FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10833**
February 1, 1996]

MANAGEMENT OFFICIAL INTERLOCKS
Proposed Amendments to Regulation L

Comments Invited by February 27

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

The Board of Governors of the Federal Reserve System, together with the three other Federal regulatory agencies, have requested comment on a proposal to amend their regulations dealing with "Management Official Interlocks," to conform the interlock rules to recent statutory changes, to modernize and clarify those rules, and to reduce unnecessary regulatory burdens.

Printed on the following pages is an excerpt from the *Federal Register*[1] containing the text of the proposed changes to the Board's Regulation L. Comments should be submitted by February 27, and may be sent to the Board of Governors, as specified in the notice, or to Kausar Hamdani, Assistant Vice President of our Bank Analysis Function.

WILLIAM J. MCDONOUGH,
President.

[1] The U.S. Government Printing Office now makes the *Federal Register* available on the Internet; the reference address is http://www.access.gpo.gov/

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 95–31]

RIN 1557–AB39

FEDERAL RESERVE BOARD

12 CFR Part 212

[Docket No. R–0907]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–AB71

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 95–204]

RIN 1150–AA95

Management Official Interlocks

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

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively, the agencies) propose to revise their rules regarding management interlocks. The proposal conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

DATES: Comments must be received by February 27, 1996.

ADDRESSES: Comments should be directed to:

OCC: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 95–31. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by internet mail to REG.COMMENTS@OCC.TREAS.GOV.

Board: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Docket No. R–0907, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FDIC: Jerry L. Langley, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be delivered to room F–400, 1776 F Street, NW, Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. or sent by facsimile transmission to FAX number 202/898–3838. Internet: COMMENTS@FDIC.GOV. Comments will be available for inspection and photocopying in room 7118,.550 17th Street, NW, Washington, DC 20429, between 8:30 a.m. and 5:00 p.m. on business days.

OTS: Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 95–204. These submissions may be hand delivered to 1700 G Street, NW, from 9:00 A.M. to 5:00 P.M. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Comments over 25 pages in length should be sent to FAX number (202) 906–6956. Comments will be available for inspection at 1700 G Street, NW, from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Sue E. Auerbach, Senior Attorney, Bank Activities and Structure Division (202) 874–5300; Emily R. McNaughton, National Bank Examiner, Credit & Management Policy (202) 874–5170; Jackie Durham, Senior Licensing Policy Analyst (202) 874–5060; or Mark J. Tenhundfeld, Senior Attorney, Legislative and Regulatory Activities (202) 874–5090.

Board: Thomas M. Corsi, Senior Attorney (202/452–3275), or Tina Woo, Attorney (202/452–3890), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for Deaf (TTD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington DC 20551.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

Section 303(a) of the CDRI Act (12 U.S.C. 4803(a)) requires the OCC, OTS, Board, and FDIC to review their regulations in order to streamline and modify the regulations to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The agencies have reviewed their respective management interlocks regulation with these purposes in mind and, as is explained in greater detail in the text that follows, propose to amend the regulations in ways designed to meet the goals of section 303(a).[1]

Summary of Statutory Changes

The CDRI Act amended the Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (Interlocks Act) by removing the agencies' broad authority to exempt otherwise impermissible interlocks and replacing it with the authority to exempt interlocks under more narrow circumstances. The CDRI Act also required a depository organization with a "grandfathered" interlock to apply for an extension of the grandfather period if the organization wanted to keep the interlock in place.[2]

[1] The National Credit Union Administration has participated in the interagency effort to revise the management interlocks regulations and intends to publish a separate Notice of Proposed Rulemaking revising 12 CFR part 711 in the near future.

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

After the changes made by the CDRI Act, a person subject to the Interlocks Act's restrictions seeking an exemption from those restrictions must qualify either for a "regulatory standards" exemption (the Regulatory Standards exemption) or an exemption under a "management official consignment program" (the Management Consignment exemption). An applicant seeking a Regulatory Standards exemption must submit a board resolution certifying that no other candidate from the relevant community has the necessary expertise to serve as a management official, is willing to serve, and is not otherwise prohibited by the Interlocks Act from serving. Before granting the exemption request, the appropriate agency must find that the individual is critical to the institution's safe and sound operations, that the interlock will not produce an anticompetitive effect, and that the management official meets any additional requirements imposed by the agency. Under the Management Consignment exemption, the appropriate agency may permit an interlock that otherwise would be prohibited by the Interlocks Act if the agency determines that the interlock would improve the provision of credit to low- and moderate-income areas, increase the competitive position of a minority- or woman-owned institution, or strengthen the management of a newly chartered institution or an institution that is in an unsafe or unsound condition. (*See* text following "Management Consignment exemption" in this Preamble for a discussion regarding interlocks involving newly chartered institutions or institutions that are in an unsafe or unsound condition.)

