

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 98-09]

RIN 1557-AB60

FEDERAL RESERVE BOARD

12 CFR Part 212

[Docket No. R-1013]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064-AC08

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 98-58]

RIN 1550-AB07

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) (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 October 13, 1998.

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. 98-09. 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 REGS.COMMENTS@OCC.TREAS.GOV.

Board: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, Docket No. R-1013, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Ms. Johnson 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 12 CFR 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898-3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Manager, Dissemination Branch, Records Management and Information

Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 98-58. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 to 5:00 on business days; sent by facsimile transmission to FAX number (202) 906-7755, or may be sent by e-mail to: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW., from 9:00 until 4:00 on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Sue E. Auerbach, Senior Attorney, Bank Activities and Structure, (202) 874-5300; Emily R. McNaughton, National Bank Examiner, Senior Policy Analyst, Core Policy Development, (202) 874-5190; Jackie Durham, Bank Organization and Structure, Senior Licensing Policy Analyst, (202) 874-5060; or Ursula Pfeil, Attorney, Legislative and Regulatory Activities, (202) 874-5090.

Board: Thomas M. Corsi, Senior Counsel, (202) 452-3275, or Michelle Q. Profit, Attorney, (202) 736-5599, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for Deaf (TTD), Diane Jenkins, (202) 452-3544.

FDIC: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898-6759; John Jilovec, Examination Specialist, Division of Supervision, (202) 898-8958; or Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division,

(202) 898-3854.

OTS: David Bristol, Senior Attorney, Business Transactions Division, Chief Counsel's Office, (202) 906-6461; or Joseph M. Casey, Supervision Policy, (202) 906-5741.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201 - 3208) (the Interlocks Act or Act) generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies (depository organizations). The scope of the prohibition depends on the size and location of the organizations involved. For instance, the Act prohibits interlocks between unaffiliated depository organizations, regardless of size, if both organizations have an office¹ in the same community (the community prohibition). Interlocks are also prohibited between unaffiliated depository organizations if both organizations have total assets of \$20 million or more and have offices in the same Relevant Metropolitan Statistical Area (RMSA) (the RMSA prohibition). The Interlocks Act also prohibits interlocks between unaffiliated depository organizations, regardless of location, if the

¹ Each of the Agencies' regulations generally define "office" as a home or branch office. See 12 CFR 26.2, 212.2, 348.2, and 563f.2.

organizations have total assets exceeding specified thresholds (the major assets prohibition).

Section 2210 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPR Act) amended sections 204, 206 and 209 of the Interlocks Act (12 U.S.C. 3203, 3205 and 3207). Section 2210(a) of the EGRPR Act amended the Interlocks Act by changing the thresholds for the major assets prohibition under 12 U.S.C. 3203. Prior to the EGRPR Act, management officials of depository organizations with total assets exceeding \$1 billion were prohibited from serving as management officials of unaffiliated depository organizations with assets exceeding \$500 million, regardless of the location of the organizations.² The EGRPR Act raised the thresholds to \$2.5 billion and \$1.5 billion, respectively. The revision also authorized the Agencies to adjust the thresholds by regulation, as necessary to allow for inflation or market conditions.

Section 2210(b) of the EGRPR Act permanently extended the grandfather exemptions found in 12 U.S.C. 3205(a) and (b). These exemptions were due to expire in 1998. The EGRPR Act repealed section 3205(c), which mandated Agency review of grandfathered interlocks before March 1995.

The EGRPR Act also amended 12 U.S.C. 3207 to provide that the Agencies may

² The Agencies define "total assets" of diversified savings and loan holding companies and bank holding companies exempt from ' 4 of the Bank Holding Company Act to include only the assets of their depository institution affiliates. See 12 CFR 26.2(r), 212.2(q), 348.2(q), and 563f.2(r).

adopt regulations that permit service by a management official that would otherwise be prohibited by [the Interlocks Act], if such service would not result in a monopoly or substantial lessening of competition.³ This change repealed the specific regulatory standards and management consignment exemptions added by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act),³ and restored the Agencies' broad authority to create regulatory exemptions to the statutory prohibitions on interlocks.

II. Discussion of Proposed Regulations

The proposal reflects these statutory changes. This proposal also renews an earlier proposal for a small market share exemption that the Board, OCC, and FDIC had advanced before enactment of the CDRI Act. The Agencies invite comments on all aspects of this proposal.

