

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

12 CFR Part 390

RIN 3064-AE20

Removal of Transferred OTS Regulations Regarding Management Official Interlocks and Amendments to 12 CFR Part 348 of FDIC's Rules and Regulations.

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking, the Federal Deposit Insurance Corporation ("FDIC") proposes to rescind and remove from the Code of Federal Regulations 12 CFR part 390, subpart V ("part 390, subpart V"), entitled "Management Official Interlocks." This subpart was included in the regulations that were transferred to the FDIC from the Office of Thrift Supervision ("OTS") on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The requirements for State savings associations in part 390, subpart V are substantively similar to those in the FDIC's 12 CFR part 348 ("part 348"), which is also entitled "Management Official Interlocks" and is applicable for all insured depository institutions ("IDIs") for which the FDIC has been designated the appropriate Federal banking agency.

Simultaneously we propose to make technical conforming edits to our existing rule and add an exemption to part 348 applicable to State savings associations which have issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act ("HOLA").

Upon removal of part 390, subpart V, regulations applicable for all IDIs for which the FDIC has been designated the appropriate Federal banking agency will be found at part 348.

DATES: Comments must be received on or before [insert date 60 days after publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- **FDIC Website:** <http://www.fdic.gov/regulations/laws/federal/>. Follow instructions for submitting comments on the agency website.
- **FDIC E-mail:** Comments@fdic.gov. Include RIN # 3064-AE20 on the subject line of the message.
- **FDIC Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- **Hand Delivery to FDIC:** Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.

Please include your name, affiliation, address, e-mail address, and telephone number(s) in your comment. Where appropriate, comments should include a short Executive Summary consisting of no more than five single-spaced pages. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to <http://www.fdic.gov/regulations/laws/federal/>, including any personal information

provided. Paper copies of public comments may be requested from the Public Information Center by telephone at 1-877-275-3342 or 1-703-562-2200.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act

The Dodd-Frank Act¹ provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, codified at 12 U.S.C. 5411, (“Transfer Date”), the powers, duties, and functions formerly performed by the OTS were respectively divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (“OCC”), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (“FRB”), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such materials were in effect on the day before the Transfer Date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5301 *et seq.*).

modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, codified at 12 U.S.C. 5414(c), further directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations which would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC's Board of Directors approved a "List of OTS Regulations to be Enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act." This list was published by the FDIC and the OCC as a Joint Notice in the Federal Register on July 6, 2011.²

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, codified at 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act ("FDI Act") and other laws as the "appropriate Federal banking agency" or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act amended the definition of "appropriate Federal banking agency" contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the "appropriate Federal banking agency." As a result, when the FDIC acts as the designated "appropriate Federal banking agency," or under similar terminology, for State savings associations, as it does here, the FDIC is authorized to issue, modify and rescind regulations involving such associations, as well as for State nonmember banks and insured branches of foreign banks.

² 76 FR 39247 (July 6, 2011).

As noted, on June 14, 2011, pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferring regulations of the former OTS. These transferred OTS regulations were published as new FDIC regulations in the Federal Register on August 5, 2011.³ When it republished the transferred OTS regulations as new FDIC regulations, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and might later recommend incorporating the transferred OTS regulations into other FDIC rules, amending them, or rescinding them, as appropriate.

One of the OTS rules transferred to the FDIC governed management official interlocks. The OTS rule, formerly found at 12 CFR part 563f ("part 563f"), was transferred to the FDIC with only minor, nonsubstantive changes and is now found in the FDIC's rules at part 390, subpart V, entitled "Management Official Interlocks." Before the transfer of the OTS rules and continuing today, the FDIC's rule contained in part 348, also entitled "Management Official Interlocks," prohibits a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect. After careful review and comparison of part 390, subpart V and part 348, the FDIC proposes to rescind part 390, subpart V, because, as discussed below, it is substantively redundant to existing part 348. Simultaneously we propose to make technical conforming edits to our existing rule and add an exemption to part 348 applicable to State savings associations which have issued stock in connection with a qualified stock issuance pursuant to section 10(q) of HOLA.⁴

³ 76 FR 47652 (Aug. 5, 2011).