The proposal reflects these statutory changes, and streamlines and clarifies the interlocks regulations in various respects. These changes are discussed in the text that follows. The agencies invite comments on all aspects of this proposal.

Discussion

The following is a section-by-section discussion of the proposed revisions.

Authority, Purpose, and Scope

This section in the agencies' current regulations identifies the Interlocks Act as the statutory authority for the management interlocks regulation. It also states that the purpose of the rules governing management interlocks is to foster competition between unaffiliated institutions. Finally, this section currently identifies the types of institutions to which each agency's regulation applies.

The proposed rule restates these provisions and, in the OCC proposed rule, uses the term "District bank" to describe banks operating under the Code of Laws of the District of Columbia. (*See* definition of "District bank" at proposed § 26.2(k).)

Definitions

Each of the agencies' current regulations sets forth definitions of key terms used in the regulation.

The proposed regulations change some of the current definitions. A discussion of the substantive differences between the current rules and proposals follows.

Anticompetitive Effect

The current regulations neither use nor define the term "anticompetitive effect."

The proposed regulations define the term to mean "a monopoly or substantial lessening of competition." This term is used in the Regulatory Standards exemption. Under that exemption, the appropriate agency may approve a request for an exemption to the Interlocks Act if, among other things, the agency finds that continuation of service by the management official does not produce an anticompetitive effect with respect to the affected institution. The statute does not define the term "anticompetitive effect," nor does the legislative history to the CDRI Act point to a particular definition.

The context of the Regulatory Standards exemption suggests, however, that the agencies should apply the term "anticompetitive effect" in a manner that permits interlocks that present no substantial lessening of competition. By prohibiting an interlock that would result in a monopoly or substantial lessening of competition, the proposed definition preserves the free flow of credit and other banking services that the Interlocks Act is designed to protect. Another benefit of the proposed definition is that it is familiar to the banking industry, given that it is derived from the Bank Merger Act (12 U.S.C. 1828(c)). This enables the agencies to accomplish the legislative purpose of the Interlocks Act without imposing unnecessary regulatory burdens.

Area Median Income

The current regulations do not use the term "area median income," and, therefore, do not define this term.

The proposed regulations define "area median income" as the median family income for the metropolitan statistical area (MSA) in which an institution is located or the statewide nonmetropolitan median family income if an institution is located outside an MSA. This term is used in the definition of "low- and moderate-income areas," which in turn is used in the implementation of the Management Consignment exemption.

Contiguous or Adjacent Cities, Towns, or Villages

The current regulations define "adjacent cities, towns, or villages" as cities, towns, or villages whose borders are within 10 road miles from each other. They also define "contiguous cities, towns, or villages" as cities, towns, or villages whose borders touch. The statute and regulations apply these terms to prohibit interlocks involving small institutions that are located in contiguous or adjacent cities, towns, or villages.

The proposed regulations combine these two definitions, given that contiguous cities, towns, or villages necessarily are within 10 miles of each other.

Critical

The current regulations neither use nor define "critical."

The proposed regulations define the term in connection with the Regulatory Standards exemption. Under that exemption, the appropriate agency must find that a proposed management official is critical to the safe and sound operations of the affected institution. 12 U.S.C. 3207(b)(2)(A). Neither the statute nor its legislative history define "critical."

The agencies are concerned that a narrow interpretation of this term would nullify the Regulatory Standards exemption. If someone were "critical" to the safe and sound operations of an institution only if the institution would fail but for the service of the person in question, the exemption would have little relevance because the standard would be practically impossible to meet. Given that Congress clearly intended for the Regulatory Standards exemption to permit interlocks under some circumstances, the question thus becomes how to define those circumstances.

This proposal addresses the issue by stating that the agencies will consider a person to be critical to a depository organization if the person will play an important role in helping the institution either address current problems or maintain safe and sound operations going forward. The agencies believe that this approach is consistent with the

legislative intent by insuring that only persons of demonstrated expertise and importance to the institution will be allowed to serve pursuant to a Regulatory Standards exemption.

Low- and Moderate-Income Areas

The current regulations permit interlocks under certain circumstances involving a depository organization located "in a low income or other economically depressed area." However, the current rules do not define "low income" or "economically depressed."

