

organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA*. 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 \$20 million or more.

(c) *Major assets*. A management official of a depository organization with total assets exceeding \$1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

**§ 563f.4 Interlocking relationships permitted by statute.**

The prohibitions of § 563f.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as de-

termined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired;

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify 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 OTS may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anti-competitive 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 OTS.

(3) The OTS 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; and

(i) Any savings association or any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph (i) shall apply only with regard to service by a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan

holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the OTS has determined that such service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

**§ 563f.5 Regulatory Standards exemption.**

(a) *Criteria.* The OTS may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 563f.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 OTS 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 OTS, 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 OTS 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 shall not apply to depository organizations subject to the Major Assets prohibition of § 563f.3(c).

(2) A proposed management official is critical to the safe and sound operations of a depository institution if:

(i) That official is permitted by OTS to serve as a director or senior executive officer of that institution pursuant to § 563.585 of this chapter; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in "troubled condition" as defined in § 563.555 of this chapter at the time the service under § 563.585 of this chapter was permitted.

(c) *Duration of interlock.* An interlock permitted under this section may continue until the OTS notifies the affected depository organizations otherwise. The OTS may require termination of any interlock permitted under this section if the OTS 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, unless the order terminating the interlock provides otherwise.

[61 FR 40308, Aug. 2, 1996, as amended at 63 FR 51275, Sept. 25, 1998]

**§ 563f.6 Management Consignment exemption.**

(a) *Criteria.* The OTS may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 563f.3 if the OTS, 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 three years at the time an application is filed under this part; or