking relationships.* Section 206 of the Interlocks Act grandfathers for a period of ten years management official interlocks in existence on November 10, 1978, that were not in violation of section 8 of the Clayton Act (15 U.S.C. § 19) immediately prior to that date. The proposed amendments included a provision that interpreted this section to mean that any person whose interlocking position as a management official meets these requirements may continue to serve in that position until November 10, 1988. While no comments were received in opposition to this proposed amendment, some comments indicated that some clarification is appropriate. In response, the agencies emphasize that, in order to be eligible for grandfather rights, it is not necessary that the person's interlocking service be otherwise prohibited under sections 203 or 204 of the Interlocks Act. It is sufficient that the interlock existed prior to November 10, 1978, and was not in violation of section 8 of the Clayton Act. The proposal has been incorporated with only a minor change.

Several commenters pointed out that the provision could be interpreted to grandfather service at a depository institution even when no interlock was involved. It was the agencies' intention rather to grandfather interlocking service in existence on November 10, 1978, at two or more depository institutions. The provision on grandfathered interlocking relationships has been amended to reflect this intent. It is not sufficient that a person served as a management official of only one depository institution or that a person



served as a management official of only one depository organization and a nondepository corporation. In this regard, the agencies will not consider a company to be a depository holding company by virtue of having entered into a binding contract to acquire a depository institution prior to November 10, 1978.

11. *Grandfathered interlocks—one-bank holding company formations.* Another provision in the proposed amendments provided that a person serving as a grandfathered management official of two or more unaffiliated depository organizations may not serve as a management official of a depository holding company created by the acquisition of one of the institutions while continuing to serve in an interlocking relationship at such institutions. The agencies have reviewed this provision and have determined to eliminate it. In effect, the provision would have prevented the formation of one-bank holding companies designed solely to effectuate a change in corporate form. In such cases where the management officials of the acquired depository institution are identical to that of the holding company and the majority ownership of the holding company is identical to that of the depository institution prior to the acquisition, the agencies do not believe that this type of internal reorganization and change of corporate form should affect grandfathered interlocks. For practical purposes, the agencies have determined that such reorganizations generally do not create new interlocks and do not affect competition among depository institutions. Therefore, grandfather rights are not affected and the management officials in question may serve the one-bank holding company and the other depository institution for the remainder of the grandfather period absent some other change of circumstances.

12. *Changes in circumstances—grandfathered interlocks.* Section 206 of the Interlocks Act provides that when a change in circumstances causes a particular interlocking relationship to become prohibited, the agencies may provide a period of up to fifteen months for the prohibited service to be terminated. The proposed amendments contained a provision defining the phrase "change in circumstances" as it applies to grandfathered, as well as nongrandfathered, interlocks. A majority of the total comments received on the regulations dealt with this provision as it applied to grandfathered interlocks.

A number of commenters objected to all or part of the proposed amendments

that enumerated events that would be considered a change in circumstances causing a loss of grandfather rights. In large part the commenters objected that the agencies lacked authority to terminate grandfather rights by applying changes in circumstances to grandfathered interlocks and that defining certain events as changes in circumstances would inhibit competition in some areas and penalize aggressive institutions. In view of these comments, the agencies have carefully reviewed the legislative history of the Interlocks Act, the statutory language, and the general law regarding administrative rulemaking. It remains the firm opinion of the agencies that the Interlocks Act requires the application of the phrase "change in circumstances" to grandfathered interlocks and that it is well within the agencies' regulatory authority to apply the phrase to such interlocks.

The literal language of the Interlocks Act indicates that the drafters contemplated the loss of grandfathered rights under certain circumstances. The second sentence of section 206 of the Act states that the appropriate Federal banking agencies may provide a reasonable period of time for compliance with the Act after any change in circumstances that makes "such service" prohibited by this title. "Such service" refers to grandfathered service in the immediately preceding sentence of section 206. Moreover, section 209 of the Act gives the agencies a broad mandate to write regulations to carry out the provisions of the Act and is broad enough to authorize regulations clarifying the prohibitions of the Act with respect to the loss of grandfather rights. The final amendments, therefore, retain the provisions that apply the change in circumstances language to grandfathered interlocks.