Section 209(c)(1)(A) of the Interlocks Act (12 U.S.C. 3207(c)(1)(A)) authorizes the appropriate agency to permit interlocks pursuant to the Management Consignment exemption if the agency determines that the proposed service would "improve the provision of credit to low- and moderate-income areas." The proposed regulations define "low- and moderate-income areas" as areas where the median family income is less than 100 percent of the area median income. This definition is consistent with Title I, Subtitle A of the CDRI Act (the Community Development Banking and Financial Institutions Act of 1994) (12 U.S.C. 4701–4718), which, like the Management Consignment exemption affecting institutions in low- and moderate-income areas, is intended to assist the flow of credit into economically depressed areas. Section 103(17) of the CDRI Act (12 U.S.C. 4702(17)) defines "low income" to mean not more than 80 percent of the area median income. The agencies believe that Congress, by using the term "low- and moderate-income" in the Management Consignment exemption, intended for that term to apply to an area where the median family income exceeds 80 percent of the median income for the area. The agencies have selected 100 percent of the area median income as the cutoff for defining "low- and moderate-income areas" because they believe that a higher threshold would permit interlocks that would not improve the provision of credit to low- and moderate-income areas.

Management Official

The current regulations define "management official" to include an employee or officer "with management functions" (including a branch manager), a director, a trustee of an organization under the control of trustees, or any person who has a representative or nominee serving in such capacity. The definition excludes (1) a person whose management functions relate either exclusively to the business of retail merchandising or manufacturing or principally to business outside the United States of a foreign commercial bank and (2) a person excluded by section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

The proposed regulations adopt the definition of "management official" set forth in the current rules, except that the phrase "an employee or officer with management functions" is removed. It is replaced by the term "senior executive officer" as defined by each of the agencies in their regulations pertaining to the prior notice of changes in senior executive officers, which implement section 32 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831i) as added by section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

The agencies are proposing this change to eliminate the uncertainty and attendant compliance burden created by the ambiguous term "management functions." The proposals incorporate specific illustrative examples of positions at depository organizations that will be treated as senior executive officers. See 12 CFR 5.51(c)(3) (OCC); 12 CFR 225.71(a) (Board); 12 CFR 303.14(a)(3) (FDIC); and 12 CFR 574.9(a)(2) (OTS). The agencies believe that these definitions will allow depository organizations to identify impermissible interlocks with greater certainty and thus will enhance compliance. The agencies request comment on the advisability of defining "management official" by using "senior executive officer" rather than "employee or officer with management functions."

The current definition of "management official" exempts those individuals whose management functions relate to retail merchandising or manufacturing. Stated another way, the current exemption applies to a category of persons whose responsibilities are unrelated to the business of a deposit-taking institution.

The agencies specifically ask commenters to address whether the agencies should exempt a broader category of management officials whose duties are unrelated to the provision of financial services by a depository institution or depository holding company, and if so, how the agencies should define that category of excluded officials.

Relevant Metropolitan Statistical Area (RMSA)

The current regulations define "relevant metropolitan statistical area" as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs as defined by the Office of Management and Budget (OMB). This definition is derived from section 203(1) of the Interlocks Act (12 U.S.C. 3202(1)).

The proposed regulations define "relevant metropolitan statistical area (RMSA)" as an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs, to the extent that the OMB defines and applies these terms. This change reflects the fact that the OMB defines "consolidated MSA" to include two or more primary MSAs. Given that consolidated MSAs, by the OMB's definition, are comprised of primary MSAs, the reference to consolidated MSAs in the Interlocks Act and the agencies' regulations is inappropriate. The proposed change enables the agencies to implement the statute in a way that complies with both the spirit and the letter of the Interlocks Act.

Representative or Nominee

The current regulations define "representative or nominee" as 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. The current definition goes on to state that the determination of whether someone is a representative or nominee depends on the facts of a particular case and that certain relationships (such as family, employment, and so on) may evidence an express or implied obligation to act.

The proposed regulations also define "representative or nominee" as someone who serves as a management official and has an obligation to act on behalf of someone else. The proposed definition deletes the rest of the current definition, however, and inserts in lieu thereof a statement that the appropriate agency will find that someone has an obligation to act on behalf of someone else *only* if there is an agreement (express or implied) to act on behalf of another. The agencies propose this change to clarify that the determination that a representative or nominee situation exists will depend on whether there is a basis to conclude that an agreement exists to act on someone's behalf. The agencies note that the current definition provides specific guidance for determining when a representative or nominee relationship might be found to exist, and request comment on whether the current definition, the proposed definition, or another definition is preferable.

