Interlocks Act

Summary Conclusion: Termination of a management interlock permitted under § 206(b) is not required when a holding company loses its diversified status due to fluctuations of income.

Date: December 19, 2002

Subjects: Savings and Loan Holding Companies./Change in Control

P-2002-9

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Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6000

December 19, 2002

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Re: [ ]—Interlocks Act

Dear [ ]:

In your letters of May 1, May 17 and December 16, 2002, you request confirmation on behalf of your client, [ ] (Bank), that four directors of [ ] (Holding Company) and one director of [ ] (together, the Companies) may continue to serve as management officials of the Companies despite the Holding Company's recent loss of diversified status. The management officials in question served prior to the Companies' acquisition of the Bank and were permitted, by § 206(b) of the Depository Institution Management Interlocks Act (Interlocks Act),[1] to remain on the boards of the Companies after the Holding Company became a diversified savings and loan holding company.

Section 206(b) of the Interlocks Act clearly provides that management officials, such as the individuals described in your letter, who serve on the board of a company that *becomes* a diversified savings and loan holding company may continue service after acquisition of the savings association regardless of any Interlocks Act prohibition that might otherwise apply.[2]

Due to a decline in earnings for the year ending December 31, 2001, the Holding Company does not now qualify for diversified status under 12 C.F.R. § 583.11, and you have requested confirmation of the continued permissibility of the management officials' interlocking service under § 206(b).

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1 12 U.S.C. § 3205(b).

2 The regulation that formerly implemented § 206(b), 12 C.F.R. § 563f.4(c) (1984) (later designated subsection (d)), also applied the exemption to any subsidiary of a diversified savings and loan holding company. The regulation was eliminated as an unnecessary repetition of the statute in 1996, but no change in policy towards subsidiaries was intended by this action. *See* 48 Fed. Reg. 50,296 (November 1, 1983) and 61 Fed. Reg. 40,293 (August 2, 1996).

As you discuss in your letters, when Congress reexamined § 206(b) of the Interlocks Act in 1988, 1994 and 1996 to revise the time period for the exemption, it found no need to impose a requirement that the company claiming the exemption remain a diversified holding company. Even during the period between the 1994 and 1996 amendments to the Interlocks Act, when Congress required the banking agencies to review permitted interlocks for characteristics relating to necessity of the individual's service and absence of anticompetitive effect, neither the statute nor regulations required demonstration of continuing diversified status. Under this regulatory and statutory scheme, neither OTS nor its predecessor, the Federal Home Loan Bank Board, has required termination of a management interlock permitted under § 206(b) because a holding company has lost its diversified status due to fluctuations of income. Accordingly, in our view, the service of management officials who are within the § 206(b) exemption does not become prohibited if the company in question loses its diversified status.

If you have any additional questions about this matter, please contact David J. Bristol, Esq., (202) 906-6461.

Sincerely,

John E. Bowman
Deputy Chief Counsel