



**TO:** Board of Directors

**FROM:** Sandra L. Thompson  
Director

Sara Kelsey  
General Counsel

**SUBJECT:** Statement of Policy for Section 19 of the Federal Deposit Insurance Act

## **EXECUTIVE SUMMARY**

Section 19 of the Federal Deposit Insurance Act (FDI Act) prohibits individuals who have been convicted of certain crimes from owning or participating in the affairs of an insured depository institution without the prior written consent of the FDIC. The FDIC's Statement of Policy for Section 19 of the FDI Act (SOP) was enacted in November 1998 to provide the public with guidance relating to Section 19, and the application thereof.

The Financial Services Regulatory Relief Act of 2006<sup>1</sup> modified Section 19 to address institution-affiliated parties (IAPs) affiliated with Bank Holding Companies and Savings and Loan Holding Companies. The Division of Supervision and Consumer Protection (DSC) and the Legal Division (Legal) propose to introduce a technical change to the SOP that will provide the public with a better understanding of the FDIC's scope given the Federal Reserve Systems' (FRS) and Office of Thrift Supervision's (OTS) new authority under Section 19. DSC and Legal recommend adding a footnote to identify the change in the statute and to alert individuals who may be subject to the prohibition in Section 19 to the potential additional requirement if they are seeking employment at a bank or savings and loan holding company.

## **RECOMMENDATION**

DSC and Legal request that the Board of Directors authorize publication of the attached *Federal Register* to implement the necessary technical and conforming amendments to the FDIC's SOP. The clarifying change would be in the form of a footnote at the end of the first sentence in the first paragraph under section A, *Scope of Section 19*. The footnote would read:

*"This Statement of Policy applies only to insured depository institutions and their institution-affiliated parties. In addition to the requirement to file an application with the FDIC, such individuals may also need to comply with any filing requirements established by the Board of Governors of the Federal Reserve System under 12 U.S.C. §1829(d), in the case of a bank*

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<sup>1</sup> Pub.L. 109-351, §710

*holding company, or with the Office of Thrift Supervision under 12 U.S.C. §1829(e), in the case of a savings and loan holding company.”*

Staff is presenting this recommendation to the Board of Directors, as DSC and Legal do not have the delegated authority to change an existing SOP.

## **BACKGROUND**

Section 19 of the FDI Act prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (covered offenses); or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from engaging in the following activities:

- becoming or continuing as an institution-affiliated party (IAP);
- owning or controlling, directly or indirectly, an insured depository institution (insured institution); or
- participating, directly or indirectly, in the conduct of the affairs of an insured institution.

In addition, the law forbids an insured institution from permitting such a person to engage in any conduct, or to continue any relationship prohibited by Section 19.

As noted, Section 19 was modified to address IAPs affiliated with bank holding companies and savings and loan holding companies. Specifically, the section was modified to provide the Board of Governors of the FRS with the authority to provide exemptions to covered individuals employed or seeking employment with a bank holding company and any organization organized and operated under Section 25A of the Federal Reserve Act or operating under Section 25 of the Federal Reserve Act. Similarly, the section was modified extending the authority to the Director of the OTS to provide exemptions to covered individuals employed or seeking employment with a thrift holding company.

## **ANALYSIS OF PROPOSED CHANGE**

The purpose of the proposed change is to recognize that the FRS and OTS now have authority relative to IAPs participating in the affairs at the holding company level which may be subject to the prohibitions of Section 19. However, the FDIC recognizes that there may be individuals at the holding company level who have influence over, or participate in the affairs of, an insured depository institution subsidiary of a given holding company. In those instances, the FDIC still has authority to consider the participation of such an individual if he/she is subject the prohibitions set forth in Section 19. The clarifying footnote is meant to remind the public that, in addition to the filing requirement with the FDIC, there may be an additional filing requirements established by the FRS or the OTS.

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