A. Definitions

³ The Agencies adopted final regulations implementing the management interlocks provisions of the CDRI Act, effective October 1, 1996. See 61 FR 40293 (August 2, 1996).

The Agencies' current regulations define key terms implementing the Interlocks Act. A number of these definitions were added or revised in 1996 to implement the CDRI Act.⁴ With the repeal of the specific exemptive standards in the CDRI Act, two of these definitions have become unnecessary and would be removed.

Anticompetitive Effect

The current rule defines "anticompetitive effect" as a "monopoly or substantial lessening of competition." Under the new statutory scheme, the substance of this definition is the sole criterion for gauging whether to grant an exemption under the Agencies' general exemptive authority. Because the proposed regulations would employ this phrase in only one provision, a separate definition is unnecessary.

Critical

The current regulations use the term "critical" in connection with the Regulatory Standards exemption created by the CDRI Act. Since the EGRPR Act eliminates the Regulatory Standards exemption, a regulatory definition of "critical" is unnecessary.

⁴ See 61 FR 40293 (August 2, 1996).

B. Major Assets Prohibition

Prior to the EGRPR Act, if a depository institution or depository holding company had total assets exceeding \$1 billion, a management official of such institution or any affiliate thereof could not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding \$500 million or as a management official of any affiliates of such other institution, regardless of location. The EGRPR Act revised the asset thresholds for the major assets prohibition from \$1 billion and \$500 million to \$2.5 billion and \$1.5 billion, respectively. The legislation also authorized the Agencies to adjust the threshold from time to time to reflect inflation or market changes.

The proposal would amend the regulations to reflect the new threshold amounts, and to add a mechanism providing for periodic adjustments of the thresholds. The adjustment would be based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (the Consumer Price Index). In those years when changes in the Consumer Price Index would change the thresholds by more than \$100 million, the Agencies will provide appropriate notice of the change to depository institutions and depository institution holding companies. The Agencies invite comment on other types of market changes that may warrant subsequent adjustments to the major assets prohibition.

C. Regulatory Standards and Management Consignment Exemptions

The current regulations contain Regulatory Standards and Management Consignment exemptions, which were predicated on section 3207 of the CDRI Act. The EGRPR Act removed the specific exemptions from the Interlocks Act and substituted a general authority for the Agencies to create exemptions by regulation. Accordingly, the proposed rule would remove these regulatory exemptions.

However, the rule proposed under the amended exemptive authority, discussed in the following section, includes rebuttable presumptions that interlocks in certain circumstances would not result in a monopoly or substantial lessening of competition. These presumptions are based on criteria that the Agencies used before the passage of the CDRI Act, and which Congress employed in creating the Management Consignment exemption.

D. General Exemptive Authority

Section 2210(c) of the EGRPR Act authorizes the Agencies to adopt regulations permitting service by a management official that would otherwise be prohibited by the Interlocks Act, if such service would not result in a monopoly or substantial lessening of competition.⁶ To implement this authority, the Agencies are proposing to exempt otherwise prohibited management interlocks where the dual service would not result in a monopoly or substantial lessening of competition, and would not otherwise threaten

safety and soundness. The process for obtaining such exemptions will be set out in each Agency's procedural regulations or, in the case of the OCC, in its Corporate Manual.

Since 1979, when regulations implementing the Interlocks Act were first promulgated, the Agencies have recognized that interlocks involving certain classes of depository organizations present a reduced risk to competition, and that, by enlarging the pool of management available to such organizations, competition could be enhanced. Thus, in the initial interlocks rules published in 1979, the Agencies reserved the authority to permit interlocks to strengthen newly chartered organizations, troubled organizations, organizations in low- or moderate-income areas, and organizations controlled or managed by minorities or women. The authority to permit interlocks in such circumstances was deemed "necessary for the promotion of competition over the long term."⁵ Prior to the CDRI Act, these exemptions were granted to meet the need for qualified management. The Management Consignment exemption under the CDRI Act was generally available to the same four classes of organizations, but on a more limited basis.

With the EGRPR Act's restoration of the broad exemptive authority under the Interlocks Act, the Agencies again have broad authority to grant exemptions that will not adversely affect competition. The Agencies believe that interlocks involving the four classes of organizations previously identified may provide management expertise needed to enhance such organizations' ability to compete. Accordingly, the Agencies propose to

⁵ See 44 FR 42161, 42165 (July 19, 1979).

create a rebuttable presumption that an interlock would not result in a monopoly or substantial lessening of competition, if: (1) the depository organization primarily serves, low- or moderate-income areas; (2) the depository organization is controlled or managed by members of a minority group or women; (3) the depository institution has been chartered for less than 2 years; or (4) the depository organization is deemed to be in "troubled condition" under regulations implementing section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1831i). These presumptions would be applied in a manner consistent with the Agencies' past analysis of the factors to meet the legitimate needs of the institutions and organizations involved for qualified and skilled management.

