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Alert

Federal Banking Agencies Increase Thresholds for Management Interlocks Act Rules

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On Oct. 2, 2019, the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board") and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "Agencies") issued a final rule increasing the thresholds in the Depository Institution Management Interlocks Act's ("DIMIA") major assets prohibition for management interlocks.

The major assets prohibition bars a management official of a depository organization[1] (or an affiliate thereof) with total assets above $2.5 billion from concurrently serving as a management official of an unaffiliated depository organization (or an affiliate thereof) with total assets above $1.5 billion. Management officials are defined as follows:

> The [A]gencies' rules define 'management official' to include directors; advisory or honorary directors of a depository institution with total assets of $100 million or more; 'senior executive officers,' as that term is defined in the [A]gencies' rules regarding notice of addition or change of directors and senior executive officers; branch managers; trustees of depository organizations under the control of trustees; and any persons who have a 'representative or nominee' (as the [A]gencies' rules define that term) serving in any of the capacities described above. 12 CFR 26.2(j)(1) (OCC); 12 CFR 212.2(j)(1) and 238.92(j)(1) (Board); and 12 CFR 348.2(k)(1) (FDIC).[2]

In consideration of the growth and consolidation of the banking industry since 1996, when those thresholds were established, both thresholds have now been raised to $10 billion in total assets. Under the DIMIA, individuals are permitted to serve as management officials of multiple depository organizations that are not subject to the major assets prohibition, unless the two institutions have offices in the same geographic area.[3]

The major assets prohibition was created to foster competition among larger institutions. This change is intended to provide relief for smaller depository organizations that pose a lesser competitive risk to the

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[1] Defined in the Agencies' rules as a depository institution or depository holding company. For more detailed definitions, see 12 CFR 26.2 (OCC); 12 CFR 212.2 and 238.92 (Board); and 12 CFR 348.2 (FDIC).

[2] *See* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20191002a1.pdf.

[3] DIMIA has two other prohibitions: (1) A management official cannot serve at two or more unaffiliated depository organizations with offices in the same "community," i.e., city, town, village and contiguous and adjacent cities, towns or villages (*See* 12 CFR 26.2(c) (OCC); 12 CFR 212.2(c) and 238.92(c) (Board); and 12 CFR 348.2(c) (FDIC)); and (2) A management official cannot serve at two or more unaffiliated depository organizations with offices in the same "relevant metropolitan statistical area" (*See* 12 CFR 26.2(m) (OCC); 12 CFR 212.2(m) and 238.92(m) (Board); and 12 CFR 348.2(c) (FDIC)), if each institution has total assets of $50 million or more.

U.S. banking market. It eliminates the need for smaller depository organizations to request exemptions[4] from the rule which, in turn, should make it easier for such institutions to find qualified directors.

The Agencies also considered that the final rule is consistent with current thresholds used by Congress and the Agencies to distinguish between larger and smaller institutions. The $10-billion threshold also provides a clear, easily applicable standard to identify institutions subject to the rule.

The rule will be effective immediately upon publication in the Federal Register.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[4] Exemptions may be granted pursuant to 12 U.S.C. 3207 when they will “not result in a monopoly or substantial lessening of competition.”