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States. Moreover, in the transactions in question, there was significant participation by U.S. offices and affiliates of the foreign banks in the underwriting process. In some transactions, the foreign office at which the transactions were booked did not have any documentation on the particular transactions; all documentation was maintained in the United States office. In all cases, the U.S. offices or affiliates provided virtually all technical support for participation in the underwriting process and benefitted from profits generated by the activity.

(4) The fact that some technological and regulatory constraints on the delivery of cross-border services into the United States have been eliminated since the Regulation K definition of ''engaged in business'' was adopted in 1979 creates greater scope for banking organizations to deal with customers outside the U.S. bank regulatory framework. The definition in Regulation K, however, does not authorize foreign banking organizations to evade regulatory restrictions on securities activities in the United States by directly underwriting securities to be distributed in the United States or by using U.S. offices and affiliates to facilitate the prohibited activity. In the GLB Act, Congress established a framework within which both domestic and foreign banking organizations may underwrite and deal in securities in the United States. The GLB Act requires that banking organizations meet certain financial and managerial requirements in order to be able to engage in these activities in the United States. The Board believes the practices described above undermine this legislative framework and constitute an evasion of the requirements of the GLB Act and the Board's Regulation K. Foreign banking organizations that wish to conduct securities underwriting activity in the United States have long had the option of obtaining section 20 authority and now have the option of obtaining financial holding company status.

(d) *Conclusion.* The Board finds that the underwriting of securities to be distributed in the United States is an activity conducted in the United States, regardless of the location at which the underwriting risk is assumed and the underwriting fees are booked. Consequently, any banking organization that wishes to engage in such activity must either be a financial holding company under the GLB Act or have authority to engage in underwriting activity under section 4(c)(8) of the BHC Act (so-called ''section 20 authority''). Revenue generated by underwriting bank-ineligible securities in such transactions should be attributed to the section 20 company for those foreign banks that operate under section 20 authority.

[Reg. K, 68 FR 7899, Feb. 19, 2003]

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

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AUTHORITY: 12 U.S.C. 3201–3208; 15 U.S.C. 19.

SOURCE: 61 FR 40302, Aug. 2, 1996, unless otherwise noted.

§ 212.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is 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.

(c) *Scope.* This part applies to management officials of state member banks, bank holding companies, and their affiliates.

§ 212.2 Definitions.

For purposes of this part, the following definitions apply: