

May 14, 2007

MEMORANDUM TO: Board of Directors

FROM: Sandra L. Thompson
Director
Division of Supervision and Consumer Protection

SUBJECT: Final Rule: Depository Institution Management Officials Interlocks Act

Recommendation

Section 610 of the Financial Services Regulatory Relief Act of 2006 (“FSRRA”) (Pub. L. 109-351, 120 Stat. 1966) modified the small institution exception of the Depository Institution Management Interlocks Act (“Interlocks Act”) (12 U.S.C. §§ 3201 *et seq.*) by increasing the small institution asset threshold from \$20 million to \$50 million. On December 20, 2006, the FDIC Board of Directors approved an Interim Rule to implement by regulation the FSRRA-mandated asset threshold increase. The Interim Rule was jointly issued by the FDIC, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively “the Agencies”) on January 11, 2007.

We recommend that the Board of Directors adopt the attached Final Rule to implement the change to the Agencies’ management official interlocks rules made by section 610 of FSRRA and to carry out other, necessary technical changes.

Concur:

Sara A. Kelsey
General Counsel

Background

The primary purpose of the Interlocks Act is to foster competition by generally prohibiting a management official¹ from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect. Section 203(1) of the Interlocks Act (12 U.S.C. § 3202(1)) prohibits interlocks between unaffiliated depository organizations if each depository organization (or a depository institution affiliate thereof) has an office in the same relevant metropolitan statistical area (“MSA”), unless one of the depository organizations involved has total assets below a specified threshold (small institution exception). Prior to enactment of the FSRRA, this asset threshold was \$20 million. Section 610 of FSRRA amended the Interlocks Act by raising this asset threshold to \$50 million, effective on the Act’s date of enactment into law (October 13, 2006).

Working together to implement the requirements of section 610 of FSRRA, the Agencies issued a joint interim rule with a request for comment. *72 Federal Register* 1274 (January 11, 2007). The Agencies amended their respective regulations by means of the interim rule to reflect the statutory increase in the asset threshold for the small institution exception. The Agencies also took advantage of the opportunity to make technical changes that would correct inaccurate cross-references in the definition of management official in the Agencies’ respective regulations. The official comment period lasted thirty days.

Discussion of Comments

The Agencies received two comments on the joint interim rule, both from trade associations for the banking industry. One was from the Independent Community Bankers of America (“ICBA”). The other comment letter was from the American Bankers Association (“ABA”).

Both letters expressed strong support for the increase in the asset threshold for application of the small institution exception. ICBA stated that the increase from \$20 million to \$50 million would make it easier for small depository institutions and community banks to employ qualified directors regardless of other affiliations. ABA stated that the increase recognized the fact that the average amount of assets held by a depository institution has increased dramatically since the Interlock Act was first enacted. ABA also noted that the increase in the asset threshold will provide depository institutions with greater access to qualified individuals, thereby increasing the institutions’ competitiveness and their ability to operate in a safe and sound manner. Both the ABA and ICBA stated that further increases should be made to the asset

¹ The Interlocks Act and each of the Agencies’ regulations generally define “management official” to include a director, an advisory or honorary director of a depository institution with total assets of \$100 million or more, a senior executive officer, a branch manager, a trustee of a depository organization under the control of trustees, and any person who has a representative or nominee serving in such capacity. *See* 12 U.S.C. § 3201(4), 12 CFR § 26.2(j) (OCC); 12 CFR § 212.2(j) (Board); 12 CFR § 348.2(j) (FDIC); and 12 CFR § 563f.2(j) (OTS).

threshold to further widen the pool of potential management officials for depository institutions.

The final rule would simply implement a statutory change that is already applicable along with certain technical changes. Moreover, the two comments which the Agencies have received in connection with this rulemaking have been favorable. Staff therefore recommends that the Board of Directors approve publication of the attached final rule.

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Attachments