With the exception noted below, the agencies also have rejected general objections to provisions within the change in circumstances proposals. Several commenters asserted that defining change in circumstances to include mergers, acquisitions, consolidations, and branching would penalize aggressive institutions by forcing them to terminate valuable management talent when expanding their operations. The agencies note that the Interlocks Act itself contemplates that depository organizations must choose between consummating certain transactions and losing certain management officials inasmuch as the statutory prohibitions are keyed to asset size and the location of offices. Neither the Act nor the regulations prohibit

depository organizations from expanding by merger, acquisition, consolidation, or branching.

The proposed regulations included, as a change in circumstances that would defeat grandfather rights, a significant increase in the management responsibilities of a management official due to a change in position within an interlocked depository organization. Upon reconsideration, the agencies have concluded that the inclusion of this provision would have fostered uncertainty with respect to management officials of numerous depository institutions and that the provision would not be susceptible to consistent enforcement at this time. The agencies remain of the opinion, however, that the language of section 206 of the Interlocks Act could be correctly interpreted to require termination of grandfathered service due to any change in position and reserve the authority to adopt this interpretation in the future should it appear appropriate to do so for purposes of properly administering the Interlocks Act. It should be noted that deletion of the provision from the final regulation will not affect the manner in which the prohibitions of the Interlocks Act apply to management officials who shift positions among affiliated depository institutions.

A discussion of each type of change in circumstances that will affect grandfathered interlocks follows: (a) *Acquisitions, mergers, and consolidations.* Mergers, acquisitions, or consolidations will terminate grandfather rights for an interlocking relationship in those situations where one of the interlocked depository organizations is merged with, acquires or is acquired by, or is consolidated with another depository organization which, immediately prior to the transaction, was an organization for which the interlocking person could not have served as a management official under sections 203 or 204 of the Interlocks Act. The language of this provision has been simplified from that proposed in July and does not effect any substantive change. For the purposes of determining the date on which the change in circumstances occurs, a merger, acquisition, or consolidation is considered to have occurred upon consummation. Operation of this paragraph is illustrated by the following example:

Director X's service as a director of Bank A and Bank D, both located in SMSA 1, is grandfathered. Director Y's service as a director of Bank B and Bank C, both located in SMSA 1, is also grandfathered. All of the banks have assets of over \$20 million but under \$500 million. BHC I, which is located in



SMSA 1 and owns Bank B, acquires Bank A and merges it with Bank B.

Director X's grandfather rights are defeated for either of two reasons: (1) Under section 203, BHC I is a depository organization for which X could not have served as a management official immediately prior to the acquisition, or (2) under section 203, Bank B is a depository organization for which X could not have served as a management official immediately prior to the merger. Thus, X would have to decide whether to continue service with Bank A or Bank D.

Director Y's grandfather rights with respect to his service with Banks B and C are defeated because, under section 203, Bank A is a depository organization for which Y could not have served immediately prior to the merger. Y, thus, would have to decide whether to continue service with Bank B or Bank C.

In addition, a provision has been added in the regulation issued by the Federal Home Loan Bank Board that affects the manner in which the provision will be applied to acquisitions by diversified savings and loan holding companies. The provision states that, for purposes of § 563f.6(a)(1)(i) of the Federal Home Loan Bank Board's regulation, the term "depository organization" includes a nondepository corporation that will become, as a result of an acquisition of a savings and loan association, a diversified savings and loan holding company. The amendment would terminate the grandfather rights of a management official of a savings and loan association that is acquired by a nondepository corporation for which the management official could not have served prior to the transaction had the corporation been a depository organization. The addition reflects the original intention of the Federal Home Loan Bank Board that the grandfathered rights of a management official of a savings and loan association that is acquired by a diversified savings and loan holding company should be terminated.

