

Federal Deposit Insurance Corporation

§ 349.1

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 FDIC 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 § 303.101(c).

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

(d) *Procedures.* Procedures for applying for an exemption under this section are set forth in 12 CFR 303.250.

[64 FR 51680, Sept. 24, 1999]

§ 348.7 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 insured nonmember bank involved in the interlock for 15 months following the date of the change in circumstances. The FDIC may shorten this period under appropriate circumstances.

[61 FR 40305, Aug. 2, 1996, as amended at 64 FR 51680, Sept. 24, 1999]

§ 348.8 Enforcement.

Except as provided in this section, the FDIC administers and enforces the Interlocks Act with respect to insured nonmember banks and their affiliates 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 an insured nonmember bank is subject to the primary regulation of another federal depository organization supervisory agency, then the FDIC does not administer and enforce the Interlocks Act with respect to that affiliate.

PART 349—REPORTS AND PUBLIC DISCLOSURE OF INDEBTEDNESS OF EXECUTIVE OFFICERS AND PRINCIPAL SHAREHOLDERS TO A STATE NONMEMBER BANK AND ITS CORRESPONDENT BANKS

Sec.

349.1 Purpose and scope.

349.2 Definitions.

349.3 Reports by executive officers and principal shareholders.

349.4 Disclosure of indebtedness of executive officers and principal shareholders.

AUTHORITY: Sec. 2 (9 "Seventh" and "Tenth"), Pub. L. 797, 64 Stat. 881, as amended by sec. 309, Pub. L. 95-630, 92 Stat. 3677 (12 U.S.C. 1819 "Seventh" and "Tenth"); secs. 428(b) and 429, Pub. L. 97-320, 96 Stat. 1526, 1527.

SOURCE: 48 FR 57114, Dec. 28, 1983, unless otherwise noted.

§ 349.1 Purpose and scope.

Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) (*BHCA Amendments*) prohibits—(1) preferential lending by a bank to executive officers, directors, and principal shareholders of another

bank when there is a correspondent account relationship between the banks, or (2) the opening of a correspondent account relationship between banks when there is a preferential extension of credit by one of the banks to an executive officer, director, or principal shareholder of the other bank. Section 106(b)(2) also imposes requirements on executive officers and principal shareholders to submit reports on their indebtedness to correspondent banks to the board of directors of their bank. Section 7(k) of the Federal Deposit Insurance Act (12 U.S.C. 1817(k)) and section 106(b)(2)(G)(ii) of the BHCA Amendments (12 U.S.C. 1972(2)(G)(ii)) authorize the Federal banking agencies to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or an executive officer or principal shareholder thereof concerning extensions of credit by the bank or its correspondent banks to any of the reporting bank's executive officers or principal shareholders, or the related interests of such persons. This part 349 implements the authorization of the latter sections to require such reporting and disclosure by insured State nonmember banks and their executive officers and principal shareholders.

§ 349.2 Definitions.

For the purposes of the reporting and disclosure requirements of this part 349, the following definitions apply:

(a) *Bank* has the meanings provided in (1) 12 U.S.C. 1841(c), and includes a branch or agency of a foreign bank, or a commercial lending company controlled by a foreign bank or by a company that controls a foreign bank, where the branch or agency is maintained in a State of the United States or in the District of Columbia or the commercial lending company is organized under State law, and (2) 12 U.S.C. 1972(2)(H)(i). Notwithstanding the foregoing, with respect to disclosures made pursuant to paragraph (a)(1) of § 349.4 and with respect to copies of requests maintained pursuant to paragraph (c) of § 349.4, *bank* shall mean *State nonmember bank* as defined in 12 U.S.C. 1813(b), including a *mutual savings bank* as defined in 12 U.S.C. 1813(f).

(b) *Capital stock and unimpaired surplus* shall have the meaning provided in § 215.2(f) of Federal Reserve Board Regulation O, subpart A (12 CFR 215.2(f)). Notwithstanding the foregoing, with respect to *mutual savings banks*, the term *total equity capital* found in 12 CFR 215.2(f) shall mean *total surplus accounts*.

(c) *Company, control of a company or bank, executive officer,¹ extension of credit, immediate family, and person* have the meanings provided in §§ 215.2 and 215.3 of subpart A of Federal Reserve Board Regulation O (12 CFR 215.2 and 215.3). All references to the term *member bank* in §§ 215.2 and 215.3 shall be deemed to refer to an insured State nonmember bank for the purposes of this part 349.

(d) *Correspondent account* is an account that is maintained by an insured State nonmember bank with another bank for the deposit or placement of funds. A correspondent account does not include:

(1) Time deposits at prevailing market rates; or

(2) An account maintained in the ordinary course of business solely for the purpose of effecting Federal funds transactions at prevailing market rates or making Eurodollar placements at prevailing market rates.

(e) *Correspondent bank* means a bank that maintains one or more correspondent accounts for an insured State nonmember bank during a calendar year that in the aggregate exceed an average daily balance during that year of \$100,000 or one-half of one percent of the insured State nonmember bank's total deposits (as reported in its first Consolidated Report of Condition during that calendar year), whichever amount is smaller.

(f) *Indebtedness* means an extension of credit, but does not include:

(1) Commercial paper, bonds, debentures and other types of marketable securities issued in the ordinary course of business; or

¹For the purposes of this part 349, executive officers of an insured State nonmember bank do not include an executive officer of a bank holding company of which such bank is a subsidiary or of any other subsidiary of the bank holding company, unless the executive officer is also an executive officer of the insured State nonmember bank.