

TO: The Board of Directors

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



DATE: November 20, 2015

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

Summary of 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 final rule (“Final Rule”) to rescind and remove 12 C.F.R. Part 390, Subpart V, (“Part 390, Subpart V”) 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 redundant and unnecessary regulations.

Status of OTS Rules Review

The rescission of Part 390, Subpart V completes the FDIC’s review of this subpart of the former Office of Thrift Supervision (“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 Upon removal of Part 390, Subpart V, the regulations governing management official interlocks applicable to all insured depository institutions 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 impacted by the abolishment of the OTS and the transfer of supervisory responsibilities for State savings associations to the FDIC.

On July 21, 2014, a notice of proposed rulemaking (“NPR” or “Proposed Rule”) was published in the *Federal Register* that proposed the removal of Part 390, Subpart V and amendments to Part 348.² The public comment period expired on September 19, 2014, and no comments were

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010) (codified at 12 U.S.C. §§ 5301 *et seq.*).

² 79 Fed. Reg. 42225 (July 21, 2014).

received. Accordingly, staff recommends that the Board approve and authorize the publication in the *Federal Register* of a Final Rule to adopt the Proposed Rule without changes.

Further, staff recommends that the action taken on this rulemaking be considered part of the FDIC's decennial regulatory review required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"),³ a review process that is currently underway.

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.

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 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, 2011.⁴

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

³ Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

⁴ 76 Fed. Reg. 39247 (July 6, 2011).

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.⁵ 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.

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 (located in 12 C.F.R. Part 348) 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 OTS⁶ (“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.⁷

NPR to Remove Part 390, Subpart V and Amend Part 348

On July 21, 2014, the FDIC published a Proposed Rule regarding the removal of Part 390, Subpart V (former OTS Part 563f), which governs FDIC oversight of management official interlocks for state savings associations and their affiliates.⁸ The NPR proposed removing Part

⁵ 76 Fed. Reg. 47652 (Aug. 5, 2011).

⁶ The joint rulemaking included the Federal Home Loan Bank Board, the OTS’s predecessor agency.

⁷ 44 Fed. Reg. 42152 (July 19, 1979).

⁸ Affiliates are implicated in this rule primarily with respect to certain prohibitions. The community prohibition bars a management official of a depository organization (a holding company or depository institution, (DO)) from also serving with an unaffiliated DO if it or an affiliate has offices in the same community as the DO where the official serves. The relevant metropolitan statistical area (RMSA) prohibition bars a management official of a DO from serving with an unaffiliated DO if that DO (or an affiliate) has offices in the same metropolitan statistical area as the

390, Subpart V from the Code of Federal Regulations in an effort to streamline FDIC regulations for all FDIC-supervised institutions. As discussed in the Proposed Rule, the FDIC carefully reviewed the transferred rule, Part 390, Subpart V, and compared it with the FDIC's existing Part 348, which existed before the transfer of Part 390, Subpart V, and continues to remain in effect today. The FDIC determined that Part 390, Subpart V was largely redundant of FDIC's Part 348 and should therefore be removed and rescinded.

The Proposed Rule included a measure designed to clarify that Part 348 applies to all insured depository institutions for which the FDIC has been designated the appropriate Federal banking agency. Specifically, the NPR proposed to modify the scope of Part 348, section 348.1(c), to apply to "management officials of FDIC-supervised institutions and their affiliates," in order to conform to and reflect the scope of the FDIC's current supervisory responsibilities as the appropriate Federal banking agency. The NPR also proposed 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 NPR also proposed to 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 NPR proposed to 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 that 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,⁹ the qualified stock issuance exemption in section 390.403(i) must carry forward to the FDIC's rule in Part 348.

The FDIC issued the Proposed Rule with a 60-day comment period, which closed on September 19, 2014. The FDIC received no comments on its Proposed Rule, and consequently staff recommends that the Board adopt the Final Rule as proposed without any changes.

The Final Rule

As discussed in the Proposed Rule, Part 390, Subpart V is substantially similar to Part 348, and the designation of Part 348 as the single regulatory authority with respect to management official interlocks for all FDIC-supervised institutions will serve to streamline the FDIC's rules and

DO where the official serves and each DO has total assets of \$50 million or more. Finally, the major assets prohibition bars a management official of a DO with total assets exceeding \$2.5 billion (or any affiliate of such organization) from serving with an unaffiliated DO with total assets exceeding \$1.5 billion (or any affiliate), regardless of their location.

⁹ 12 U.S.C. 3204(9).

eliminate unnecessary regulations. If approved, the Final Rule will remove and rescind Part 390, Subpart V in its entirety.

Consistent with the Proposed Rule, if approved, the Final Rule will also amend the scope of Part 348, section 348.1(c), to apply to “management officials of FDIC-supervised institutions and their affiliates,” in order to conform to and reflect the scope of the FDIC’s current supervisory responsibilities as the appropriate Federal banking agency. The Final Rule will also 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 Final Rule will also make conforming amendments throughout the regulation to reflect the new scope of the regulation.

Finally, the Final Rule will 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.

EGRPRA

Section 2222 of 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.¹⁰ The FDIC’s review is ongoing and must be completed by 2016. The Proposed Rule solicited 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 insured depository institutions. No comments on this issue were received. Upon review, staff does not believe that Part 348, as amended, imposes any outdated or unnecessary regulatory requirements on any insured depository institutions. Rather, staff believes that such action will harmonize FDIC’s regulations and ensure uniform treatment of all FDIC-supervised institutions.

Recommendation

Based on the foregoing, staff recommends that the Board approve the attached resolution to rescind and remove Part 390, Subpart V and amend Part 348 and authorize publication of the attached Final Rule in the *Federal Register*, to be made effective 30 days after its publication. Further, staff recommends that the action taken on this rulemaking be considered a part of the FDIC’s decennial EGRPRA regulatory review process.

Staff members knowledgeable about this case:

¹⁰ Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

Recommendation

Based on the foregoing, staff recommends that the Board approve the attached resolution to rescind and remove Part 390, Subpart V and amend Part 348 and authorize publication of the attached Final Rule in the *Federal Register*, to be made effective 30 days after its publication. Further, staff recommends that the action taken on this rulemaking be considered a part of the FDIC's decennial EGRPRA regulatory review process.

Staff members knowledgeable about this case:

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Concur



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[Attachment: Proposed Final Rule entitled, "Removal of Transferred OTS Regulations Regarding Management Official Interlocks and Amendments to 12 CFR Part 348 of FDIC's Rules and Regulations."]