⁴ Home Owners' Loan Act, Pub. L. No. 101-73; § 301, 103 Stat. 277, (1989) (codified at 12 U.S.C. 1461 *et seq.*)

FDIC's Existing 12 CFR Part 348 and Former OTS's Part 563f (transferred, in part, to FDIC's Part 390, Subpart V)

The Depository Institution Management Interlocks Act (“Interlocks Act”)⁵ was enacted as Title II of the Financial Institutions Regulatory and Interest Rate Control Act of 1978.⁶ The Interlocks Act generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies (“depository organizations”). The purpose of the Interlocks Act and the rules governing management interlocks generally is to foster competition between unaffiliated institutions. Thus, the Interlocks Act seeks to prohibit interlocks that could enable two institutions to engage in anticompetitive behavior. The scope of the prohibition depends on the size and location of the organizations involved. For example, the Interlocks Act prohibits interlocks between unaffiliated depository organizations, regardless of size, if each organization has an office in the same community (the “community prohibition”). Interlocks are also prohibited between unaffiliated depository organizations if each organization has total assets of \$50 million or more and has an office in the same relevant metropolitan statistical area (“RMSA”) (the “RMSA prohibition”). The Interlocks Act also prohibits interlocks between unaffiliated depository organizations, regardless of location, if each organization has total assets exceeding specified thresholds (the “major assets prohibition”).

On July 19, 1979, the FDIC, the OTS,⁷ the OCC, and the FRB (collectively, the “Federal banking agencies”), published a joint final rule to implement the statutory

⁵ 12 U.S.C. 3201 *et seq.*

⁶ Pub. L. No. 95-630, 92 Stat. 3665 (Nov. 10, 1978).

⁷ The joint rulemaking included the Federal Home Loan Bank Board, the OTS’s predecessor agency.

mandates of the Interlocks Act.⁸ On August 2, 1996, in order to comply with the mandate of section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (“CDRI Act”),⁹ the Federal banking agencies published a joint final rule¹⁰ to implement revisions to the Management Official Interlocks regulations.

Section 303(a) of the CDRI Act, requires the Federal banking agencies to conduct a systematic review of their regulations and written policies in order to streamline and modify them to improve efficiency, reduce unnecessary costs, and eliminate constraints on credit availability.¹¹ Section 303(a) also instructs the Federal banking agencies to remove inconsistencies and outmoded and duplicative requirements.¹² Finally, section 303(a) requires the Federal banking agencies to consult and coordinate with one another “to make uniform all regulations and guidelines implementing common statutory or supervisory policies.”¹³ Pursuant to the CDRI’s mandate, the Federal banking agencies consulted and coordinated with respect to this rulemaking and on an interagency basis jointly issued rules that are substantively similar with regard to management official interlocks.¹⁴ Accordingly, the portion of the OTS regulations that applied to State savings associations and their affiliates, originally codified at 12 CFR part 563f and subsequently transferred to FDIC’s part 390, subpart V, is substantively similar to the current FDIC regulations in part 348, with the following exceptions. Specifically, part 348 of the FDIC regulations applies to management officials of insured nonmember

⁸ 44 FR 42152 (July 19, 1979).

⁹ 12 U.S.C. 4803(a).

¹⁰ 61 FR 40293 (Aug. 2, 1996).

¹¹ 12 U.S.C. 4308(a)(1)(A).

¹² 12 U.S.C. 4308(a)(1)(B).

¹³ 12 U.S.C. 4308(a)(3).

¹⁴ 61 FR 40293 (Aug. 2, 1996).

banks and their affiliates,¹⁵ while part 390, subpart V applies to management officials of State savings associations and their affiliates.¹⁶ Part 390, subpart V also contains an exception from the prohibition against management interlocks that is not included in part 348. This exception, found in 390.403(i), allows a State savings association that has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of HOLA to be exempt from the prohibition against management interlocks.¹⁷ By amending part 348 and rescinding part 390, subpart V, the FDIC will streamline its regulations and reduce redundancy.

Although the former OTS rule part 563f applies to management officials of savings and loan holding companies, the FDIC does not supervise savings and loan holding companies for purposes of this rule. Section 312 of the Dodd-Frank Act¹⁸ divides and transfers the functions of the former OTS to the FDIC, OCC, and FRB by amending section 1813(q) of the FDI Act. Specifically, section 312 transfers the former OTS's power to regulate State savings associations to the FDIC, while it transfers the power to regulate savings and loan *holding companies* to the FRB.¹⁹ As a result, whereas the former OTS part 563f applied to savings associations and their affiliates as well as to savings and loan holding companies,²⁰ upon transfer of part 563f to FDIC's part 390, subpart V, only the authority over State savings associations and their affiliates was

¹⁵ 12 CFR 348.1.