The presumptions are designed to provide greater flexibility to classes of organizations that may have greater need for seasoned management. A claim that factors exist giving rise to a presumption does not preclude an Agency from denying a request for an exemption if the Agency finds that the interlock nevertheless would result in a monopoly or substantial lessening of competition.

The definitions of "area median income" and "low- and moderate-income areas" added to the regulations in 1996 to implement the CDRI Act amendments would be retained to provide guidance as to when an organization would qualify for one of the presumptions.

Interlocks that are based on a rebuttable presumption would be allowed to continue

for three years, unless otherwise provided in the approval order. Nothing in the proposed rule would prevent an organization from applying for an extension of an interlock exemption granted under a presumption if the factors continued to apply. The organization would also be free to utilize any other exemption that may be available. The Agencies propose that any interlock approved under this section may continue so long as it would not result in a monopoly or substantial lessening of competition, becomes unsafe or unsound, or is subject to a condition requiring termination at a specific time.

E. Small Market Share Exemption

In 1994, the OCC, Board, and FDIC published notices of proposed rulemaking seeking comment on a proposed market share exemption.⁶ The proposed exemption would have been available 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 CDRI Act. After the CDRI Act restricted the agencies' broad authority, the OCC, Board and FDIC withdrew their proposals.⁷ The broad exemptive authority under the EGRPR Act provides authority for a small market share exemption. Accordingly, the OCC, Board and FDIC, joined by the

⁶ See OCC, 59 FR 29740 (June 9, 1994); Board, 59 FR 7909 (February 17, 1994); and FDIC, 59 FR 18764 (April 20, 1994).

⁷ See 60 FR 67424 (December 29, 1995) for withdrawal by the OCC and the

OTS, are issuing this proposal for the small market share exemption.

The exemption is intended to enlarge the pool of management talent upon which depository institutions may draw, resulting in more competitive, better-managed institutions without causing significant anticompetitive effects. The Interlocks Act, by discouraging common management among financial institutions, seeks to prevent adverse effects on competition in the provision of products and services that financial institutions offer. Where depository institutions dominate a large portion of the market, these risks are significant. When a particular market is served by many institutions, however, the risks diminish that depository institutions with interlocking relationships can adversely affect the available products and services in their markets.

The Agencies believe that the combined share of the deposits of two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related services in their market. Accordingly, the Agencies propose to exempt interlocking service involving two unaffiliated depository organizations that together control no more than 20 percent of the deposits in any RMSA or community in which the organizations have offices. Organizations claiming the exemption would be required to

Board; and 60 FR 7139 (February 7, 1995) for withdrawal by the FDIC.

determine the market share in each RMSA and community in which both depository organizations (or their depository institution affiliates) have offices.

The relevant market used for the small market share exception (i.e. the RMSAs or communities in which both depository organizations or their depository institution affiliates have offices) are the same markets described in the community and RMSA prohibitions. The small market share exemption would not be available for interlocks subject to the major assets prohibition.

The exemptions would continue to apply as long as the organizations meet the applicable conditions. Any event, such as expansion or a merger, that causes the level of deposits controlled to exceed 20 percent of deposits in any RMSA or community would be considered to be a change in circumstances. Accordingly, the depository organizations would have 15 months (or such shorter period as directed by the appropriate Agency) to address the prohibited interlock by termination or otherwise. Conforming changes relating to termination have been made to the Agencies' change of circumstances provisions.

No prior Agency approval would be required in order to claim the proposed small market share exemption. Management is responsible for compliance with the terms of the exemption and for maintaining sufficient supporting documentation. To determine their eligibility for the exemptions, depository organizations would need to obtain appropriate deposit share data from the FDIC. This information is collected in the Summary of

Deposits published by the FDIC and is available for institutions regulated by the Agencies on the Internet at <http://www.fdic.gov>.

The most recently available deposit share data will be used to determine whether organizations are entitled to the exemptions. Thus, the depository organization seeking the exemption is entitled to rely upon the deposit share data that has been compiled for the previous year, until the next year's data has been distributed.

