

## Federal Reserve System

## § 238.91

on the application. Within 30 days after the filing of a timely request for a hearing, the Board will notify the sav- ings and loan holding company or per- son in writing of its decision to grant or deny the hearing request. If the Board grants the request for a hearing, it will order a hearing to be com- menced within 60 days of the issuance of the notification. Upon the request of a party, the Board may at its discre- tion order a later hearing date.

(c) *Hearing procedures.* The following procedures apply to hearings under this subpart.

(1) The hearing shall be held in Wash- ington, DC, or at another designated place, before a presiding officer des- igned by the Board.

(2) An applicant may elect in writing to have the matter determined on the basis of written submissions, rather than an oral hearing.

(3) The parties to the hearing are En- forcement Counsel and the applicant.

(4) The provisions of §§ 263.2, 263.4, 263.6 through 263.12, and 263.16 of this chapter apply to the hearing.

(5) Discovery is not permitted.

(6) A party may introduce relevant and material documents and make oral argument at the hearing.

(7) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses must be sworn, unless otherwise di- rected by the presiding officer. The pre- siding officer may ask questions of any witness. Each party may cross-examine any witness presented by the opposing party. The Board will furnish a tran- script of the proceedings upon an appli- cant's request and upon the payment of the costs of the transcript.

(8) The presiding officer has the power to administer oaths and affirma- tions, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas *duces tecum*. If the presentation of witnesses is per- mitted, the presiding officer may re- quire the attendance of witnesses from any state, territory, or other place sub- ject to the jurisdiction of the United States at any location where the pro-

ceeding is being conducted. Witness fees are paid in accordance with sec- tion 263.14 of this chapter.

(9) Upon the request of a party, the record will remain open for five busi- ness days following the hearing for ad- ditional submissions to the record.

(10) Enforcement Counsel has the burden of proving a *prima facie* case that a person is prohibited from a posi- tion under section 19(e) of the FDIA. The applicant has the burden of proof on all other matters.

(11) The presiding officer must make recommendations to the Board, where possible, within 20 days after the last day for the parties to submit additions to the record.

(12) The presiding officer must for- ward his or her recommendation to the Board who shall promptly certify the entire record, including the presiding officer's recommendations. The Board's certification will close the record.

(d) *Decision.* After the certification of the record, the Board will notify the parties of its decision by issuing an order approving or denying the applica- tion.

(1) An approval order will require fi- delity bond coverage for the position to the same extent as similar positions with the savings and loan holding com- pany. The approval order may include such other conditions as may be appro- priate.

(2) A denial order will include a sum- mary of the relevant factors under § 238.88(b).

### Subpart J—Management Official Interlocks

#### § 238.91 Authority, purpose, and scope.

(a) *Authority.* This subpart 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 Inter- locks Act and this subpart 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 anti- competitive effect.

(c) *Scope.* This subpart applies to management officials of savings and

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loan holding companies, and their affiliates.

**§ 238.92 Definitions.**

For purposes of this subpart, the following definitions apply:

(a) *Affiliate*. (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. “Immediate family” means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a savings and loan holding company based on common ownership does not exist if the Board determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the Board considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person’s ownership of shares in the other organization.

(b) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(c) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(d) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city,

town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(e) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(f) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a home- stead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(g) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(h) *Depository organization* means a depository institution or a depository holding company.

(i) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(j) *Management official*. (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of \$100 million or more;

(iii) A senior executive officer as that term is defined in § 225.71(c) of this chapter;

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (j)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;