Prohibitions

The current regulations prohibit interlocks in the following three

instances. First, no two unaffiliated depository organizations may have an interlock if they (or their depository institution affiliates) have depository institution offices in the same community. Second, a depository organization may not have an interlock with any unaffiliated depository organization if either depository organization has assets exceeding $20 million and the depository organizations (or depository institution affiliates of either) have depository institution offices in the same RMSA.[3] Third, if a depository organization has total assets exceeding $1 billion, it (and its affiliates) may not have an interlock with any depository organization with total assets exceeding $500 million (or affiliate thereof), regardless of location.

The proposed regulations amend the rules as they apply to institutions with assets of less than $20 million to better conform to the purposes of the Interlocks Act. Whereas the current rules prohibit interlocks in an RMSA if *one* of the organizations has total assets of $20 million or more, the proposed rules would apply the RMSA-wide prohibition only if *both* organizations have total assets of $20 million or more. Interlocks within a community involving unaffiliated depository organizations would continue to be prohibited.

The agencies believe that this proposed change is consistent with both the language and the intent of the Interlocks Act. While the statute uses the plural "depository institutions" in section 203(1) of the Interlocks Act (12 U.S.C. 3202(1)), in context, neither the statute nor its legislative history compels the conclusion that the interlock must involve two institutions with less than $20 million in assets before the less restrictive prohibition applies.

The Interlocks Act seeks to prohibit interlocks that could enable two institutions to engage in anticompetitive behavior. However, an institution with total assets of less than $20 million is likely to derive most of its business from the community in which it is located and is unlikely to compete with institutions that do not have offices in that community. Therefore, interlocks involving one institution with assets under $20 million and another institution with assets of at least $20 million not in the same community are not likely to lead to the anticompetitive conduct that the Interlocks Act is designed to prohibit.

[3] A community as that term is defined in the proposals is smaller than an RMSA. There may be several communities in one RMSA.

The agencies believe, moreover, that the proposed change will promote rather than inhibit competition. Expanding the pool of managerial talent for institutions with assets under $20 million could enhance the ability of smaller institutions to compete by improving the management of these institutions.

The proposed regulations reflect the change affecting depository organizations with less than $20 million in total assets. They also set forth the prohibition against interlocks involving large depository organizations but do not change the substance of that prohibition. The proposed regulations change the style of all three prohibitions in order to make them easier to understand.

The agencies invite comment on any aspect of this proposed section. The agencies specifically seek comment on whether the proposed reinterpretation of 12 U.S.C. 3202(1) might result in anticompetitive effects and thus run counter to the legislative intent of the Interlocks Act. For example, could the proposed change enable a large bank to engage in anticompetitive conduct by creating interlocks with one or more smaller depository institutions located in the same RMSA but not in the same community (a "hub and spokes" interlock)? The agencies also seek comment on whether the final rule should specifically address such situations.

Interlocking Relationships Expressly Permitted by Statute

The current regulations restate most of the exemptions that are expressly permitted by the Interlocks Act and list those exemptions that the agencies have permitted by regulation pursuant to the broad exemptive authority that applied before the enactment of the CDRI Act. The current regulations also address interlocks involving diversified savings and loan holding companies.

The proposed regulations state the exemptions found in 12 U.S.C. 3204(1)-(8).[4] The proposals reorder the exemptions set forth in the current regulations in order to conform the list of exemptions to the list set forth in the Interlocks Act.

[4] The Interlocks Act contains an additional exemption for savings associations and savings and loan holding companies that have issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act (12 U.S.C. 1467a(q)). *See* 12 U.S.C. 3204(9). The OTS therefore proposes to continue to list an additional exemption in its interlocks regulation which the other agencies do not list. Another exemption provides for interlocks as a result of an emergency acquisition of a savings association authorized in accordance with section 13(k) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)) if the FDIC has given its approval to the interlock. The FDIC therefore proposes to continue to list an additional exemption in its management interlocks regulation which the other agencies do not list.

Regulatory Standards Exemption

The current regulations contain no Regulatory Standards exemption.

The proposed regulations set forth the standards that a depository organization must satisfy in order to obtain a Regulatory Standards exemption. The proposal implements the requirement regarding certification by allowing a depository organization's board of directors (or the organizers of a depository organization that is being formed) to certify to the appropriate agency that no other qualified candidates have been found after undertaking reasonable efforts to locate other qualified candidates who are not prohibited from service under the Interlocks Act. If read narrowly, the Interlocks Act could require a depository organization to evaluate every person in a given locale that might be qualified and interested. This would create a requirement that, in practice, would be impossible to satisfy. Given that Congress would not have included an exemption that would have no practical application, the agencies believe that the proposed "reasonableness" standard is consistent with the legislative intent.

