



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

March 9, 2024

Brian D. Christiansen, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue NW
Washington, D.C. 20005-2111

Dear Mr. Christiansen:

This is in response to your request on behalf of New York Community Bancorp, Inc. (“NYCB”), Hicksville, New York, for an exemption from the prohibitions of the Depository Institution Management Interlocks Act (“Interlocks Act”)¹ and the Board’s Regulation L² to permit Mr. Milton Berlinski to become a director on the board of NYCB while serving as a director of EverBank Financial Corp (“EFC”) and as a director of EFC’s subsidiary depository institution, EverBank, National Association (“EverBank”), both of Jacksonville, Florida.

The Interlocks Act, as implemented by Regulation L, prohibits a management official of a depository institution or a depository holding company (“depository organization”) with total assets exceeding \$10 billion (or of any affiliate of such an organization) from serving at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$10 billion (or of any affiliate of such an organization), regardless of the location of the two depository organizations (“major assets prohibition”). NYCB; its subsidiary bank Flagstar Bank, National Association (“Flagstar Bank”), Hicksville, New York; EFC; and EverBank each has total assets that exceed the applicable thresholds of the major assets prohibition. Therefore, Mr. Berlinski’s proposed simultaneous service as a management official of NYCB and of EFC and EverBank would be prohibited.³

¹ 12 U.S.C. § 3201 *et seq.*

² 12 CFR part 212.

³ In addition, Flagstar Bank and EverBank each have offices in certain communities and Metropolitan Statistical Areas (“MSAs”) in Florida. (These communities and MSAs are listed in the Appendix.) Under the “community prohibition” of the Interlocks Act and Regulation L, a management official of a depository organization may not serve at the

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.⁴ The Board has delegated to the General Counsel, after consultation with the Director of the Division of Supervision and Regulation (“Director”), authority to grant exemptions under this provision of Regulation L.⁵

The interlocks here would not result in a monopoly or in a substantial lessening of competition. NYCB and EFC have subsidiary banks that compete directly in four banking markets, all in Florida.⁶ If the proposed interlocks were evaluated as a merger between NYCB and EFC, the competitive effects of the combination in the local retail banking markets, as measured by the Herfindahl-Hirschman Index (“HHI”)

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. 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). In addition, under the relevant metropolitan statistical area (“RMSA”) prohibition, 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 \$50 million or more. 12 U.S.C. § 3202(1); 12 CFR 212.3(b). However, the interlocks would be 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. 12 CFR 212.5.

In addition, Mr. Berlinski is a management official of DMG Bancshares, Inc. (“DMG”), the parent of Liberty Bank N.A. (“Liberty Bank”), both of Irvine, California. Liberty Bank and Flagstar Bank each have offices in certain communities and MSAs in California. (These communities and MSAs are listed in the Appendix.) The small market share exemption also would permit Mr. Berlinski’s interlocked service at NYCB and DMG.

Furthermore, Mr. Berlinski is a management official of Russell Investments Group, an affiliate of Russell Investment Trust Company (“RITC”), a Washington state-chartered nondepository trust company. Although RITC is a “depository institution” within the meaning of the Interlocks Act, RITC has total assets of less than \$10 billion, and thus Mr. Berlinski’s interlocked service at NYCB and an affiliate of RITC would not be prohibited by the major assets prohibition.

⁴ 12 CFR 212.6(a).

⁵ 12 CFR 265.6(d)(1).

⁶ These markets are the Fort Myers banking market, the Miami-Fort Lauderdale banking market, the Naples banking market, and the West Palm Beach banking market.

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.⁷

In addition, the interlocks do not present safety and soundness concerns. Mr. Berlinski has broad experience in financial services and experience serving on the boards of directors of multiple companies, including for depository organizations.

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 Mr. Berlinski to serve as a management official of NYCB while also serving as a management official of EFC and EverBank.

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

Sincerely yours,

/s/ Michele Taylor Fennell

Michele Taylor Fennell
Deputy Associate Secretary of the Board

⁷ 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.

Appendix – Interlocked Communities and Metropolitan Statistical Areas

New York Community Bancorp, Inc. and EverBank Financial Corp

Communities: The city of Fort Lauderdale, the community comprising the cities of Coral Springs and Fort Lauderdale, the community comprising the cities of Deerfield Beach and Fort Lauderdale, the community comprising the cities of Hollywood and Fort Lauderdale, the community comprising the cities of Pembroke Pines and Fort Lauderdale, the community comprising the cities of Plantation and Fort Lauderdale, and the community comprising the cities of Sunrise and Fort Lauderdale, all in Broward County; the community comprising certain branches located in unincorporated areas of Collier County near Naples, Florida; the community comprising the city of Fort Myers and the village of Estero, both in Lee County; the city of Coral Gables, the community comprising the cities of Doral and Coral Gables, and the community comprising the cities of Miami Beach and Coral Gables, all in Miami-Dade County; the city of Boca Raton, the community comprising the cities of Delray Beach and Boca Raton, and the community comprising the cities of Boynton Beach and Boca Raton, all in Palm Beach County; the community comprising the city of Deerfield Beach in Broward County and the city of Boca Raton in Palm Beach County; and the community comprising the city of Coral Springs in Broward County and the city of Boca Raton in Palm Beach County, all in Florida.

MSAs: The Cape Coral–Fort Myers, Florida, MSA; the Miami–Fort Lauderdale–Pompano Beach, Florida, MSA; and the Naples–Marco Island, Florida, MSA.

New York Community Bancorp, Inc. and DMG Bancshares, Inc.

Communities: The community comprising the city of San Francisco in San Francisco County and the city of South San Francisco in San Mateo County and the community comprising the cities of Newport Beach and Irvine, both in Orange County, both in California.

MSAs: The Los Angeles–Long Beach–Anaheim, California, MSA and the San Francisco–Oakland–Berkeley, California, MSA.