

§ 264a.1

12 CFR Ch. II (1–1–98 Edition)

AUTHORITY: 18 U.S.C. 208, as amended by the Federal Reserve Reform Act of 1977, Pub. L. 95–188, sec. 205, 91 Stat. 1387; 12 U.S.C. 248, 301.

SOURCE: 43 FR 24667, June 7, 1978, unless otherwise noted.

§ 264a.1 Purpose.

Directors of Federal Reserve Banks are charged by law with the responsibility of supervising and controlling the operations of the Reserve Banks, under the general supervision of the Board of Governors, and for assuring that the affairs of the Banks are administered fairly and impartially. The Federal Reserve Act provides that Reserve bank directors will be selected with due consideration to the interests of various segments of the population and the economy, thus assuring that the Federal Reserve System will receive the benefit of the experienced judgment of individuals from a broad spectrum of the communities that will be affected by actions of the System. For example, the provisions of section 4 of the Federal Reserve Act, as amended by the Federal Reserve Reform Act of 1977, provide that both class B and C directors shall be chosen to represent the public and with “due but not exclusive consideration to the interests of agriculture, commerce, industry, services, labor, and consumers.” Section 4 further provides that class A directors “shall be chosen by and be representative of the stock-holding banks” of the Federal Reserve System. Recognizing that Reserve Bank directors may have, in their private capacities, business, consumer, or other interests to which legitimate attention is to be given; but recognizing also that these same individuals have fiduciary responsibilities as directors of Reserve Banks, this regulation is promulgated for the purpose of assuring preservation of and adherence to the intent of both the Federal Reserve Act and section 208 of title 18, United States Code.

§ 264a.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) The term *director*, unless otherwise indicated, means a head office or branch director of a Federal Reserve Bank.

(b) The term *Board of Governors* means the Board of Governors of the Federal Reserve System.

(c) The term *board* means the board of directors of a Federal Reserve Bank or branch of a Federal Reserve Bank.

(d) The term *related person* means (1) a partner of a director, (2) any organization in which the director is serving as an officer, director, trustee, partner or employee, or (3) any person or organization with whom the director is negotiating or has any arrangement concerning prospective employment.

(e) The term *participate* means to act through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or as is otherwise within the meaning of the provisions of 18 U.S.C. 208.

(f) The term *particular matter* means a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other subject within the meaning of the provisions of 18 U.S.C. 208.

(g) The term *discussions* means the consideration of a matter by a board and may include, depending upon the board’s statutory authority, votes taken or other decisional action.

§ 264a.3 Prohibition against director participation in particular matters.

(a) Pursuant to the provisions of 18 U.S.C. 208(a), no director may participate personally and substantially in a particular matter in which, to the director’s knowledge, the director, the director’s spouse or minor child, or related persons have a financial interest unless such action is otherwise permitted by 18 U.S.C. 208(b) and § 264a.4 or § 264a.5 of this part.

(b) Except as provided by 18 U.S.C. 208(b) and § 264a.4 or § 264a.5 of this part, no director shall participate in deliberations or decisions of a Reserve Bank board when the question presented is whether the board should approve or ratify an extension of credit, advance, or discount by a Reserve Bank to a bank which is, in the opinion of the President of the Reserve Bank, in a hazardous financial condition, and

(1) Where the director has knowledge that he, his spouse, or minor child has

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a financial interest in the proposed transaction as a result of:

(i) Being a borrower or applicant for credit from the borrowing bank, other than consumer credit as defined in Regulation Z (12 CFR 226.2(p));

(ii) Maintaining a depository relationship with the borrowing bank in an amount exceeding that covered by Federal deposit insurance;

(iii) Owning stock, stock options, bonds, notes or other forms of indebtedness issued by the borrowing bank, or its registered parent holding company, the market value of which exceeds \$100,000 or represents more than 1 percent of the value of that class of stock, stock option, bond, note, or other form of indebtedness issued by the borrowing bank or its registered parent holding company; or

(iv) Employment in a policy making position or service as a director with the borrowing bank or the registered parent holding company of the borrowing bank.

(2) Where the director has a financial interest in the proposed transaction as a result of:

(i) Service by the director as an officer or director of another bank that is known by the director to be located in the same geographic market for local banking services as the borrowing bank and is known by the director to be in direct and substantial competition with the borrowing bank;

(ii) Service by the director as an officer or director of another bank that is known by the director:

(A) To have outstanding or to be negotiating an extension of credit from, or to, the borrowing bank, other than Federal funds or foreign exchange transactions; or

(B) To maintain a correspondent or depository relationship with the borrowing bank in an amount exceeding that covered by Federal deposit insurance; or

(iii) Service by the director as one of the principal officers of any business enterprise that constitutes the director's primary business or professional occupation where such business enterprise is known by the director:

(A) To have outstanding or to be negotiating a direct and substantial ex-

tension of credit or line of credit from the borrowing bank;

(B) To maintain a principal depository relationship with the borrowing bank in an amount exceeding that covered by Federal deposit insurance; or

(C) To own stock, stock options, bonds, notes or other forms of indebtedness issued by the borrowing bank, the market value of which exceeds \$100,000 or represents more than 1 percent of the value of that class of stock, stock options, bonds, notes or other form of indebtedness issued.

(3) Where the director has knowledge that a partner of the director has a financial interest in the proposed transaction; or

(4) Where the director has a financial interest in the proposed transaction as a result of the director's participation in current negotiations or arrangements concerning prospective employment with the borrowing bank.

(c) It is recognized that a Reserve Bank board can, within the spirit and letter of its responsibilities, delegate to appropriate officials of the Reserve Bank authority to act with respect to extensions of credit to individual banks determined to be in hazardous financial condition, thus avoiding both ratification by the board and applicability to the directors of the prohibitions of this section. Such delegation would not preclude continued advice to the board of appropriate information regarding bank conditions in the district so as to enable the board to perform fully its general oversight responsibilities.

§264a.4 Granting of ad hoc exemptions.

(a) The prohibitions of 18 U.S.C. 208 and §264a.3 of this part shall not apply if the director first advises the Board of Governors of the nature and circumstances of the particular matter before the board and makes full disclosure of the financial interest involved and receives in advance a written determination made by the Board of Governors, or its designee, pursuant to 18 U.S.C. 208(b)(1), that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Federal Reserve System may expect from such director.