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**FEDERAL DEPOSIT INSURANCE CORPORATION**

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

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

**AGENCY:** Federal Deposit Insurance Corporation (“FDIC”).

**ACTION:** Addition of a clarifying footnote.

**SUMMARY:** On October 13, 2006, Section 19 of the Federal Deposit Insurance Act was modified to address institution-affiliated parties participating in the affairs of Bank Holding Companies and Savings and Loan Holding Companies. The FDIC proposes to introduce a footnote to its Statement of Policy for Section 19 of the Federal Deposit Insurance Act (“SOP”) that will provide the public with a better understanding of the FDIC’s scope given the Federal Reserve System’s and Office of Thrift Supervision’s new authority under Section 19. The FDIC is not seeking comment on the footnote clarifying the SOP, and the change is effective upon publication in the Federal Register.

**DATES:** The change to the policy statement is effective **[INSERT DATE OF FEDERAL REGISTER PUBLICATION]**.

**FOR FURTHER INFORMATION CONTACT:**

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 19 of the Federal Deposit Insurance Act prohibits, without the prior written consent of the FDIC, a person convicted of any criminal offense involving dishonesty or breach of trust or money laundering, or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, from becoming or continuing as an institution-affiliated party (“IAP”), owning or controlling, directly or indirectly, an insured depository institution (“insured institution”), or otherwise participating, directly or indirectly, in the conduct of the affairs of the 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. The FDIC’s 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 IAPs affiliated with Bank Holding Companies and Savings and Loan Holding Companies. The FDIC has amended the SOP to introduce a technical change that will provide the public with a better understanding of the FDIC’s scope given the FRS’ and OTS’ new authority under Section 19.

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<sup>1</sup> Pub.L. 109-351, §710

## **II. Clarifying Amendment to the Statement of Policy**

### **FDIC Statement of Policy for Section 19 for the FDI Act**

The SOP is amended by adding a footnote at the end of the first sentence of the first paragraph of subsection A. *Scope of Section 19*:

#### *A. Scope of Section 19*

Section 19 covers institution-affiliated parties, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an insured institution.<sup>1</sup>

Therefore, all employees of an insured institution fall within the scope of Section 19. In addition, those deemed to be de facto employees as determined by the FDIC based upon generally applicable standards of employment law, will also be subject to Section 19.

Whether other persons who are not institution-affiliated parties are covered depends upon their degree of influence or control over the management or affairs of an insured institution. For example, Section 19 would not apply to persons who are merely employees of an insured institution's holding company, but would apply to its directors and officers to the extent that they have the power to define and direct the policies of the insured institution. Similarly, directors and officers of affiliates, subsidiaries or joint ventures of an insured institution or its holding company will be covered if they are in a position to influence or control the management or affairs of the insured institution.

Those who exercise major policymaking functions of an insured institution would be deemed participants in the affairs of that institution and covered by Section 19.

Typically, an independent contractor does not have a relationship with the insured institution other than the activity for which the insured institution has contracted. Under

12 U.S.C. 1813(u), independent contractors are institution-affiliated parties if they knowingly or recklessly participate in violations, unsafe or unsound practices or breaches of fiduciary duty which are likely to cause significant loss to, or a significant adverse effect on, an insured institution. In terms of participation, an independent contractor who influences or controls the management or affairs of the insured institution would be covered by Section 19. In addition, “person” for purposes of Section 19 means an individual, and does not include a corporation, firm or other business entity.

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<sup>1</sup> 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 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.

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By Order of the Board of Directors.

Dated at Washington, DC, the \_\_\_\_\_ day of \_\_\_\_\_, 2007

FEDERAL DEPOSIT INSURANCE CORPORATION

Executive Secretary  
(SEAL)