

I. INTRODUCTION

Section 203 of the Depository Institutions Management Interlocks Act (Interlocks Act) fosters competition by generally prohibiting a management official from serving with two nonaffiliated depository organizations when the management interlock would likely have an anticompetitive effect. Part 348 of the FDIC Rules and Regulations, issued pursuant to the Interlocks Act, as amended, applies to management officials of FDIC-supervised institutions and their affiliates. The following describes the prohibitions and exemptions set forth in Part 348.

Prohibitions - Section 348.3 of the FDIC Rules and Regulations

- 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.
- Relevant Metropolitan Statistical Area (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.
- Major Assets - A management official of a depository organization (or any affiliate of such an organization) with total assets exceeding \$10 billion may not serve at the same time as a management official of an unaffiliated depository organization (or any affiliate of such an organization) with total assets exceeding \$10 billion, regardless of the location of the two depository organizations.

Permitted Interlock Relationships - Section 348.4 of the FDIC Rules and Regulations

The prohibitions of Section 348.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

- 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;
- A corporation operating under Section 25 or Section 25A of the Federal Reserve Act (Edge Corporations and Agreement Corporations);
- A state-chartered savings and loan guaranty corporation;
- 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 extends for five years, beginning on the date the depository organization is acquired;
- A savings association whose acquisition has been authorized on an emergency basis in accordance with Section 13(k) Emergency Acquisitions Involving Savings Associations of the FDI Act, with resulting dual service by a management official that would otherwise be prohibited under the Interlocks Act. This exemption may continue for up to 10 years from the

date of the acquisition, provided the FDIC has given its approval for the continuation of such service; and,

- A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (HOLA)) 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.

However, 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 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 FDIC.

The FDIC may require that any permitted interlock for a diversified savings and loan holding company 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.

- Any state savings association that has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the HOLA. This exception 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 HOLA.

Small Market Share Exemption - Section 348.5 of the FDIC Rules and Regulations

A management interlock that is prohibited by Section 348.3 is permissible if the interlock is not prohibited by Section 348.3(c) (Major Assets) and 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. Each institution is responsible for maintaining records sufficient to support its determination of eligibility for this exemption and must reconfirm that determination on an annual basis. No prior FDIC approval is required to claim the proposed small market share exemption.

General Exemption - Section 348.6 of the FDIC Rules and Regulations

The FDIC may by agency order exempt an interlock from the prohibitions in Section 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. This exemption may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound, unless a shorter expiration period is provided for in the FDIC approval.

In reviewing an application for an exemption under Section 348.6, 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:

- Primarily serves low- and moderate-income areas;
- Is controlled or managed by persons who are members of a minority group, or women;
- Is a depository institution that has been chartered for less than two years; or,
- Is deemed to be in “troubled condition” as defined in Section 303.101(c) of the FDIC Rules and Regulations.

If the FDIC grants an interlock exemption in reliance upon one of these presumptions, the interlock may continue for three years, unless otherwise provided by the FDIC in writing, unless a shorter period is otherwise established.

Change in Circumstances - Section 348.7 of the FDIC Rules and Regulations

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; 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.

A management official described in the previous paragraph 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.

Enforcement - Section 348.8 of the FDIC Rules and Regulations

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 to the Attorney General of the United States to enforce compliance. If an affiliate of an FDIC-supervised institution is subject to the primary regulation of another federal supervisory agency, then the FDIC does not administer and enforce the Interlocks Act with respect to that affiliate.

State Savings Associations

Case Managers must consult with the Washington Office (WO) on any application related to a state savings association to ensure that the appropriate procedures and timelines are followed. Refer to *Applications Overview*, Section 1.1 of these Procedures, for general information regarding filings involving state savings associations.

