

§212.5

basis for disapproval of the interlock during the notice period.

§212.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by §212.3 is permissible, if:

(1) The interlock is not prohibited by §212.3(c); and

(2) 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 for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

[64 FR 51679, Sept. 24, 1999]

§212.6 General exemption.

(a) *Exemption.* The Board may, by agency order, exempt an interlock from the prohibitions in §212.3, if the Board finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) *Presumptions.* In reviewing an application for an exemption under this section, the Board 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:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in "troubled condition" as defined in 12 CFR 225.71.

(c) *Duration.* Unless a shorter expiration period is provided in the Board approval, an exemption permitted by

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paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the Board grants an interlock exemption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the Board in writing.

[64 FR 51679, Sept. 24, 1999]

§212.7 Change in circumstances.

(a) *Termination.* 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 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.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the state member bank or bank holding company involved in the interlock for 15 months following the date of the change in circumstances. The Board may shorten this period under appropriate circumstances.

[61 FR 40302, Aug. 2, 1996, as amended at 64 FR 51679, Sept. 24, 1999]

§212.8 Enforcement.

Except as provided in this section, the Board administers and enforces the Interlocks Act with respect to state member banks, bank holding companies, and affiliates of either, 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 and this part. If an affiliate of a state member bank or a bank holding company is subject to the primary regulation of another Federal depository organization supervisory agency, then the Board does not