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The Management Interlocks Revision Act of 1988

Summary: The Management Interlocks Revision Act provides exceptions for directors of diversified savings and loan holding companies.

RESCINDED

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For Further Information Contact:
The Office of General Counsel, Corporate and Securities Division,
Wendy Laguarda, Staff Attorney,
(202) 906-6525.

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I. Summary of the Management Interlocks Revision Act of 1988.

On November 10, 1988, the Management Interlocks Revision Act of 1988 ("Interlocks Revision Act" or "Act") became law.¹ The Interlocks Revision Act makes the following five basic changes to the Interlocks Act of 1978:

- (1) The Act changes part of the definition of "affiliated" entities in a way which will allow interlocks formerly prohibited under the Interlocks Act. Management officials of "affiliated" corporations are not subject to the prescriptions of the Interlocks Act or the Interlocks Revision Act. Affiliated corporations (including depository institutions and depository holding companies) are now defined as corporations in which more than 25 percent of the voting stock of both corporations is beneficially owned in the aggregate by the same person or persons.² Previously, entities were "affiliates" if more

than 50 percent of the voting stock of both corporations was beneficially owned in the aggregate by the same person or persons.

- (2) In depository institutions with assets of \$100 million and less, interlocks involving advisory and honorary directors will be permitted;³
- (3) Interlocks that result from an acquisition of a failed or failing institution will be allowed to continue for 5 years from the date of acquisition.⁴
- (4) A new exception is created for directors of diversified savings and loan holding companies. This exception allows directors of diversified holding companies to also serve as directors of nonaffiliated depository institutions or depository holding companies, if (i) such dual service will not result in a monopoly or have an anticompetitive effect upon the financial service industry; (ii) such dual service will not lead to conflicts of interest or unsafe or unsound practices; and (iii) the diversified savings and loan holding company has furnished all the information required by the appropriate reviewing agency(s). Regulators are directed to use the standards and procedures under the Change in Savings and Loan Control Act, 12 U.S.C.

1730(q) ("Control Act")⁵ to review proposed director interlocks involving diversified savings and loan holding companies, and will have 60 days to disapprove notice of the dual service;⁶ and

- (5) Pre-1978 interlocks that were grandfathered under the 1978 Interlocks Act and set to expire November 10, 1988, are grandfathered for an additional 5 years, or until November 10, 1993.⁷

Any exceptions granted under the Interlocks Revision Act may still have to be approved under 12 U.S.C. Section 408(i) of the National Housing Act and the implementing regulations at 12 C.F.R. Section 584.9, where the interlock involves a savings and loan holding company and another savings institution or holding company.

II. New Exception for Directors of Diversified Savings and Loan Holding Companies Under Section 5 of the Interlocks Revision Act

Section 5 of the Interlocks Revision Act⁸ permits a director of a diversified savings and loan holding company also to serve as a director of a nonaffiliated depository institution or depository holding company (including a savings and loan holding company)⁹ if the diversified holding company gives 60 days' prior notice of the proposed dual service to the appropriate federal

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depository institution regulatory agencies.¹⁰ The exemption is available only where the proposed interlocking relationship involves a director of a diversified savings and loan holding company and either unaffiliated depository institution or depository holding company. The director of the diversified savings and loan holding company cannot also serve as a director of the diversified holding company's subsidiary depository institution.¹¹ A proposed dual service will be exempt from the proscriptions of the Interlocks Act unless the appropriate agency(s) determines that:

- (i) such dual service will result in a monopoly or have an anticompetitive effect upon the financial service industry;
- (ii) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or
- (iii) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information required by such agency.¹²

Once the appropriate agency(s) determines not to disapprove a requested dual service based on the above criteria, a change in circumstances in any depository institution or depository holding company that would have provided a basis for disapproval of the dual service during the review period will allow the appropriate agency(s) to terminate the dual service any time after the review period ends. A "change in circumstances" may include the loss of a holding company's diversified status or the disclosure of a conflict of interest or an unsafe or unsound practice. After the review period ends, therefore, Supervisory Agents should monitor dual services allowed under this exception for any occurrences of changes in circumstance.

All notices should include the latest H-(b)11 or H-(b)12 report that verifies the holding company's diversified status as defined by Section 584.8 of the Holding Company Regulations. If this information is not submitted by the filer, it should be requested by the staff reviewing the notice.

1 Pub. L. 100-650, 102 Stat. 3819; to be codified at 12 U.S.C. § 3201 et seq. The Interlocks Revision Act amends the Depository Institutions Management Interlocks Act of 1978 (the "Interlocks Act"). The Interlocks Act was designed to promote competition among depository institutions by prohibiting certain interlocking management relationships. 12 U.S.C. § 3201 et seq.

2 Section 2 of the Act; to be codified at 12 U.S.C. § 3201(3)(B).

3 Section 3 of the Act; to be codified at 12 U.S.C. § 3201(4).

4 Section 4 of the Act; to be codified at 12 U.S.C. § 3204.

5 Reference to the "standards and procedures of the Control Act" is made in the floor debate of H.R. 4879 (the Interlocks Revision Act), Congressional Record, H9796, October 6, 1988.

6 Section 5 of the Act; to be codified at 12 U.S.C. § 3204.

7 Section 6 of the Act; to be codified at 12 U.S.C. § 3205.

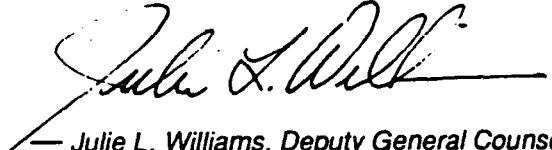
8 Section 5 of the Act; to be codified at 12 U.S.C. § 3204.

9 For purposes of the Interlocks Act, "depository institution" means a commercial bank, a savings bank, a trust company, a savings and loan association, building and loan association, a credit association, a cooperative bank, an industrial bank, or a credit union. 12 U.S.C. § 3201(1). "Depository holding company" means a bank holding company or a savings and loan holding company. 12 U.S.C. § 3201(2).

10 Section 5 of the Interlocks Revision Act; to be codified at 12 U.S.C. § 3204(8)(A).

11 See Congressional Record, H9796, October 6, 1988.

12 Section 5 of the Interlocks Revision Act; to be codified at 12 U.S.C. § 3204(8)(B).


— Julie L. Williams, Deputy General Counsel