At. Cir. No. 9877(a)

June 13, 1985

To All Depository Institutions in the Second
Federal Reserve District, and Others Maintaining
Sets of Board Regulations:

Enclosed is a copy of Regulation L, "Management Official Interlocks," as amended effective June 10, 1984. The revised pamphlet has been printed in the new smaller size and replaces the previous printing of that regulation, together with all amendments thereto.

Questions regarding this regulation may be directed to our Regulations Division (Tel. No. 212-791-5914).

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Board of Governors of the Federal Reserve System

At-Cir. No. 9877a

Regulation L
Management Official Interlocks

12 CFR 212; as amended effective June 10, 1984

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Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

April 1985

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Regulation L
Management Official Interlocks

12 CFR 212; as amended effective June 10, 1984

SECTION 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 USC 3201 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.

SECTION 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 10 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) (1) *"Management official"* means (i) an employee or officer with management functions (including a branch manager); (ii) a director (including an advisory director or honorary director); (iii) a trustee of a business organization under the control of

* The words "this part," as used herein, mean Regulation L (Code of Federal Regulations, title 12, chapter II, part 212).

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trustees (e.g., a mutual savings bank); or (iv) any person who has a representative or nominee serving in any such capacity.

(2) "Management official" does not include (i) a person whose management functions relate exclusively to the business of retail merchandising or manufacturing; (ii) a person whose management functions relate principally to the business outside the United States of a foreign commerical bank; or (iii) persons described in the provisos of section 202(4) of the Interlocks Act (12 USC 3201(4)).

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

(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 responsiblities. 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 all of its subsidiary affiliates, except that "total assets" of a diversified savings and loan holding company, as defined in section 408(a)(1)(F) of the National Housing Act (12 USC 1730a(a)(F)), or of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that act (12 USC 1843(d)), means only the total assets of its depository institution affiliate. "Total assets" of a United States branch or agency of a foreign commercial bank means the total assets of such branch or agency itself exclusive of the assets of the other offices of the foreign commercial bank.

(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.

(n) *"Relevant metropolitan statistical area"* means a primary metropolitan statistical area, a metropolitan statistical area, or a consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget.

SECTION 212.3—General Prohibitions

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

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

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

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

(b) *Metropolitan statistical area.* A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if—

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

(2) offices of depository institution affili-

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ates of both are located in the same relevant metropolitan statistical area and either of the depository institution affiliates has total assets of $20 million or more; or

(3) one is a depository institution that has an office in the same relevant metropolitan statistical area as a depository institution affiliate of the other and either the depository institution 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.

SECTION 212.4—Permitted Interlocking Relationships

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

(1) *Organization in low-income area; minority or women's organization.* A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations is (i) located, or to be located, in a low-income or other economically depressed area, or (ii) controlled or managed by persons who are members of minority groups or by women, subject to the following conditions: (A) the relationship is necessary to provide management or operating expertise to the organization specified in (i) or (ii) above; (B) no interlocking relationship permitted by this 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 in any specific case.

(2) *Newly chartered organization.* A person may serve at the same time as a management official of two or more depository organizations if one of the depository organizations (or an affiliate thereof) is a newly chartered organization, subject to the following conditions: (i) the relationship is necessary to provide management or operating expertise to the newly chartered orga-

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nization; (ii) no interlocking relationship permitted by this subparagraph shall continue for more than two years after the newly chartered organization commences business; and (iii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate federal supervisory agency in any specific case.

(3) *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 one of the depository organizations faces conditions endangering the organization's safety or soundness, subject to the following conditions: (i) the relationship is necessary to provide management or operating expertise to such organization facing conditions endangering safety or soundness; and (ii) other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate federal supervisory agency in any specific case.