(b) *Branching.* Newly established branches will terminate grandfather rights in those situations where one of the depository organizations involved in the grandfathered interlocking relationship, or its depository institution affiliate, establishes an office in the same community as the other depository organization, or its depository institution affiliate, where no such office existed previously; or where both depository organizations, or their depository institution affiliates, establish an office in a community or SMSA where neither previously had an office. For example, if a person's service as a director of Bank A and Bank B located in different cities in the same SMSA is grandfathered and Bank A establishes its first branch in a

city where Bank B already has a branch or its main office, then the person's grandfathered rights would be terminated. However, if Bank A and Bank B each have a branch located in the same city, then the banks may establish additional branches in that city (and adjacent and contiguous cities thereto) without affecting the person's grandfather rights.

13. *Changes in circumstances—non-grandfathered interlocks.* The proposed amendments identified several events that would cause a non-grandfathered management official interlock to become prohibited. (A non-grandfathered interlock is any interlock created after November 10, 1978, or an interlock that was in violation of section 8 of the Clayton Act on that date.) In the case of certain involuntary events (for example, material growth in asset size, change in SMSA or community boundaries, designation of new SMSA), the organizations automatically would be given fifteen months to conform to the Interlocks Act unless the appropriate agency or agencies acted to establish a shorter period. In the event of certain voluntary events (mergers, acquisitions, consolidations, branching), the organizations would be given until the next annual shareholders' meeting to conform to the Interlocks Act. An extension of up to fifteen months would be available. It should be noted that the listed events are not exhaustive of all such events that may cause an interlock to become prohibited.

The agencies have relied on the rulemaking authority in section 209 of the Interlocks Act to apply the change in circumstances restrictions to non-grandfathered interlocks in addition to grandfathered interlocks. Inasmuch as the agencies received no unfavorable comments concerning these provisions, the agencies are retaining them in the final amendments with a minor change as noted in paragraph fourteen of the discussion below.

14. *Changes in circumstances—compliance period.* The proposed amendments listed changes in circumstances which, if they occurred after March 9, 1979, would require the termination of grandfathered interlocking service. The proposed amendments were based on section 206 of the Interlocks Act, which provides that when a change in circumstances causes a particular interlocking relationship between two depository organizations to become prohibited, the agencies may allow the relationship to continue for a period of time not exceeding 15 months from the date on which the relationship became

prohibited. The agencies proposed the March 9 date because March 10, 1979, was the effective date of the Interlocks Act and thus was the date upon which the prohibitions of the Interlocks Act became applicable to interlocking relationships. A number of commenters felt that the March 9 date was inappropriate since the proposed amendments were not published until July 19, 1979. The commenters asserted that many depository organizations would have structured various transactions in a different manner had they been aware of the exact nature of the events that would terminate grandfather rights. Some commenters also asserted that publication of the regulations at a time when many depository organizations are holding their annual meetings would cause hardship for some organizations which have already sent out notices to shareholders nominating directors and have annual meetings scheduled to occur shortly. The commenters therefore suggested that the agencies amend the date after which changes in circumstances would terminate grandfather rights.

In response to these comments, the agencies have amended the change in circumstances provision to provide an additional grace period for compliance in cases where a change in circumstance requiring termination of grandfather rights occurred prior to the effective date of these final amendments. The agencies do not believe it is appropriate to ignore changes that occurred prior to the date of the proposed amendments, as some commenters suggested, since to do so would permit uninterrupted service until 1988 contrary to the prohibitions of the Interlocks Act. Thus, an event falling within the categories of changes in circumstances will be considered a change that terminates grandfather rights. However, if that event occurred prior to the effective date of the final amendments, the grace period will commence on the effective date of the amendments. The regulations also grant a grace period to persons whose grandfathered service was prohibited on March 10, 1979, due to a change in circumstances occurring between November 10, 1978, and March 9, 1979. Without such a grace period, the Interlocks Act would necessitate immediate termination of such service. The provisions of the proposed amendments concerning non-grandfathered interlocks that become prohibited as a result of a change in circumstances also have been rewritten to apply the grace period to interlocking service that becomes prohibited as a



result of a change in circumstances. The agencies are making the above changes pursuant to their authority under section 209 of the Interlocks Act to permit service that is otherwise prohibited.