The proposed regulations also set forth presumptions that the agencies will apply when reviewing an application for a Regulatory Standards exemption. First, each agency will presume that an interlock will not have an anticompetitive effect if it involves institutions that, if merged, would not trigger a challenge from the agencies on competitive grounds. This presumption is unavailable, however, for interlocks subject to the Major Assets prohibition.

Generally, the agencies will not object to a merger on competitive grounds if the post-merger Herfindahl-Hirschman Index (HHI) for the market is less than 1800 and the merger increases the HHI by 200 points or less. This presumption will enable applicants to avoid the unnecessary burden of submitting a competitive analysis in several instances. The agencies have found this HHI benchmark to be a useful guide to evaluating anticompetitive effects of interlocks.[5] However, simply analyzing the HHI for the two organizations in a potential interlock does not take into

[5] See, *e.g.*, the OCC's Bank Merger Competitive Analysis Screen (OCC Advisory Letter 95-4, July 18, 1995); Department of Justice Merger Guidelines (49 FR 26823, June 29, 1984) (applied by the Board); FDIC Statement of Policy: Bank Merger Transactions (54 FR 39045, Sept. 22, 1989).

account any anticompetitive effects that might stem from a previously existing interlock. Accordingly, the agencies are requesting comments as to how other interlocks involving depository organizations should be viewed in applying this presumption.

The second presumption to be applied by the agencies is that a person is critical to an institution's safe and sound operations if the agencies also approved that individual under section 914 of FIRREA and the institution in question either was a newly chartered institution, failed to meet minimum capital requirements, or otherwise was in a "troubled condition" as defined in the reviewing agency's section 914 regulation at the time the section 914 filing was approved.[6]

The agencies invite comment on the utility of the proposed presumptions and on whether other presumptions also should apply.

The proposed regulations also address the duration of an interlock permitted under the Regulatory Standards exemption. The statute does not require that these interlocks terminate. In light of this open-ended grant of authority, the agencies are not proposing a specific term for a permitted exemption. Instead, the agencies may require an institution to terminate the interlock if an agency determines that the management official in question either no longer is critical to the safe and sound operations of the affected organization or that continued service will produce an anticompetitive effect. The agencies will provide affected organizations an opportunity to submit information before they make a final determination to require termination of an interlock.

Grandfathered Interlocking Relationships—Removed

The current regulations restate the grandfather provisions set forth in section 206 of the Interlocks Act (12 U.S.C. 3205). Section 338(a) of the CDRI Act authorizes the agencies to extend a grandfathered interlock for an additional five years if the management official in question satisfied the statutory criteria for obtaining an extension.

The proposed regulations remove the sections addressing the grandfather exemption because they are unnecessary and redundant in light of the statute. Individuals who wished to extend their exemption already have applied for and received an exemption if they met the statutory criteria. The grandfathered exemptions will expire on November 10, 1998, unless Congress amends the Interlocks Act again to provide another opportunity for an extension.

Management Consignment Exemption

The current regulations set forth a number of instances in which the agencies may permit an exemption to the Interlocks Act. However, the statutory provisions authorizing the agencies to grant exemptions have been amended, thereby requiring that the current regulations be amended as well. The Management Consignment exemption set forth in section 209(c) of the Interlocks Act (12 U.S.C. 3207(c)) is modelled after certain exemptions that appear in the agencies' current regulations.

The proposed regulations implement the Management Consignment exemption, and restate the statutory criteria, with three clarifications. First, the proposed rules state that the agencies consider a "newly chartered institution" to be an institution that has been chartered for less than two years at the time it files an application for exemption. This standard is consistent with certain other banking agency thresholds for determining when an institution is considered newly chartered (see, *e.g.*, 12 CFR 5.51(d), 225.72(a)(1); 303.14(b)).

Second, the proposal clarifies that the exemption available for "minority- and women-owned institutions" is available for an institution that is owned either by minorities or women. In noting the types of exemptions that the Federal banking agencies have approved, the House Conference Report to the CDRI Act (H.R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 181 (1994)) (Conference Report) states that the types of institutions that have received exemptions include those that are "owned by women or minorities." These exemptions ultimately were codified in the Interlocks Act. Accordingly, the agencies have concluded that Congress intended the Management Consignment exemption to assist institutions owned by women and/or by minorities, but did not intend to require the institution to be owned by both.

