

## Federal Reserve System

## §212.1

### §211.603 Commodity swap transactions.

For text of interpretation relating to this subject, see §208.128 of this chapter.

[56 FR 63408, Dec. 4, 1991]

### §211.604 Data processing activities.

(a) *Introduction.* As a result of a recent proposal by a bank holding company to engage in data processing activities abroad, the Board has considered the scope of permissible data processing activities under Regulation K (12 CFR part 211). This question has arisen as a result of the fact that §211.5(d)(10) of Regulation K does not specifically indicate the scope of data processing as a permissible activity abroad.

(b) *Scope of data processing activities.* (1) Prior to 1979, the Board authorized specific banking organizations to engage in data processing activities abroad with the expectation that such activity would be primarily related to financial activities. When Regulation K was issued in 1979, data processing was included as a permissible activity abroad. Although the regulation did not provide specific guidance on the scope of this authority, the Board has considered such authority to be coextensive with the authority granted in specific cases prior to the issuance of Regulation K, which relied on the fact that most of the activity would relate to financial data. Regulation K does not address related activities such as the manufacture of hardware or the provision of software or related or incidental services.

(2) In 1979, when the activity was included in Regulation K for the first time, the data processing authority in Regulation K was somewhat broader than that permissible in the United States under Regulation Y (12 CFR part 225) at that time, as the Regulation K authority permitted limited non-financial data processing. In 1979, Regulation Y authorized only financial data processing activities for third parties, with very limited exceptions. By 1997, however, the scope of data processing activities under Regulation Y was expanded such that bank holding companies are permitted to derive up

to 30 percent of their data processing revenues from processing data that is not financial, banking, or economic. Moreover, in other respects, the Regulation Y provision is broader than the data processing provision in Regulation K.

(3) In light of the fact that the permissible scope of data processing activities under Regulation Y is now equal to, and in some respects, broader than the activity originally authorized under Regulation K, the Board believes that §211.5(d)(10) should be read to encompass all of the activities permissible under §225.28(b)(14) of Regulation Y. In addition, the limitations of that section would also apply to §211.5(d)(10).

(c) *Applications.* If a U.S. banking organization wishes to engage abroad in data processing or data transmission activities beyond those described in Regulation Y, it must apply for the Board's prior consent under §211.5(d)(20) of Regulation K. In addition, if any investor has commenced activities beyond those permitted under §225.28(b)(14) of Regulation Y in reliance on Regulation K, it should consult with staff of the Board to determine whether such activities have been properly authorized under Regulation K.

[Reg. K, 64 FR 58781, Nov. 1, 1999]

## PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

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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

## §212.2

## 12 CFR Ch. II (1–1–03 Edition)

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 anti-competitive 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:

(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 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 and 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 12 CFR 225.71(a);

(iv) A branch manager;