¹⁶ 12 CFR 390.400.

¹⁷ The Interlocks Act contains an additional exemption for interlocks as a result of an emergency acquisition of a savings association authorized in accordance with section 13(k) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)) if the FDIC has given its approval to the interlock. The FDIC will continue to list this additional exemption in its management interlocks regulation in part 348.

¹⁸ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. 5412 *et seq.*).

¹⁹ 12 U.S.C. 5412.

²⁰ 12 CFR 563f.

transferred to the FDIC for purposes of this rule.²¹ The FRB currently has jurisdiction over the regulation and supervision of management official interlocks as it applies to savings and loan holding companies.²²

After careful comparison of the FDIC's part 348 with the transferred OTS rule in part 390, subpart V, the FDIC has concluded that, with the exception of the scope of the two sections and the newly created section 348.4(j) that carries over the qualified stock issuance exemption from the former OTS rule, the transferred OTS rules governing management official interlocks are substantively redundant. Therefore, based on the foregoing, the FDIC proposes to rescind and remove from the Code of Federal Regulations the rules located at 12 CFR part 390, subpart V; to make minor conforming changes to part 348 to incorporate State savings associations; and to insert the OTS's exemption for State savings associations which have issued stock in connection with a qualified stock issuance pursuant to section 10(q) of HOLA located in section 390.403(i) into a newly created section 348.4(j) in the FDIC's rule. If the proposal is adopted in final form, all IDIs regulated by the FDIC—including State savings associations—will be regulated in a uniform manner.

II. The Proposal

Regarding the functions of the former OTS that were transferred to the FDIC, section 316(b)(3) of the Dodd-Frank Act, 12 U.S.C. 5414(b)(3), in pertinent part, provides that the former OTS regulations will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law. After reviewing the rules currently found in part 390, subpart V, the FDIC, as the appropriate

²¹ 12 CFR 390.400.

²² 12 CFR 212.1.

Federal banking agency for State savings associations, proposes to rescind part 390, subpart V in its entirety.

The FDIC also proposes to modify the scope of part 348, section 348.1(c), to apply to “management officials of FDIC-supervised institutions and their affiliates” to conform to and reflect the scope of the FDIC’s current supervisory responsibilities as the appropriate Federal banking agency. The FDIC also proposes to add two new definitions into section 348.2. A newly created subsection (i) would define an “FDIC-supervised institution” as “either an insured nonmember bank or a State savings association.” A newly created subsection (p) would define “State savings association” as having “the same meaning as in section 3(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).” The FDIC would also make conforming amendments throughout the regulation to reflect the new scope of the regulation. These amendments would conform to and reflect the scope of the FDIC’s current supervisory responsibilities as the appropriate Federal banking agency.

Finally, the proposal would insert an exemption from part 390, subpart V, section 390.403(i), into a newly created subsection (j) of section 348.4. The exemption allows certain interlocking relationships for any State savings association which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of HOLA. Because the Interlocks Act provides for this statutory requirement,²³ the qualified stock issuance exemption in section 390.403(i) must carry forward to the FDIC’s rule in part 348.

If the proposal is finalized, oversight of management official interlocks in part 348 would apply to all FDIC-supervised institutions, including State savings associations

²³ 12 U.S.C. 3204(9).

and their affiliates, and part 390, subpart V would be removed because it is largely duplicative of those rules found in part 348. Rescinding part 390, subpart V will serve to streamline the FDIC's rules and eliminate unnecessary regulations.

III. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following:

1.) Are there any specific provisions of part 348 that are outdated or obsolete, or are behind industry standards? If so, please describe and recommend alternate disclosure and reporting methodology.

2.) Are the provisions of proposed part 348 sufficient to provide adequate disclosure and reporting of CRA-related agreements? Are the provisions of proposed part 348 overly burdensome? Please substantiate your answer.

3.) What impacts, positive or negative, can you foresee in the FDIC's proposal to rescind part 390, subpart V?

Written comments must be received by the FDIC no later than [insert date 60 days after publication in the FEDERAL REGISTER].

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act ("PRA") of 1995, 44 U.S.C. 3501-3521, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget ("OMB") control number.