Third, the proposal permits an interlock if the interlock would strengthen the management of either a newly chartered institution or an institution that is in an unsafe or unsound condition. Section 209(c)(1)(C) of the Interlocks Act (12 U.S.C. 3207(c)(1)(C)) permits an exemption if the interlock would "strengthen the management of newly chartered institutions that are in an unsafe or unsound condition." However, this provision contains what appears on its face to be an error, given that an exemption limited to situations involving newly chartered institutions that also are in an unsafe and unsound condition would have no practical utility. The chartering agencies do not approve an application for a bank or thrift charter unless the applicant seeking a charter can demonstrate that the proposed new financial institution will operate in a safe and sound manner for the foreseeable future. While there may be an extraordinary instance where a newly chartered institution immediately experiences unforeseen problems so severe that they threaten the safety and soundness of that institution, there is nothing in the legislative history to suggest that Congress intended to limit the Management Consignment exemption to such rare instances.

Moreover, the legislative history of the CDRI Act suggests that the agencies are to apply the Management Consignment exemption in cases involving either newly chartered institutions or institutions that are in an unsafe or unsound condition. The Conference Report notes that the agencies have used their exemptive authority to grant exemptions in limited cases where institutions "are particularly in need of management guidance and expertise to operate in a safe and sound manner." *Id.* The Conference Report goes on to state that "Examples of exceptions permissible under an agency management official consignment program include improving the provision of credit to low- and moderate-income areas, increasing the competitive position of minority- and women-owned institutions, and strengthening he [sic] management of newly chartered institutions or institutions that are in an unsafe or unsound condition." *Id.* at 182 (emphasis added).

Finally, Congress used the exemptions in the agencies' current rules as the model for the Management Consignment exemption. See *id.* at 181–182. These exemptions distinguish newly chartered institutions from institutions that are in an unsafe or unsound condition. The reference in the CDRI Act's legislative history to the current regulatory exemptions suggests that Congress intended to codify these exemptions.

For these reasons, the agencies propose to permit exemptions pursuant

[6] This presumption also applies to individuals whose service as a senior executive officer is approved by the OCC pursuant to the standard conditions imposed on newly chartered national banks and to individuals whose service as a management official is approved by the FDIC as a condition of a grant of deposit insurance prior to the opening of the depository institution.

to the Management Consignment exemption if the management official will strengthen either a newly chartered institution or an institution that is in an unsafe or unsound condition. Commenters are requested to address this approach.

The proposals set forth two presumptions that the agencies will apply in connection with an application for an exemption under the Management Consignment exemption. First, the agencies will presume that an individual is capable of strengthening the management of an institution that has been chartered for less than two years if the reviewing agency approved the individual to serve as a management official of that institution pursuant to section 914 of FIRREA.[7] Second, the agencies will presume that an individual is capable of strengthening the management of an institution that is in an unsafe or unsound condition if the reviewing agency approved the individual to serve under section 914 as a management official of that institution at a time when the institution was not in compliance with minimum capital requirements or otherwise was in a "troubled condition."

The agencies believe that presumptions of suitability are less valid when applied to the other Management Consignment exemptions because there is no reason to conclude that a management official approved under section 914 necessarily will improve the flow of credit to low- and moderate-income areas or increase the competitive position of minority- or woman-owned institutions. No presumption regarding effects on competition is proposed, given that this is not a factor to be considered by the agencies when reviewing an application for a Management Consignment exemption.

The agencies seek comment on the utility of the proposed presumptions and on whether additional presumptions should apply as well.

The proposed regulations set forth the limits on the duration of a Management Consignment exemption. The Interlocks Act limits a Management Consignment exemption to two years, with a possible extension for up to an additional two years if the applicant satisfies at least one of the criteria for obtaining a Management Consignment exemption. The proposed regulations implement this limitation by requiring interested parties to submit an application for an extension at least 30 days before the expiration of the initial term of the exemption and by clarifying that the presumptions that apply to initial applications also apply to extension applications.

Change in Circumstances

The current regulations provide a 15-month grace period for nongrandfathered interlocks that become impermissible due to a change in circumstances. This period may be shortened by the agencies under appropriate circumstances.

The proposed regulations revise the style of this section in the current regulations but not its substance.

The agencies seek comment on the proposed continued availability of a grace period.

Enforcement

The current regulations set forth the jurisdiction of the agencies that enforce the Interlocks Act.