The proposed amendments stated that a person may continue to serve for a certain period as a management official of "both organizations" involved in the prohibited interlocking relationship. Since many interlocks involve more than two organizations, the language has been revised to make clear that the person may continue to serve as a management official of "all" organizations involved in the prohibited interlocking relationship.

Accordingly, 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 amend 12 CFR by revising Parts 212, 26, 348, 563f, and 711, respectively, to read as follows:

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 212

[Regulation L—Docket No. R-0198]

#### PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

- 212.1 Authority, purpose, and scope.
- 212.2 Definitions.
- 212.3 General prohibitions.
- 212.4 Permitted Interlocking Relationships.
- 212.5 Grandfathered Interlocking Relationships.
- 212.6 Changes in circumstances.
- 212.7 Effect of Interlocks Act on Clayton Act.
- 212.8 Enforcement.

**Authority:** Depository Institution Management Interlocks Act ("Interlocks Act") (12 U.S.C. 3201 et seq.)

##### § 212.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act ("Interlocks Act") (12 U.S.C. 3210 et seq.).

(b) *Purpose and scope.* The general purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official of a depository institution or depository holding company from also serving as a management official of another depository institution or depository holding company if the two organizations (1) are not affiliated and (2) are very large or are located in the same local area. This part applies to management officials of State member

banks, bank holding companies, and their affiliates.

##### § 212.2 Definitions.

For the purpose of this part, the following definitions apply:

(a) "Adjacent cities, towns, or villages" means cities, towns or villages whose borders are within ten road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is regarded as the boundary line of that city, town, or village for the purpose of this definition.

(b) "Affiliate" has the meaning given in section 202 of the Interlocks Act. For purposes of section 202, an individual's shares include shares of members of his or her immediate family. For the purpose of section 202(3)(B) of the Interlocks Act, an affiliate relationship based on common ownership does not exist if the appropriate Federal supervisory agency or agencies determine, after giving the affected persons the opportunity to respond, that the asserted affiliation appears to have been established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the agencies will consider, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate with that person's ownership of shares in the other organization. "Immediate family" includes spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(c) "Community" means city, town, or village, or contiguous or adjacent cities, towns, or villages.

(d) "Contiguous cities, towns, or villages" means cities, towns, or villages whose borders actually touch each other.

(e) "Depository holding company" means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act) having its principal office located in the United States.

(f) "Depository institution" means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered in the United States and having a principal office located in the United States. Additionally, a United

States office, including a branch or agency, of a foreign commercial bank is a "depository institution."

(g) "Depository organization" means a depository institution or a depository holding company.

(h) "Management official" means an employee or officer with management functions (including a branch manager), a director (including an advisory director or honorary director), a trustee of a business organization under the control of trustees (e.g., a mutual savings bank), or any person who has a representative or nominee serving in any such capacity. "Management official" does not mean a person whose management functions relate exclusively to the business of retail merchandising or manufacturing, for the purposes of section 212.3(c) of this Part, and does not mean a person whose management functions relate principally to the business outside the United States of a foreign commercial bank.

"Management official" does not include persons described in the provisos of section 202(4) of the Interlocks Act.

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

(j) "Person" means a natural person, corporation, or other business.

(k) "Representative or nominee" means a person who serves as a management official and has an express or implied obligation to act on behalf of another person with respect to management responsibilities. Whether a person is a "representative or nominee" depends upon the facts in individual cases, and the appropriate Federal supervisory agency or agencies will determine, after giving the affected persons an opportunity to respond, whether a person is a "representative or nominee." Certain relationships, including family, employment, or agency relationships, or the ability and exercise of ability by a shareholder of a depository organization to elect a director may be evidence of such an express or implied obligation by the management official to another person. For the purposes of this definition, "person" shall include only natural persons.