The Agencies request comments on all aspects of the proposed small market share exemption. In particular, the Agencies request comments regarding the following issues:

1. Whether 20 percent of the deposits in a community or RMSA is an appropriate limit for the application of the exemptions.
2. Whether deposit data collected by the FDIC in connection with the Report of Condition and Income should be used to determine eligibility for the exemptions, and whether alternative sources of information concerning deposit share should be acceptable for determining availability of the exemptions.
3. Whether calculation of a depository organization's eligibility for exemption from the community prohibition will create undue burdens, and, if so, how the burdens could be reduced (for example, by basing the exemption on the total asset size of the institutions involved).
4. Whether there is a significant risk that the purposes of the Interlocks Act would be evaded through "hub and spoke" arrangements. Under these arrangements,

directors of one depository organization would serve as directors of different unaffiliated organizations that have, in the aggregate, a deposit share in excess of the 20% limit.

III. Paperwork Reduction Act

The Agencies 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;

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

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

Recordkeepers 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), 26.6(b), 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: 4 hours.

Estimated number of respondents: 7.

Estimated total annual reporting burden: 29 hours.

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, Chief, Financial Reports Section, 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 212.4(h)(1)(i), 212.6(b), 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.

Estimated number of respondents: 6 applicants per year.

Estimated average annual burden per respondent: 4 hours.

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

Estimated total annual reporting burden: 24 hours.

Start-up costs to respondents: None.

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

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 (3604-0118), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, 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), 348.6(b), and 348.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act. The likely respondents are insured nonmember banks.

Estimated number of respondents: 5 applicants per year.

Estimated average annual burden per respondent: 4 hours.

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

Estimated total annual reporting burden: 20 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 (1550-0051), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC.

The information collection requirements in this proposed rule are found in 12 CFR 563f.4(h)(1)(i), 563f.6(b) and 563f.6(c). The OTS requires this information as evidence of compliance with the requirements of the Interlocks Act by savings associations. The likely respondents are savings associations.

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

Estimated total annual reporting burden: 32 hours.

Estimated average annual hours per respondent: 4 hours.

Estimated number of respondents: 8.

Start-up costs to respondents: None.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) 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. The proposed regulations relax the criteria for obtaining an exemption from the interlocks prohibitions, and specifically address the needs of small entities by creating the small market share exemption. Accordingly, a regulatory flexibility analysis is not required.

V. Executive Order 12866

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

VI. Unfunded Mandates Act of 1995

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, Holding companies, Management official interlocks, National banks, Reporting and recordkeeping requirements.

12 CFR Part 212

Antitrust, Banks, banking, Federal Reserve System, Holding companies, Management official interlocks, Reporting and recordkeeping requirements.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 563f

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

PART 26 -- MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 93a and 3201-3208.

' 26.2 [Amended]

2. Section 26.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

3. Section 26.3 is amended by revising paragraph (c) to read as follows:

' 26.3 Prohibitions.

* * * * *

(c) Major assets. A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The OCC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with

rounding to the nearest \$100 million.

4. Section 26.5 is revised to read as follows:

' **26.5 Small market share exemption.**

(a) Exemption. A management interlock that is prohibited by ' 26.3 is permissible, if:

(1) The interlock is not prohibited by ' 26.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 26.6 is revised to read as follows:

' **26.6 General exemption.**

(a) Exemption. The OCC may, by order issued following receipt of an application, exempt an interlock from the prohibitions in ' 26.3, if the OCC finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) Presumptions. In reviewing applications for an exemption under this section, the OCC will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

- (1) Primarily serves low- and moderate-income areas;
- (2) Is controlled or managed by persons who are members of a minority group, or women;
- (3) Is a depository institution that has been chartered for less than two years; or
- (4) Is deemed to be in "troubled condition" as defined in 12 CFR 5.51(c)(6).

(c) Duration. Unless a specific expiration period is provided in the OCC approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound.

If the OCC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise

provided by the OCC in writing.

6. Section 26.7 is amended by revising paragraph (a) to read as follows:

' **26.7 Change in circumstances.**

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

DATE: July 14, 1998

Julie L. Williams

Acting Comptroller of the Currency

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 212 -- MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 212 continues to read as follows:

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

' **212.2 [Amended]**

2. Section 212.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (r) as paragraphs (b) through (p), respectively.

3. Section 212.3 is amended by revising paragraph (c) to read as follows:

' **212.3 Prohibitions.**

* * * * *

(c) Major assets. A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with

total assets exceeding \$1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The Board will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million.