The proposed regulations simplify the style of this section in the current regulations but not its substance.

Small Market Share Exemption

In 1994, the OCC, Board, and FDIC published separate notices of proposed rulemaking seeking comment on a proposed exemption for interlocks involving institutions that, on a combined basis, would control less than 20 percent of the deposits in a community or relevant MSA. These agencies published small market share exemption proposals pursuant to the broad exemptive authority vested in the agencies prior to the enactment of the CDRI Act. However, as previously noted, the CDRI Act amended the agencies' broad rulemaking authority by authorizing the agencies to grant exemptions only in more narrow circumstances. In light of this statutory change, the three agencies believe that it would be inappropriate to adopt the proposed small market share exemption. The FDIC already has withdrawn its proposal regarding the small market share exemption (see 60 FR 7139 (February 7, 1995)). The OCC and Board hereby withdraw their respective proposals.

Paperwork Reduction Act

The OCC, FDIC, and OTS invite comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OCC: The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0196), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557–0196), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 26.4(h)(1)(i), 26.5(a)(1), 26.5(a)(2), 26.6(a), and 26.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act by national banks and District banks. The likely respondents are national banks and District banks.

Estimated average annual burden hours per respondent: 3 hours.

Estimated number of respondents: 100.

Start-up costs to respondents: None.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0046, 7100–0134, 7100–0171, 7100–0266), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed rulemaking are found in 12 CFR

[7] This presumption also applies to an individual whose service as a senior executive officer of a national bank is approved pursuant to the standard conditions imposed by the OCC on newly chartered national banks and to individuals whose service as a management official is approved by the FDIC as a condition of a grant of deposit insurance prior to the opening of the depository institution.

212.4(h)(1)(i), 212.5(a)(1), 212.5(a)(2), 212.6(a), and 212.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act as amended by section 338 of the CDRI Act. The respondents are state member banks and subsidiary depository institutions of bank holding companies.

Currently, information on management official interlocks is gathered as a part of the following applications: membership in the Federal Reserve System (OMB No. 7100–0046); state member bank mergers (OMB No. 7100–0266); changes in bank control (OMB No. 7100–0134); and bank holding company acquisitions of depository institutions (OMB No. 7100–0171). The estimated portion of burden for each application that is attributable to management interlocks averages 4 hours, and the burden ranges from as much as 6 hours to as little as 0.5 hours. It is estimated that 822 applications are filed annually, with an estimate of 3,288 hours of annual burden. Based on an hourly cost of $20, the annual cost to the public is estimated to be $65,760. The Federal Reserve believes that the proposed rule will have a minimal effect on respondent burden.

The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display currently valid OMB control numbers.

No issues of confidentiality under the provisions of the Freedom of Information Act normally arise for the applications.

Comments are invited on: (1) Whether the proposed revised collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

FDIC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0092), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Room F–453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collection of information requirements in this proposed regulation are found in 12 CFR 348.4(i)(1)(i), 348.5(a)(1), 348.5(a)(2), 348.6(a), and 348.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act as amended by section 338 of the CDRI Act. The likely respondents are insured nonmember banks.

Estimated number of respondents: 6 applicants per year.

Estimated average annual burden per respondent: 4 hours.

Estimated annual frequency of recordkeeping: Not applicable (one-time application).

Estimated total annual recordkeeping burden: 24 hours.

OTS: The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503, with copies to the Business Transactions Division (1550), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC.

The collection of information requirements in this proposed rule are found in 12 CFR 563f.4(h)(1)(i), 563f.5(a)(1), 563f.5(a)(2), 563f.6(a), and 563f.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act by savings associations. The likely respondents are national savings associations.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 8.

Start-up costs to respondents: None.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the initial regulatory flexibility analysis otherwise required under section 603 of the RFA (5 U.S.C. 603) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification and a succinct statement explaining the reasons for such certification in the Federal Register along with its general notice of proposed rulemaking.

Pursuant to section 605(b) of the RFA, the agencies hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The agencies expect that this proposal will not (1) have significant secondary or incidental effects on a substantial number of small entities or (2) create any additional burden on small entities. Moreover, the changes to the exemptions available are required by the Interlocks Act. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

OCC and OTS: The OCC and OTS have determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Act of 1995

OCC and OTS: Section 202 of the Unfunded Mandates Act of 1995 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a proposed rule likely to result in a Federal mandate that may result in the annual expenditure of $100 million or more in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act requires an agency to identify and consider a reasonable number of alternatives before promulgating a proposal.