(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 its depository institution affiliates for



the purposes of § 212.3(b) of this part, and include the total assets of all of its affiliates for purposes of § 212.3(c). Total assets of a United States branch or agency of a foreign commercial bank means total assets of such branch or agency itself exclusive of the assets of the other offices of the foreign commercial bank.

(m) "United States" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

#### § 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) Offices of both are located in the same community; (2) offices of depository institution affiliates of both are located in the same community; or (3) an office of one of the depository organizations is located in the same community as an office of a depository institution affiliate of the other.

(b) *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) Offices of both are located in the same Standard Metropolitan Statistical Area ("SMSA") and either has total assets of \$20 million or more; (2) offices of depository institution affiliates of both are located in the same SMSA and either of the depository institution affiliates has total assets of \$20 million or more; or (3) an office of one of the depository organizations is located in the same SMSA as an office of a depository institution affiliate of the other and either the depository organization or the depository institution affiliate has total assets of \$20 million or more.

(c) *Major Assets.* Without regard to location, a management official of a depository organization with total assets exceeding \$1 billion or a management official of any affiliate of the greater than \$1 billion depository organization may not serve at the same time as a management official of a nonaffiliated depository organization with total assets exceeding \$500 million or a management official of any affiliate of the greater than \$500 million depository organization.

#### § 212.4 Permitted interlocking relationships.

(a) *Interlocking relationships permitted by statute.* The prohibitions of § 212.3 do not apply in the case of any

one or more of the following organizations or their subsidiaries:

(1) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(2) A corporation operating under section 25 or 25(a) of the Federal Reserve Act ("Edge Corporations" and "Agreement Corporations");

(3) A depository organization that has been placed formally in liquidation, or that is in the hands of a receiver, conservator, or other official exercising a similar function;

(4) A credit union being served by a management official of another credit union;

(5) A State-chartered savings and loan guaranty corporation; or

(6) A Federal Home Loan Bank or any other bank organized solely for the purpose of serving depository institutions (commonly referred to as "bankers' banks") or solely for the purpose of providing securities clearing services and services related thereto for depository institutions, securities companies, or both.

(b) *Interlocking relationships permitted by Board order.* A management official or a prospective management official of a State member bank, bank holding company, or affiliate of either may apply for the Board's prior approval to enter into a relationship involving another depository organization that would otherwise be prohibited under § 212.3, if the relationship falls within any of the classifications enumerated in this paragraph. If the relationship involves a depository organization subject to the supervision of another Federal supervisory agency as specified in section 207 of the Interlocks Act, the management official or prospective management official must also obtain the prior approval of that other agency.

(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 appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the organization specified in Paragraph (b)(1)(i) or (ii) of this; (B) no interlocking relationship permitted by this paragraph 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 or agencies 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 appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the newly-chartered organization; (ii) no interlocking relationship permitted by this paragraph shall continue for more than two years after the newly-chartered organization commences; and (iii) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency or agencies in any specific case.

(3) *Conditions endangering safety or soundness.* A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if the primary Federal supervisory agency of one of the depository organizations believes that such depository organization faces conditions endangering the organization's safety or soundness, subject to the following conditions: (i) The appropriate Federal supervisory agency or agencies determine the relationship to be necessary to provide management or operating expertise to the 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 or agencies in any specific case.

(4) *Organization sponsoring credit union.* A management official of a depository organization or its affiliate may serve at the same time as a management official of a Federally-insured credit union that is sponsored by the depository organization or its affiliate primarily to serve employees of the depository organization.