The Proposed Rule would rescind and remove from FDIC regulations part 390, subpart V. This rule was transferred with only nominal changes to the FDIC from the OTS when the OTS was abolished by Title III of the Dodd-Frank Act. Part 390, subpart V is largely redundant of the FDIC's existing part 348 regarding disclosure and reporting of CRA-related agreements. The information collection contained in part 348 is cleared by OMB under the FDIC's "Management Official Interlocks" information collection (OMB No. 3064-0118). The FDIC reviewed its burden estimate for the collection at the time it assumed responsibility for supervision of State savings associations transferred from the OTS and obtained OMB approval to adjust the burden estimates as necessary. This Proposed Rule will not modify the FDIC's existing collection and does not involve any new collections of information pursuant to the PRA.

Finally, the Proposed Rule would amend part 348 to include State savings associations and their affiliates and would amend section 348.2 to define "State savings association." These measures clarify that State savings associations and their affiliates, as well as insured nonmember banks and their affiliates are subject to part 348. The Proposed Rule would also insert the qualified stock issuance exemption in section 390.403(i) into a newly created subsection (j) of section 348.4. These provisions of the Proposed Rule will not involve any new collection of information under the PRA or impact current burden estimates. Based on the foregoing, no information collection request has been submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”),²⁴ requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$500 million).²⁵ However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the Federal Register together with the rule. For the reasons provided below, the FDIC certifies that the Proposed Rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

As discussed in this notice of proposed rulemaking, part 390, subpart V was transferred from OTS’s part 563f, which governed management official interlocks. OTS’s part 563f had been in effect since 1979, and all savings associations were required to comply with it. Because it is duplicative of existing part 348 of the FDIC’s rules, the FDIC proposes rescinding and removing part 390, subpart V. As a result, all FDIC-supervised institutions—including State savings associations and their affiliates—would be required to comply with part 348. Because all State savings associations and their affiliates have been required to comply with substantially similar management official

²⁴ 5 U.S.C. 601 *et seq.*

²⁵ 78 FR 37409, 37411 (June 20, 2013).

interlocks rules since 1979, today's Proposed Rule would have no significant economic impact on any State savings association.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, codified at 12 U.S.C. 4809, requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. The FDIC invites comments on whether the Proposed Rule is clearly stated and effectively organized, and how the FDIC might make it easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

D. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"), the FDIC is required to review all of its regulations, at least once every 10 years, in order to identify any outdated or otherwise

unnecessary regulations imposed on insured institutions.²⁶ The FDIC completed the last comprehensive review of its regulations under EGRPRA in 2006 and is commencing the next decennial review. The action taken on this rule will be included as part of the EGRPRA review that is currently in progress. As part of that review, the FDIC invites comments concerning whether the Proposed Rule would impose any outdated or unnecessary regulatory requirements on insured depository institutions. If you provide such comments, please be specific and provide alternatives whenever appropriate.

List of Subjects

12 CFR part 348

Banks, banking; management official interlocks; savings associations

12 CFR part 390, subpart V

Management Official Interlocks

Authority and Issuance

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 348 of title 12 of the Code of Federal Regulations and amend part 390, of title 12 of the Code of Federal Regulations by removing subpart V as set forth below:

1. Revise part 348 to read as follows:

²⁶ Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996).

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

§ 348.1 Purpose and scope of this part.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This part applies to management officials of FDIC-supervised institutions and their affiliates.

§ 348.2 Other definitions and rules of construction used in this part.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term affiliate has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of section 202, shares held by an individual include shares held by members of his or her immediate family. “Immediate family” means spouse, mother, father, child, grandchild, sister, brother or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving an FDIC-supervised institution based on common ownership does not exist if the FDIC determines, after giving the affected persons the

opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the FDIC considers, among other things, whether a person, including members of his or her immediate family whose shares are necessary to constitute the group, owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(c) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(d) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city,

town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(e) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(f) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(g) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(h) *Depository organization* means a depository institution or a depository holding company.

(i) *FDIC-supervised institution* means either an insured state nonmember bank or a State savings association.

(j) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(k) *Management official*. (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of \$100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 303.101(b).

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (j)(1).

(2) The term *management official* does not include:

- (i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;
- (ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or
- (iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).
- (l) *Office* means a principal or branch office of a depository institution located in the United States. Office does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.
- (m) *Person* means a natural person, corporation, or other business entity.
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- (n) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.
- (o) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The FDIC will find that a person has an obligation to act on

behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The FDIC will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee*.