The OCC and OTS have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 26

Antitrust, Banks, banking, Holding companies, Management official interlocks, National banks.

12 CFR Part 212

Antitrust, Banks, banking, Holding companies, Management official interlocks.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies.

12 CFR Part 563f

Antitrust, Holding companies, Management official interlocks, Savings associations.

Portions of the text of this *Federal Register notice*, pertaining to the rule changes of the three other Federal regulatory agencies — the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision — have been deleted from this circular. To obtain a copy of the complete text refer to Vol. 60, No. 250, of the *Federal Register* published on Friday, December 29, 1995. You may also access the Government Printing Office's (GPO) web site on the Internet at http://www.access.gpo.gov/

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board proposes to revise part 212 of chapter II of title 12 of the Code of Federal Regulations to read as follows:

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.
212.1 Authority, purpose, and scope.
212.2 Definitions.
212.3 Prohibitions.
212.4 Interlocking relationships permitted by statute.
212.5 Regulatory Standards exemption.
212.6 Management Consignment exemption.
212.7 Change in circumstances.
212.8 Enforcement.
212.9 Effect of Interlocks Act on Clayton Act.

Authority: 12 U.S.C. 3201–3208; 15 U.S.C. 19.

§ 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. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This part applies to management officials of state member banks, bank holding companies, and their affiliates.

§ 212.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term affiliate has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section, shares held by an individual include shares held by members of his or her immediate family. "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.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship based on common ownership does not exist if the Board determines, after

giving the affected persons the opportunity to respond, that the asserted affiliation was 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 Board considers, 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.

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(d) *Community* means city, town, or village, or contiguous and adjacent cities, towns, or villages.

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or 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 the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical,* as used in § 212.5, means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *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 (12 U.S.C. 3201)) having its principal office located in the United States.

(h) *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 under the laws of 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.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *Low- and moderate-income areas* means areas where the median family income is less than 100 percent of the area median income.

(l) *Management official.* (1) The term *management official* includes:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 225.71(a);

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee, as defined in paragraph (p) of this section, serving in any of the capacities in this paragraph (l) (1).

(2) The term *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 a foreign commercial bank's business outside the United States; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

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

(n) *Person* means a natural person, corporation, or other business entity.

(o) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(p) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The Board will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The Board will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(q) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(r) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 212.3 Prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of $20 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 212.4 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 to a subsidiary thereof:

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

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

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

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

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

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The Board may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the Board.

(3) The Board may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 212.5 Regulatory Standards exemption.

(a) *Criteria.* The Board may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 212.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to the Board certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) The Board, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* The Board applies the following presumptions when reviewing any application for a Regulatory Standards exemption:

(1) An interlock has no anticompetitive effect if it involves depository institutions that, if merged, would not cause the post-merger Herfindahl-Hirschman Index (HHI) to exceed 1800 and would not cause the HHI to increase by more than 200 points. This presumption does not apply to institutions subject to the major assets prohibition of § 212.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if the official is approved by the Board to serve as a director or senior executive officer of the institution pursuant to 12 CFR 225.71 and the institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a "troubled condition" as defined in 12 CFR 225.71 at the time the service under that section was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the Board notifies the affected organizations otherwise. The Board may require termination of any interlock permitted under this section if the Board concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made.

§ 212.6 Management Consignment exemption.

(a) *Criteria.* The Board may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 212.3 if the Board, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or woman-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by the Board on a case-by-case basis.

(b) *Presumptions.* The Board applies the following presumptions in reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by the Board to serve as a director or senior executive officer of that institution pursuant to 12 CFR 225.71 and the institution had operated for less than two years at the time the service was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if the official is approved by the Board to serve as a director or senior executive officer of the institution pursuant to 12 CFR 225.71 and the institution was not in compliance with minimum capital requirements or otherwise was in a "troubled condition" as defined under 12 CFR 225.71 at the time service was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. The Board may extend this period for one additional two-year

period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§ 212.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the state member bank or bank holding company involved in the interlock for 15 months following the date of the change in circumstances. The Board may shorten this period under appropriate circumstances.

§ 212.8 Enforcement.

Except as noted in this section, the Board administers and enforces the Interlocks Act with respect to state member banks, bank holding companies, and affiliates of either, and may refer any case of a prohibited interlocking relationship involving these institutions 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 a bank holding company is subject to the primary regulation of another Federal depository organization supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate.

§ 212.9 Effect of Interlocks Act on Clayton Act.

The Board 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.

Dated: December 14, 1995.

William W. Wiles,

Secretary of the Board.