II. FORM OF APPLICATION

With respect to the general exemption under Section 348.6 of the FDIC Rules and Regulations, applicants should submit a letter application to the appropriate Regional Director in accordance

with Section 303.249 of the FDIC Rules and Regulations.¹ The application should include the following information:

- A description of the proposed interlock;
- A statement of the reasons as to why the interlock will not result in a monopoly or a substantial lessening of competition; and,
- If the applicant is seeking to invoke any of the presumptions set forth in Section 348.6 of the FDIC Rules and Regulations, a description of the particular presumption which is being requested and a statement of reasons why the presumption is applicable.

The FDIC may request additional information at any time during processing of the filing.

III. ACCEPTING AND PROCESSING THE APPLICATION

The following steps are specific to processing interlock applications. Case Managers should also refer to *Applications Overview*, Section 1.1 of these Procedures, for general information regarding receipt and acceptance of applications.²

1. All applications are to be entered into the appropriate internal database within three business days of receipt. In all cases, dates and comments in the record should be updated regularly to reflect the current status of the application. The application should be forwarded to Legal for review.
2. Assess the application and complete the appropriate Summary of Investigation (SOI) form.³ Retrieve the Application Summary Statement from the appropriate internal database and attach to the SOI. The SOI narrative should address:
 - The nature of the interlock;
 - The circumstances necessitating the request for an exemption;
 - An assessment of whether the circumstances comply with the criteria for granting an exemption;
 - Regional Counsel's opinion (on a case by case basis, as necessary); and,
 - Recommendation for approval or denial.
3. If an application has deficiencies that may result in a denial, the Regional Office (RO) should advise the applicant of the deficiencies to ensure that all relevant facts are obtained

¹ Section 303.249(c)(3) of the FDIC Rules and Regulations was previously in error with respect to an application being required for the small market share exemption. Because Section 348.5 of the FDIC Rules and Regulations is self-executing, there is no need to file an application with the FDIC. Instead, each depository organization is responsible for complying with the terms of the exemption and must maintain records sufficient to support its determination of eligibility for the exemption and reconfirm that determination on an annual basis. On February 8, 2019, an FDIC final rule was published that corrected the erroneous statement in Section 303.249(c)(3). 84 Federal Register 2705. The final rule also corrected an erroneous citation in Section 348.4(i). Both changes were made by means of technical amendments without notice and comment and were effective immediately upon publication.

² Case Managers should follow the general guidance and expectations for all applications regarding receipt and acceptance, recordkeeping responsibilities, DCP notifications, WO action or input, delegations, and other applicable instructions in *Applications Overview*, Section 1.1 of these Procedures.

³ Case Managers are to follow the general instructions and a detailed discussion of SOI requirements for all types of applications found in *Summary of Investigation*, Section 1.2 of these Procedures, as well as the specific instructions in this Section.

prior to making a final decision. Refer to *Denials and Disapprovals*, Section 1.3 of these Procedures, for further instruction.

4. Prepare a draft transmittal letter (for approval or denial, as appropriate).
5. If denial is recommended or the application cannot be acted on under delegated authority, submit the SOI and the draft transmittal letter to the WO for final processing. Refer to *Applications Overview*, Section 1.1 of these Procedures, for instruction regarding applications that require WO action or input.
6. Update the system of record to reflect the date of final action, the date forwarded to the WO, if applicable, hours devoted to the application, and any other required information.

IV. TIME FRAME FOR PROCESSING

Statutory: None.

RO Processing Guideline: 20 days after receipt of a substantially complete application.

V. PUBLICATION REQUIREMENT

No requirement.

VI. DELEGATED AUTHORITY

Delegations of authority regarding applications, notices and other filings are discussed in *Applications Overview*, Section 1.1 of these Procedures.

VII. REFERENCES

Section 203 of the Depository Institutions Management Interlocks Act (12 U.S.C. § 3202)

Section 303.249 and Part 348 of the FDIC Rules and Regulations

There are numerous FDIC Advisory Opinions regarding management official interlocks. See "FDIC Advisory Opinions Subject Index" for a complete list of outstanding opinions.