(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 is likely to lose 30 percent or more of its directors or of its total management officials due to a change in circumstances described in section 212.6 of this part, the affected management officials may continue to serve in excess of the time periods specified in section 212.6, provided that: (i) the depository organization's prospective loss of management officials or directors will be disruptive to the internal management of the depository organization; (ii) the depository organization demonstrates that, absent a grant of relief in accordance with this subparagraph, 30 percent or more of either its directors or management officials are likely to sever their interlocking relationships with the depository organization; (iii) if the prospective losses of management officials resulted from more than one change in circumstances, such changes in circumstances must have occurred within a 15-month period; and (iv) the depository organization develops a plan for the orderly termination of service by each such management official over a period not longer than 30 months after the change in circumstances which caused the person's service to become prohibited (but if the loss of management officials is the result of more than one change in circumstances, the 30-month period is measured from the first change in circumstances). Other conditions in addition to, or in lieu of, the foregoing may be imposed by the appropriate federal supervisory agency. In evaluating requests made pursuant to this subparagraph, the appropriate federal supervisory agency will presume that a director who also is a paid, full-time employee of the depository organization, absent unusual circumstances, will not resign from the position of director with that depository organization. This presumption may, however, be rebutted by a showing that such unusual circumstances exist.

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

SECTION 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

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the Clayton Act (15 USC 19) is not prohibited from continuing to serve in such interlocking positions until November 10, 1988. Any management official who has been required to terminate or who has terminated service in one or more such interlocking positions as a result of a merger, acquisition, consolidation, or establishment of an office that formerly was defined as a change in circumstances in 12 CFR 212.6(a) (1981) is not prohibited from continuing or resuming such service until November 10, 1988.

SECTION 212.6—Changes in Circumstances

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

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

SECTION 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 USC 19) to have been supplanted by the revised and more comprehensive prohibitions on management official interlocks between depository organizations in the Interlocks Act.

SECTION 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.

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Depository Institutions Management Interlocks Act

12 USC 3201 et seq.; 92 Stat. 3672; Pub. L. 95–630, Financial Institutions Regulatory and Interest Rate Control Act, Title II (November 10, 1978)

FIRA, TITLE II—Interlocking Directors

SECTION 201—Short Title

This title may be cited as the "Depository Institution Management Interlocks Act".

[12 USC 3201 note.]

SECTION 202—Definitions

As used in this title—

(1) the term "*depository institution*" means a commercial 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;

(2) the term "*depository holding company*" means a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956, a company which would be a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 but for the exemption contained in section 2(a)(5)(F) thereof, or a savings and loan holding company as defined in section 408(a)(1)(d) of the National Housing Act;

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an "affiliate of," or as "affiliated" with any other corporation means that—

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiaries of the same depository holding company, as the term "subsidiary" is defined in either section 2(d) of the Bank Holding Company Act of 1956 in the case of a bank holding company or section 408(a)(1)(H) of the National Housing Act in the case of a savings and loan holding company; or

(B) more than 50 per centum of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than 50 per centum of the voting stock of the other corporation; or

(C) one of the corporations is a trust company all of the stock of which, except for directors qualifying shares, was owned by one or more mutual savings bank on the date of enactment of this Act, and the other corporation is a mutual savings bank; or

(D) one of the corporations is a bank, insured by the Federal Deposit Insurance Corporation and chartered under State law, the voting securities of which are held by other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however,* That in no case shall the voting securities of such corporation be held by any such other bank in excess of 5 per centum of the paid-in capital and 5 per centum of the surplus of such other bank; or

(E) one of the corporations is a bank, chartered under State law and insured by the Federal Deposit Insurance Corporation, the voting securities of which are held only by persons who are officers of other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however,* That in no case shall the voting securities of such corporation be held by such officers of the other banks in excess of 6 per centum of the paid-in capital and 6 per centum of the surplus of such a bank.

(4) the term "*management official*" means an employee or officer with management functions, a director (including an advisory or honorary director), a trustee of a business organization under the control of

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trustees, or any person who has a representative or nominee serving in any such capacity: *Provided,* That if a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank is specifically authorized under the laws of the State in which said institution is located to serve as a trustee, director, or other officer of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons, then, for the purposes of this title, such corporator, trustee, director, or other officer shall not be deemed to be a management official of such trust company: *And provided further,* That if a management official of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons is specifically authorized under the laws of the State in which said institution is located to serve as a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank, then, for the purposes of this title, such management official shall not be deemed to be a management official of any such savings bank or cooperative bank; and

(5) the term "*office*" used with reference to a depository institution means either a principal office or a branch.

[12 USC 3201.]

