

§ 26.3

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(p) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

[61 FR 40300, Aug. 2, 1996, as amended at 64 FR 51678, Sept. 24, 1999; 72 FR 1276, Jan. 11, 2007; 73 FR 22251, Apr. 24, 2008; 79 FR 28399, May 16, 2014]

§ 26.3 Prohibitions.

(a) *Community*. 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.

(b) *RMSA*. 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 \$50 million or more.

(c) *Major assets*. A management official of a depository organization with total assets exceeding \$2.5 billion (or any affiliate of such an organization) 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 of such an organization), regardless of the location of the two depository organizations. The OCC will adjust these thresholds, as necessary, based on the 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 OCC will announce the revised thresholds by publishing a final rule without notice and comment in the FEDERAL REGISTER.

[61 FR 40300, Aug. 2, 1996, as amended at 64 FR 51678, Sept. 24, 1999; 72 FR 1276, Jan. 11, 2007]

12 CFR Ch. I (1–15 Edition)

§ 26.4 Interlocking relationships permitted by statute.

The prohibitions of § 26.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) 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;

(b) 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) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) 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;

(g) 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

(h)(1) 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:

(i) 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

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The OCC may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anti-competitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the OCC.

(3) The OCC may require that any interlock permitted under this paragraph (h) 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.

(i) Any savings association that has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the HOLA, as provided by section 205(9) of the Interlocks Act (12 U.S.C. 3204(9)).

(j) A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with a Federal savings association for a period of up to 10 years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

[61 FR 40300, Aug. 2, 1996, as amended at 79 FR 28399, May 16, 2014]

§ 26.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 26.3 is permissible, if:

(1) The interlock is not prohibited by § 26.3(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 51678, Sept. 24, 1999]

§ 26.6 General exemption.

(a) *Exemption.* The OCC may by order issued following receipt of an application, exempt an interlock from the prohibitions in § 26.3 if the OCC 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 OCC 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 5.51(c)(6).

(c) *Duration.* (1) Unless a specific expiration period is provided in the OCC approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in either:

(i) A monopoly or substantial lessening of competition; or

(ii) An unsafe or unsound condition.

(2) If the OCC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OCC in writing.

[64 FR 51678, Sept. 24, 1999, as amended at 79 FR 28399, May 16, 2014]