4. Section 212.5 is revised to read as follows:

' **212.5 Small market share exemption.**

(a) Exemption. A management interlock that is prohibited by ' 212.3 is permissible, if:

(1) The interlock is not prohibited by ' 212.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain

records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 212.6 is revised to read as follows:

' **212.6 General exemption.**

(a) Exemption. The Board may, by agency order, exempt an interlock from the prohibitions in ' 212.3, if the Board finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) Presumptions. In reviewing applications for an exemption under this section, the Board will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

- (1) Primarily serves low- and moderate-income areas;
- (2) Is controlled or managed by persons who are members of a minority group, or women;
- (3) Is a depository institution that has been chartered for less than two years; or
- (4) Is deemed to be in ?troubled condition@as defined in 12 CFR 225.71.

(c) Duration. Unless a shorter expiration period is provided in the Board approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the Board grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the Board in writing.

6. Section 212.7 is amended by revising paragraph (a) to read as follows:

' **212.7 Change in circumstances.**

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

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By order of the Board of Governors of the Federal Reserve System, July 20, 1998.

Jennifer J. Johnson

Secretary of the Board

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 348 -- MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 1823(k), 3207.

' **348.2 [Amended]**

2. Section 348.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (r) as paragraphs (b) through (p), respectively.

3. Section 348.3 is amended by revising paragraph (c) to read as follows:

' **348.3 Prohibitions.**

* * * * *

(c) Major assets. A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with

total assets exceeding \$1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The FDIC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million.

4. Section 348.5 is revised to read as follows:

' **348.5 Small market share exemption.**

(a) Exemption. A management interlock that is prohibited by ' 348.3 is permissible, if:

(1) The interlock is not prohibited by ' 348.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 348.6 is revised to read as follows:

' **348.6 General exemption.**

(a) Exemption. The FDIC may, by agency order, exempt an interlock from the prohibitions in ' 348.3, if the FDIC finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) Presumptions. In reviewing applications for an exemption under this section, the FDIC will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

- (1) Primarily serves low- and moderate-income areas;
- (2) Is controlled or managed by persons who are members of a minority group, or women;
- (3) Is a depository institution that has been chartered for less than two years; or
- (4) Is deemed to be in "troubled condition" as defined in ' 303.101(c) of this chapter.

(c) Duration. Unless a shorter expiration period is provided in the FDIC approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the FDIC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the FDIC in writing.

6. Section 348.7 is amended by revising paragraph (a) to read as follows:

' **348.7 Change in circumstances.**

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

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By order of the Board of Directors.

Dated at Washington, DC, this 18th day of May, 1998.

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert E. Feldman

Executive Secretary

(SEAL)

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, the OTS proposes to amend chapter V of title 12 of the Code of Federal Regulations as follows:

PART 563f -- MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 563f continues to read as follows:

Authority: 12 U.S.C. 3201-3208.

' 563f.2 [Amended]

2. Section 563f.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

3. Section 563f.3 is amended by revising paragraph (c) to read as follows:

' **563f.3 Prohibitions.**

* * * * *

(c) Major assets. A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The OTS will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million.

4. Section 563f.5 is revised to read as follows:

' **563f.5 Small market share exemption.**

(a) Exemption. A management interlock that is prohibited by ' 563f.3 is permissible, if:

- (1) The interlock is not prohibited by ' 563f.3(c); and
- (2) The depository organizations (and their depository institution affiliates) hold,

in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 563f.6 is revised to read as follows:

' **563f.6 General exemption.**

(a) Exemption. The OTS may, by agency order, exempt an interlock from the prohibitions in ' 563f.3, if the OTS finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns. A depository organization may apply to the OTS for an exemption as provided by ' 516.2 of this chapter.

(b) Presumptions. In reviewing applications for an exemption under this section, the OTS will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that or has been chartered for less than two years; or

(4) Is deemed to be in "troubled condition" as defined in ' 574.9(a)(5) of this chapter.

(c) Duration. Unless a shorter expiration period is provided in the OTS approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the OTS grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OTS in writing.

6. Section 563f.7 is amended by revising paragraph (a) to read as follows:

' 563f.7 Change in circumstances.

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository

organization that causes a previously permissible interlock to become prohibited.

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By the Office of Thrift Supervision.

DATED: May 27, 1998

Ellen Seidman
Director