SECTION 203—Management Official of Unaffiliated Institution or Company in Same Area

A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than $20,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

[12 USC 3202. As amended by act of Nov. 30, 1983 (97 Stat. 1267).]

SECTION 204—Management Official of $1 Billion Institution or Company as Management Official of Unaffiliated Institution or Company

If a depository institution or a depository holding company has total assets exceeding $1,000,000,000, a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $500,000,000 or as a management official of any affiliate of such other institution.

[12 USC 3203.]

SECTION 205—Exceptions

The prohibitions contained in sections 203 and 204 shall not apply in the case of any one or more of the following or subsidiary thereof:

(1) A depository institution or depository holding company which has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function.

(2) A corporation operating under section 25 or 25(a) of the Federal Reserve Act.

(3) A credit union being served by a management official of another credit union.

(4) A depository institution or depository holding company which does not do business within any State of the United States, the District of Columbia, any territory of

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the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands except as an incident to its activities outside the United States.

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

(6) A Federal Home Loan Bank or any other bank organized specifically to serve depository institutions.

[12 USC 3204. As amended by act of Oct. 15, 1982 (96 Stat. 1524).]

SECTION 206—Management Official in Position Prior to November 10, 1978

(a) A person whose service in a position as a management official began prior to the date of enactment of this title and who was not immediately prior to the date of enactment of this title in violation of section 8 of the Clayton Act is not prohibited by section 203 or section 204 of this title from continuing to serve in that position for a period of ten years after the date of enactment of this title. The appropriate Federal banking agency (as set forth in section 209) may provide a reasonable period of time for compliance with this title, not exceeding fifteen months, after any change in circumstances which makes service described in the preceding sentence prohibited by this title, except that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 203 or section 204 of this title.

(b) Effective on the date of enactment of this title, a person who serves as a management official of a company which is not a depository institution or a depository holding company and as a management official of a depository institution or a depository holding company is not prohibited from continuing to serve as a management official of that depository institution or depository holding company as a result of that company which is not a depository institution or depository holding company becoming a diversified savings and loan holding company as that term is defined in section 408(a) of the National Housing Act. This subsection shall expire ten years after the date of enactment of this title.

[12 USC 3205. As amended by act of Dec. 26, 1981 (95 Stat. 1515).]

SECTION 207—Administration and Enforcement

This title shall be administered and enforced by—

(1) the Comptroller of the Currency with respect to national banks and banks located in the District of Columbia,

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies,

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation,

(4) the Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and savings and loan holding companies,

(5) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration, and

(6) upon referral by the agencies named in the foregoing paragraphs (1) through (5), the Attorney General shall have the authority to enforce compliance by any person with this title.

[12 USC 3206.]

* * * * *

SECTION 209—Rules and Regulations

Rules and regulations to carry out this title, including rules or regulations which permit service by a management official which would otherwise be prohibited by section 203 or section 204, may be prescribed by—

(1) the Comptroller of the Currency with

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respect to national banks and banks located in the District of Columbia.

(2) the Board of Governors of the Federal Reserve System with respect to State banks which are members of the Federal Reserve System, and bank holding companies.

(3) the Board of Directors of the Federal Deposit Insurance Corporation with respect to State banks which are not members of the Federal Reserve System but the deposits of which are insured by the Federal Deposit Insurance Corporation.

(4) the Federal Home Loan Bank Board with respect to institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, and savings and loan holding companies, and

(5) the National Credit Union Administration with respect to credit unions the accounts of which are insured by the National Credit Union Administration.

[12 USC 3207.]

SECTION 210—Functions and Powers of Attorney General and Assistant Attorney General

(a) For the purpose of the exercise by the Attorney General of his enforcement functions under section 207 (6) of this title, all of the functions and powers of the Attorney General under the Clayton Act are available to the Attorney General, irrespective of any jurisdictional tests in the Clayton Act, including the power to take enforcement actions in the same manner as if the violation has been a violation of the Clayton Act.

(b) All of the functions and powers of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice are available to the Attorney General or to such Assistant Attorney General to investigate possible violations under section 207 (6) of the title in the same manner as if such possible violations were possible violations of the Clayton Act.

[12 USC 3208. As added by act of Oct. 15, 1982 (96 Stat. 1524).]

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