

Federal Reserve System

§ 264a.4

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.

(b) Telegraphic communications from the President, First Vice President, Secretary or General Counsel of a Reserve Bank to the Board of Governors on behalf of a director and setting forth the precise nature of both the particular matter before the board and the financial interest involved shall be considered to meet the director's duty of full disclosure set forth in § 264a.4(a). Telegraphic response to the same identified officials of the Reserve Bank by the Board of Governors, or its designee, shall be deemed to meet the requirement of a written determination by the Board of Governors set forth in § 264a.4.

§ 264a.5 Exemption of remote or inconsequential financial interests.

(a) Pursuant to the provisions of 18 U.S.C. 208(b)(2), certain actions of directors of Federal Reserve Banks may be exempted from the prohibitions of 18 U.S.C. 208(a) and § 264a.3 of this part, if by general rule or regulation published in the FEDERAL REGISTER, the financial interest involved has been determined to be too remote or too inconsequential to affect the integrity of directors' services. Financial interests will be viewed as too remote or too inconsequential:

(1) In circumstances in which a director's action on a matter will not directly, substantially, and predictably affect the financial interest; or

(2) In circumstances in which a director's independence of judgment will not be affected by the financial interest.

(b) The Board of Governors has determined that the financial interests of a director, the director's spouse or minor child, or related persons in the following matters are too remote or too inconsequential to affect the integrity of directors' services and, accordingly, the prohibitions of 18 U.S.C. 208(a) and § 264a.3 of this part shall not apply to a director's participation in such matters:

(1) Deliberations concerning or ratification of extensions of credit, advances, or discounts to any bank that has not been determined to be in hazardous financial condition by the President of the Reserve Bank, provided such credit extensions, advances, or discounts are made under appropriate provisions of the Federal Re-

serve Act, regulations and policies of the Board of Governors and the Federal Reserve Banks, and the established operating procedures at the director's Reserve Bank;

(2) Deliberations concerning or affecting any financial institution, to the extent the financial interest in such matters results from:

(i) Maintenance at the financial institution of a checking or other deposit account covered by Federal Insurance;

(ii) A fiduciary relationship involving the utilization of the financial institution's trust or investment advisory services;

(iii) The receipt from the financial institution of consumer credit, as that term is defined in Regulation Z (12 CFR 226.2(p)); or

(iv) Participation in Federal funds or foreign exchange transactions with the financial institution;

(3) Deliberations concerning or affecting any financial institution or other enterprise to the extent the financial interest results from ownership of stock, stock options, bonds, notes, or other forms of indebtedness, the market value of which is less than \$100,000 and represents less than 1 percent of the value of that class of stock, stock option, bond, note or other form of indebtedness issued by the financial institution or other enterprise.

(4) Deliberations concerning or affecting any financial institution or other enterprise to the extent the financial interest results from holdings in a diversified and widely held mutual fund, investment company, pension or retirement plan that, in turn, may have invested in the financial institution, provided that the director does not contribute to investment decisions of the fund, company, or plan.

(c) Section 264a.3(b) of this part specifically identifies certain financial interests, the existence and knowledge of which will preclude a director from participating in deliberations or decisions of a Reserve Bank board (except through recourse to the procedures set forth in § 264a.4) 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,