Aldrich & Bonnefin

The Banking & Business Law Firm

Corporate Governance Update

JANUARY 2019

BANKING AGENCIES PROPOSE TO UPDATE MANAGEMENT INTERLOCK RULES

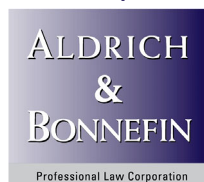
Last month, the FDIC, FRB and OCC issued a proposed rule that would increase the major assets prohibition thresholds under the Depository Institution Management Interlocks Act (Interlocks Act). Overall, the Interlocks Act's purpose is to prohibit a "management official" (defined as a financial institution's director, officer or branch manager) from serving two nonaffiliated depository organizations in situations where the management interlock would likely have an anticompetitive effect.

There are three specific prohibitions to fulfill the Interlocks Act's purpose, one of which is the major assets prohibition. In general, the major assets prohibition of the Interlocks Act prohibits a management official of a depository organization with total assets exceeding $2.5 billion from serving at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion, regardless of the two depository organizations' locations. The agencies propose to raise the major assets prohibition to $10 billion to account for changes in the U.S. banking market since establishing the thresholds back in 1996.

In lieu of this straight increase to $10 billion for both thresholds, the agencies also propose three alternative approaches which would be based on market changes or inflation as outlined below.

Thresholds adjustment based on percentage of the number of banking organizations covered by prohibition. Under this alternative, the agencies propose to adjust the major assets prohibition thresholds so that approximately the same percentage of the total number of banking organizations covered by the thresholds as of Q4 1996 – the year of establishing the current $1.5 billion and $2.5 billion major assets prohibition thresholds – would be covered as of Q4 2017. This alternative would increase the current thresholds of $1.5 billion and $2.5 billion to $7.9 billion and $11.8 billion, respectively, resulting in exempting an additional 702 depository organizations from the major assets prohibition.

Thresholds adjustment based on asset growth. Under this alternative, the agencies would adjust the major assets prohibition thresholds to reflect the rate of asset growth for depository organizations over the period between Q4 1996 and Q4 2017. In general, this approach would use total asset growth as a market change measure. Under this approach, the agencies would multiply the current major assets prohibition thresholds by the rate of asset growth to account for market changes for depository organizations. This approach would increase the current assets thresholds from $1.5 billion and $2.5 billion to $5.3 billion and $8.8 billion, respectively.



The Banking & Business Law Firm

www.ablawyers.com 949.474.1944

18500 Von Karman Ave., Suite 300, Irvine, California 92612

Authors: Mark E. Aldrich, Esq. and Joel N. Cook, Esq.

Thresholds adjustment increased based on inflation. Finally, under this proposed alternative approach, the agencies would adjust the major assets prohibition thresholds based on changes in the CPI-W average from year to year. Adjusting the asset thresholds based on inflation from Q4 1996 to Q4 2017 would increase the major assets prohibition thresholds from $1.5 billion and $2.5 billion to $2.3 billion and $3.9 billion, respectively.

There will be a 60-day comment period after publishing the proposal in the Federal Register.

Copyright © 2018
Aldrich & Bonnefin, PLC
All Rights Reserved