

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 will not have an anticompetitive effect if it involves depository organizations 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 depository organizations 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:

(i) 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

(ii) 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 depository 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. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. The Board may shorten this period under appropriate circumstances.

**§212.6 Management Consent exemption.**

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

## Federal Reserve System

## § 212.9

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 women-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 para-

graph (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 provided 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 entities 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.