

TO: The Board of Directors

FROM: Doreen R. Eberley
Director
Division of Risk Management Supervision



DATE: June 23, 2014

SUBJECT: Review of Regulations Transferred from the Former Office of Thrift Supervision: Part 390, Subpart V – Management Official Interlocks

Recommendation

Staff recommends that the Federal Deposit Insurance Corporation (“FDIC”) Board of Directors (“Board”) approve the attached resolution to adopt and authorize for publication in the *Federal Register* (1) a notice of proposed rulemaking (“NPR”) to rescind and remove 12 C.F.R. Part 390, Subpart V (“Part 390, Subpart V”), of the former Office of Thrift Supervision (“OTS”) entitled *Management Official Interlocks*; and (2) conforming amendments to 12 C.F.R. Part 348, (“Part 348”), also entitled *Management Official Interlocks*. Rescinding Part 390, Subpart V will serve to streamline the FDIC’s rules and eliminate redundancy and unnecessary regulations.

Status of OTS Rules Review

The proposed rescission of Part 390, Subpart V, if adopted after notice and comment, will complete the FDIC’s review of this subpart of the OTS rules for rescission, amendment, or adoption. This subpart was included in the regulations that were transferred to the FDIC from the 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”).¹ This move was taken in connection with the transfer of the responsibility for the supervision of State savings associations from the OTS to the FDIC, pursuant to the Dodd-Frank Act. Upon removal of Part 390, Subpart V, the Management Official Interlocks regulations applicable for all insured depository institutions (“IDIs”), for which the FDIC has been designated the appropriate Federal banking agency, will be found at 12 C.F.R. Part 348, entitled *Management Official Interlocks*.

The proposed rescission and amendments also fulfill the FDIC’s review of the Management Official Interlocks sections of the FDIC rules and regulations affected by the abolishment of the OTS and the transfer of supervisory responsibilities for State savings associations to the FDIC.

Background

The Dodd-Frank Act, signed into law on July 21, 2010, provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.

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.*).

Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, 12 U.S.C. § 5411, 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, 12 U.S.C. § 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and other advisory materials, that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that if such regulatory materials were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are 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, 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 that would be enforced by the FDIC and the OCC, respectively. On June 14, 2011, the FDIC’s Board 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, 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 authority. Section 312(c) of the Dodd-Frank Act amended section 3(q) of the FDI Act, 12 U.S.C. § 1813(q), and designated the FDIC as the “appropriate Federal banking agency” for State savings associations. As a result, when the FDIC acts as the designated “appropriate Federal banking agency” (or under similar authority) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations.

On June 14, 2011, operating pursuant to this authority, the FDIC’s Board reissued and re-designated certain transferring regulations of the former OTS.³ These transferred OTS regulations were published as new FDIC regulations in the Federal Register on August 5, 2011. In the preamble to the interim rule, the FDIC specifically noted that its staff would evaluate the transferred OTS rules and may later recommend incorporation of the transferred OTS regulations into existing FDIC rules, amending or rescinding them, as appropriate.

² 76 Fed. Reg. 39247 (July 6, 2011).

³ 76 Fed. Reg. 47652 (Aug. 5, 2011).

Part 390, Subpart V – Management Official Interlocks

One of the regulations transferred to the FDIC governed OTS implementation of the Management Official Interlocks rule. This regulation prohibits a management official from serving two nonaffiliated depository organizations in situations where the management interlock would likely have an anticompetitive effect.

Since 1979, the FDIC's rules have included Part 348, implementing the Management Official Interlocks rule, and all State-chartered nonmember banks have been required to comply with it. Other depository institutions were subject to the same requirements under the applicable counterpart regulation of their appropriate Federal supervisory agency. The OTS's regulation, formerly found at 12 C.F.R. Part 563f, was transferred to the FDIC with only nominal changes. It is currently located in the FDIC's rules at 12 C.F.R. Part 390, Subpart V. The FDIC Management Official Interlocks rule and the former OTS rule (now located in 12 C.F.R. Part 390, Subpart V) were issued by the FDIC and OTS, respectively, in 1979, as part of a joint interagency rulemaking among the FDIC, the FRB, the OCC, and the OTS⁴ ("Federal banking agencies") to implement the Depository Institution Management Interlocks Act, 12 U.S.C. 3201-3208, ("Interlocks Act"). As a result of this joint rulemaking, the Federal banking agencies adopted very similar, though not identical, rules regarding management official interlocks.⁵