(5) *Loss of management officials due to changes in circumstances.* If a depository organization experiences a change in circumstances described in paragraphs (a)(1), (b)(1), or (b)(2) of § 212.6, and the change requires the termination of service at the depository organization of 50 per cent or more of the organization's directors or of 50 per cent or more of the total management officials of the depository organization, such management officials may continue to serve in excess of the time periods



provided in paragraphs (a)(2), (b)(1), and (b)(2) of § 212.6: *Provided*, That: (i) The appropriate Federal supervisory agency or agencies determines that the service by such management officials is necessary to provide management or operating expertise; (ii) each management official so affected agrees to sever the prohibited interlocking relationship no later than 30 months after the change in circumstances; (iii) the depository organization submits a proposal for the orderly termination of service by such management officials over the time period provided; and (iv) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency or agencies in any specific case.

#### § 212.5 Grandfathered Interlocking Relationships.

A person whose interlocking service in a position as a management official of two or more depository organizations 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 interlocking positions until November 10, 1988, except as provided in § 212.6(a).

#### § 212.6 Changes in circumstances.

(a)(1) *Grandfathered interlocks.* If a person's service as a management official is grandfathered under § 212.5 the person must terminate such service if the service becomes prohibited by the occurrence of any of the following changes in circumstances:

(i) *Acquisitions, mergers, and consolidations.* One of the depository organizations involved in the interlocking relationship acquires or is acquired by, is merged into or with, or is consolidated with another depository organization for which prior to the transaction the person could not have served as a management official under § 212.3; or

(ii) *Branching.* One of the depository organizations involved in the grandfathered interlocking relationship, or its depository institution affiliate, establishes an initial office in the same community as the other depository organization, or its depository institution affiliate, or both of the depository organizations, or their depository institution affiliates, establish offices in a community or SMSA where neither previously had an office.

(2) *Grace period.* If a person's grandfathered service becomes prohibited under paragraph (a)(1) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited

interlocking relationship through the date of the next regularly scheduled annual shareholders' meeting of any of the organizations involved, whichever occurs last, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period. However, the person may request the appropriate agency or agencies to grant an additional extension of time to continue the interlocking relationship, but the prohibited interlocking relationship may not continue for more than 15 months from the date of the change in circumstances. If the change in circumstances occurred prior to May 9, 1980, the change will be considered to have occurred on May 9, 1980, for purposes of this paragraph.

(b)(1) *Non-grandfathered interlocks; involuntary changes; grace period.* If a person's service as a management official is not grandfathered under § 212.5 and becomes prohibited as a result of an increase in the asset size of an organization due to natural growth, or as a result of a change in SMSA or community boundaries or the designation of a new SMSA, the person has 15 months from the date of the change in circumstances to comply with this part, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period. If the change in circumstances occurred prior to May 9, 1980, the change will be considered to have occurred on May 9, 1980 for purposes of this subparagraph.

(2) *Non-grandfathered interlocks; voluntary changes; grace period.* If a person's service as a management official is not grandfathered under § 212.5 and becomes prohibited as a result of an acquisition, merger, consolidation, or the establishment of an office, the person may continue to serve as a management official of all organizations involved in the prohibited interlock through the date of the next regularly scheduled annual shareholders' meeting of any of the organizations involved, whichever occurs last, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period. However, the person may request the appropriate agency or agencies to grant an additional extension of time to continue the interlocking relationship, but the prohibited interlocking relationship may not continue for more than 15 months from the date of the change in circumstances. If the change in circumstances occurred prior to May 9, 1980, the change will be considered to

have occurred on May 9, 1980 for purposes of this paragraph.

#### § 212.7 Effect of Interlocks Act on Clayton Act.

The Board of Governors of the Federal Reserve System regards the provisions of the first three paragraphs of section 8 of the Clayton Act (15 U.S.C. 19) to have been supplanted by the revised and more comprehensive prohibitions on management official interlocks between depository organizations in the Interlocks Act.

#### § 212.8 Enforcement.

The Board of Governors of the Federal Reserve System administers and enforces the Interlocks 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 organization, regardless of the nature of any other organization involved in the prohibited relationship, to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a State member bank or bank holding company is primarily subject to the regulation of another Federal supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate.

Board of Governors of the Federal Reserve System, April 3, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.