



BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, DC 20551

March 7, 2018

Jeremy E. Hill, Esq.  
Bingham Greenebaum Doll LLP  
2700 Market Tower  
10 West Market Street  
Indianapolis, Indiana 46204

Dear Mr. Hill:

This is in response to your request on behalf of First Merchants Corporation, Muncie, Indiana, for an exemption from the prohibitions of the Depository Institution Management Interlocks Act (“Interlocks Act”)<sup>1</sup> and the Board’s Regulation L<sup>2</sup> to permit Ms. Jean L. Wojtowicz to remain a director on the boards of First Merchants Corporation and its subsidiary, First Merchants Bank (“FMB,” and collectively, “First Merchants”), while at the same time serving as a director of First Internet Bancorp, Fishers, Indiana, and its subsidiary, First Internet Bank of Indiana (“FIBI,” and collectively, “First Internet”).<sup>3</sup>

Ms. Wojtowicz assumed her directorship positions at First Merchants in 2004. First Merchants operates offices in Illinois, Indiana, and Ohio and specifically has operated a branch in Carmel, Indiana, since 1998. Ms. Wojtowicz became a director of FIBI in 1998 and a director of First Internet Bancorp upon its formation in 2006. From 1998 to 2015, First Internet’s sole office was located in Indianapolis, Indiana, a city that shares a border with Carmel, Indiana.

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<sup>1</sup> 12 U.S.C. § 3201 *et seq.*

<sup>2</sup> 12 CFR part 212.

<sup>3</sup> Ms. Wojtowicz’s service as a management official of FIBI while at the same time serving as a management official of FMB is subject to approval by the Federal Deposit Insurance Corporation (“FDIC”). The FDIC approved the request by letter dated November 1, 2017.

Upon Ms. Wojtowicz joining the First Merchants boards in 2004, the resulting interlocks with First Internet triggered both the “community prohibition”<sup>4</sup> and the “RMSA prohibition” under the Interlocks Act and Regulation L.<sup>5</sup> However, the interlocks were allowable under the “small market share exemption” of Regulation L, which provides an exemption from the community and RMSA prohibitions if the depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each community or RMSA in which the depository organizations (or their depository institution affiliates) have offices.<sup>6</sup>

A change of circumstances occurred when First Internet moved its sole office to Fishers, Indiana (a city that also shares a border with Carmel, Indiana), in November 2015 and when First Merchants acquired a branch in Fishers, Indiana, in December 2015. As a result, as of June 30, 2016, the combined deposits of FMB and FIBI exceeded the 20 percent deposit threshold in the community of Fishers, Indiana, and in the community comprising Fishers and Carmel, Indiana. Thus, the longstanding interlocks between the two organizations no longer qualified for the small market share exemption from the community prohibition.<sup>7</sup> First Merchants Corporation requests a general exemption to permit

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<sup>4</sup> Under the community prohibition, a management official of a depository organization may not at the same time serve 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. 12 U.S.C. § 3202(2); 12 CFR 212.3(a). “Community” means any city, town, or village, and contiguous or adjacent cities, towns, or villages. 12 CFR 212.2(d).

<sup>5</sup> Under the RMSA prohibition, a management official of a depository organization may not at the same time serve 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 relevant metropolitan statistical area (“RMSA”) and each depository organization has total assets of \$50 million or more. 12 U.S.C. § 3202(1); 12 CFR 212.3(b). First Merchants and First Internet both have offices in the Indianapolis–Carmel–Anderson, Indiana, Metropolitan Statistical Area.

<sup>6</sup> 12 CFR 212.5.

<sup>7</sup> In addition, these interlocks became subject to the “major assets prohibition,” which prohibits a management official of a depository institution or depository holding company with total assets exceeding \$2.5 billion (or of any affiliate thereof) from serving at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or of any affiliate thereof) regardless of the location of the two depository organizations. 12 U.S.C. § 3203; 12 CFR 212.3(c). As of December 31, 2016, First Merchants and First Internet had assets that exceeded these thresholds.

Ms. Wojtowicz to continue her management official positions at First Merchants while also serving in management official positions at First Internet.

Under the general exemption provision of Regulation L, the Board may permit an interlock that otherwise would be prohibited by the Interlocks Act and Regulation L if the Board determines that the interlock would not result in a monopoly or in a substantial lessening of competition and would not present safety and soundness concerns.<sup>8</sup> The Board has delegated to the General Counsel, in consultation with the Director of the Division of Supervision and Regulation (“Director”), authority to grant exemptions under this provision of Regulation L.

The interlocks do not result in a monopoly or in a substantial lessening of competition. First Merchants and First Internet each maintain a physical presence in the Indianapolis, Indiana, banking market. If the proposed interlock were evaluated as if First Internet were merging into First Merchants, with the latter as the surviving entity, the competitive effects of the combination in this local retail banking market, as measured by the HHI and the combined market share in the market, would be consistent with Board precedent and within the thresholds of the Department of Justice Bank Merger Competitive Review guidelines.<sup>9</sup> Competitive considerations also would be consistent with approval if First Internet’s competitive presence were measured on the basis of First Internet’s deposits pertaining to each banking market in which both firms have deposit customers.<sup>10</sup> The interlocks also would not have any substantial effect on competition with respect to the nonbanking activities of First Merchants and First Internet.

In addition, the interlocks do not present safety and soundness concerns. First Merchants Corporation represents that Ms. Wojtowicz’s continued service at First Merchants and First Internet would provide managerial continuity for these organizations. Additionally, Ms. Wojtowicz has been a management official of several large organizations.

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<sup>8</sup> 12 CFR 212.6(a).

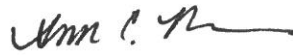
<sup>9</sup> Department of Justice, Bank Merger Competitive Review – Introduction and Overview, <http://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/6472.pdf> (current as of September 2000). The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points.

<sup>10</sup> See TIAA Board of Overseers, FRB Order No. 2017-16 (June 7, 2017).

Based on all the facts of record and for the reasons discussed above, the General Counsel, acting pursuant to authority delegated by the Board and after consultation with the Director, has granted an exemption to allow Ms. Wojtowicz to serve in management official positions at First Merchants while also serving in management official positions at First Internet.

The Board reserves the right to revoke the exemption should the interlock result in a monopoly or a substantial lessening of competition or present safety and soundness concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ann E. Misback". The signature is fluid and cursive, with a prominent flourish at the end.

Ann E. Misback  
Secretary of the Board