After careful review and comparison of 12 C.F.R. Part 348, the FDIC's Management Official Interlocks rule with the transferred OTS rule, Part 390, Subpart V, the staff has concluded that the FDIC's Part 348, with several technical amendments described below, will continue to provide appropriate oversight of the requirements for management official interlocks pursuant to the Interlocks Act for all insured depository institutions for which the FDIC is the appropriate Federal banking agency. Where possible, it is desirable for reasons of regulatory policy that insured depository institutions for which the FDIC is the appropriate Federal banking agency are subject to the same substantive and procedural rules governing management official interlocks.

After reviewing Part 390, Subpart V, staff recommends that the FDIC, as the appropriate Federal banking agency for State savings associations, propose to rescind the former OTS rule in its entirety. Rescinding Part 390, Subpart V will also serve to streamline the FDIC's rules and eliminate unnecessary regulations. If the proposed rule is adopted, all of the banks and State savings associations supervised by the FDIC would be subject to the FDIC's Part 348, as modified.

Part 348.1 – Purpose and scope of this part

Section 348.1 currently defines the scope of Part 348 only with respect to FDIC-insured state nonmember banks and their affiliates that are prohibited from entering into interlocking

⁴ The joint rulemaking included the Federal Home Loan Bank Board, the OTS's predecessor agency.

⁵ 44 Fed. Reg. 42152 (July 19, 1979).

relationships. Although the former OTS rule included savings and loan holding companies within its scope, section 312 of the Dodd-Frank Act transferred jurisdiction over savings and loan holding companies to the FRB. For this reason, although the former OTS rule references savings and loan holding companies, proposed changes to the scope of the existing Part 348 does not include savings and loan holding companies.

Staff recommends the FDIC propose modifications to the scope of Part 348 to include State savings associations and their affiliates to conform to and reflect the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency.

Part 348.2 – Other definitions and rules of construction used in this part

Section 348.2 currently contains no definition of *State savings association*. Accordingly, staff recommends that the FDIC propose to add a new subsection (o), which 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)).” This amendment would conform to and reflect the scope of FDIC's current supervisory responsibilities as the appropriate Federal banking agency. The current provision occupying subsection (o) will be moved to a newly created subsection (p) within section 348.2, and the current subsection (p) will be moved to a newly created subsection (q) within section 348.2.

Part 348.4 – Interlocking relationships permitted by statute

Section 348.4 currently does not contain a statutory requirement for State savings associations that is included in Part 390, Subpart V. Section 3204(9) of the Interlocks Act allows certain organizations and their subsidiaries to engage in interlocking relationships. With certain exceptions, one such organization includes 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. The Proposed Rule would redesignate section 390.403(i) as a newly created subsection (j) of section 348.4.

EGRPRA

Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”) requires the FDIC 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.⁶ The FDIC's review is ongoing and must be completed by 2016. The attached Notice of Proposed Rulemaking (“NPR”) solicits comments on whether the proposed rescission of Part 390, Subpart V and amendments to Part 348 would impose any outdated or unnecessary regulatory requirements on any IDIs.

⁶ Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

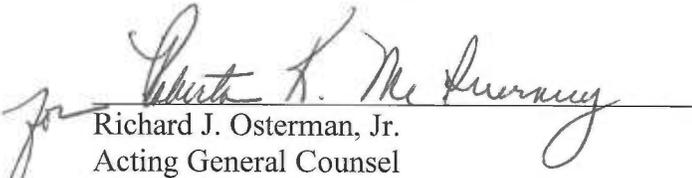
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Concur


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[Attachments: Part 390, Subpart V - Management Official Interlocks, and Part 348, entitled *Management Official Interlocks*, both as proposed to be modified herein.]