MANAGEMENT OFFICIAL INTERLOCKS

OVERVIEW

Overview

The purpose of Management Interlocks Act (the Interlocks Act), 12 U.S.C. XX3201is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

The Interlocks Act applies to management officials of federally insured credit unions. Section 3204 of the Interlocks Act and 711.4(c) of NCUA Regulations exempts a management official of a credit union from the prohibitions of the Interlocks Act when the individual serves as a management official of another credit union. Therefore, the Interlocks Act prohibitions only apply to a management official of a credit union when that individual also serves as a management official of another type of depository organization (usually a bank or thrift).

Exemptions

Small market share exemption (§ 711.5)
A management interlock that is prohibited by § 711.3(a) or § 711.3(b) is automatically considered exempt provided:

- The interlock is not prohibited by § 711.3(c); and
- The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20% of the deposits, in each Relevant Metropolitan Statistical Area (RMSA) or community in which the depository organizations (or their depository institution affiliates) are located. The amount of deposits will be determined by reference to the most recent annual Summary of Deposits published by the FDIC. This information is available on the Internet at http://www.fdic.gov .

General exemption (§ 711.6)

- If requested in an application, NCUA may, grant a general exemption from the prohibitions in § 711.3, if NCUA finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present other safety and soundness concerns.
- In reviewing applications for an exemption, NCUA 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:
  (a) Primarily serves, low- and moderate-income areas;
  (b) Is controlled or managed by persons who are members of a minority group or women;
  (c) Is a depository institution that has been chartered for less than two years; or
  (d) Is deemed to be in ‘‘troubled condition’’ as defined in § 701.14(b)(3).

Prohibitions

Community (§ 711.3(a))
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.

RMSA (§ 711.3(b))
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 $20 million or more.

Major assets (§ 711.3(c))
A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate thereof), regardless of the location of the two depository organizations. The NCUA will adjust these thresholds, as necessary, based on year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The NCUA will announce the revised thresholds by publishing a notice in the Federal Register.

Interlocking Relationships Permitted by Statute

The prohibitions of § 711.3 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 (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq*., respectively);
- A credit union being served by a management official of another credit union;
- A depository organization that does not do business within the United States except as an incident to its activities outside the United States;
- A State-chartered savings and loan guaranty corporation;
- A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;
- 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 lasts for five years, beginning on the date the depository organization is acquired; and

- A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:
    (1) 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
    (2) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

The NCUA Board or its designee may disapprove a notice of proposed service if it finds that:

(1) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;
(2) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or
(3) The notificant failed to furnish all the information required by NCUA.

The NCUA Board or its designee may require that any interlock permitted under this paragraph 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.

Change in Circumstances

Termination (§ 711.7(a)
A management official shall terminate his or her service if a change in circumstances causes the service to become prohibited. A change in circumstances may include, but is not limited to, an increase in asset size of an organization, 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.

Transition period (§ 711.7(b)
A management official described in the paragraph above may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. NCUA may shorten this period under appropriate circumstances.

Associated Risks

Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Management Official Interlocks.

Additional Information

Additional information can be found on-line at the NCUA website at http://www.ncua.gov/ .

MANAGEMENT OFFICIALS INTERLOCKS

OPERATIONAL REQUIREMENTS

Recordkeeping

Small Market Share Exemption
Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under § 711.5(b), and must reconfirm that determination on an annual basis.

Enforcement / Liability

Administrative Enforcement Authority
NCUA administers and enforces the Interlocks Act with respect to federally insured credit unions, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act.

Penalties and Liabilities
There are no penalties or liabilities in the regulation.