(p) *State savings association* has the same meaning as in section (3)(b)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(3).

(q) *Total assets*. (1) The term *total assets* includes assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that are exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate;

or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(r) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 348.3 Prohibitions.

(a) Community. 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 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 \$50 million or more.

(c) Major assets. A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding \$1.5 billion (or any affiliate of such an organization), regardless of the location

of the two depository organizations. The FDIC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest \$100 million. The FDIC will announce the revised thresholds by publishing a final rule without notice and comment in the Federal Register.

§ 348.4 Interlocking relationships permitted by statute.

The prohibitions of § 348.3 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 determined 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) A savings association whose acquisition has been authorized on an emergency basis in accordance with section 13(k) of the Federal Deposit Insurance Act (12 U.S.C. 1823(k)) with resulting dual service by a management official that would otherwise be prohibited under the Interlocks Act which may continue for up to 10 years from the date of the acquisition provided that the FDIC has given its approval for the continuation of such service;

(i)(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 is also 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 FDIC 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 FDIC.

(3) The FDIC 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

(j) Any FDIC-supervised institution which is a State savings association that has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act, except that this paragraph (j) shall apply only with regard to service as a single management official of such State savings association or any subsidiary of such State savings association by a single management official of a savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the FDIC has determined that such service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

§ 348.5 Small market share exemption.

(a) Exemption. A management interlock that is prohibited by § 348.3 is permissible, if:

(1) The interlock is not prohibited by § 348.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) Confirmation and records. Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

§ 348.6 General exemption.

(a) Exemption. The FDIC may by agency order exempt an interlock from the prohibitions in § 348.3 if the FDIC finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns.

(b) Presumptions. In reviewing an application for an exemption under this section, the FDIC will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low-and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in “troubled condition” as defined in § 303.101(c).

(c) Duration. Unless a shorter expiration period is provided in the FDIC approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If

the FDIC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the FDIC in writing.

(d) Procedures. Procedures for applying for an exemption under this section are set forth in 12 CFR 303.249.

§ 348.7 Change in circumstances.

(a) Termination. A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or 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 FDIC-supervised institution involved in the interlock for 15 months following the date of the change in circumstances. The FDIC may shorten this period under appropriate circumstances.

§ 348.8 Enforcement.

Except as provided in this section, the FDIC administers and enforces the Interlocks Act with respect to FDIC-supervised institutions and their affiliates 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 an FDIC-supervised institution is subject to the primary regulation of another federal depository organization supervisory agency, then the FDIC does not administer and enforce the Interlocks Act with respect to that affiliate.

PART 390 -- REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

Subpart V ---Management Official Interlocks

2. The authority citation for part 390 is revised to read as follows:

AUTHORITY: 12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1820.

Subpart B also issued under 12 U.S.C. 1818.

Subpart C also issued under 5 U.S.C. 504; 554-557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78 l; 78o-5; 78u-2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78 l.

Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 et seq.

Subpart G also issued under 12 U.S.C. 2810 et seq., 2901 et seq.; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601-3619.

Subpart I also issued under 12 U.S.C. 1831x.

Subpart J also issued under 12 U.S.C. 1831p-1.

Subpart K also issued under 12 U.S.C. 1817; 1818; 15 U.S.C. 78c; 78 *l*.

Subpart L also issued under 12 U.S.C. 1831p-1.

Subpart M also issued under 12 U.S.C. 1818.

Subpart N also issued under 12 U.S.C. 1821.

Subpart O also issued under 12 U.S.C. 1828.

Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p-1; 3339.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p-1.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p-1; 1881-1884; 3207; 3339; 15 U.S.C. 78b; 78 *l*; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 *l*; 78m; 78n; 78w.

Subpart U also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 *l*; 78m; 78n; 78p; 78w; 78d-1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78 *l*; 78m; 78n; 78p; 78w.

Subpart X also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828; 3331 *et seq.*

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

Remove from the authority citation for part 390, the sentence “Subpart V also issued under 12 U.S.C. 3201-3208.”

3. Subpart V – [Removed and reserved]

Remove and reserve Subpart V consisting of §§ 390.400 through 390.408.

Dated at Washington, D.C., this ____ day of _____, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman

Executive Secretary