EXHIBIT C **[6714-01-P]**

FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY: Federal Deposit Insurance Corporation (FDIC)

ACTION: Modifications to Statement of Policy for Section 19 of the Federal Deposit Insurance Act

SUMMARY: The FDIC originally promulgated the Statement of Policy for Section 19 of the Federal Deposit Insurance Act (SOP) in December 1998. The FDIC, in 2007, issued a clarification to the SOP based on the 2006 amendment to Section 19 of the Federal Deposit Insurance Act which addressed institution-affiliated parties (IAPs) participating in the affairs of Bank Holding Companies, or Savings and Loan Holding Companies. The FDIC, in 2011, clarified the SOP as to: (i) the applicability of section 19 on bank and thrift holding company institution-affiliated parties; (ii) the term "complete expungement;" and (iii) the factors for considering de minimis convictions. The FDIC is restating the full SOP, including previous changes, and modifying what the FDIC views as the definition of *de minimis* offenses.

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

FOR FURTHER INFORMATION CONTACT:

Martin P. Thompson, Review Examiner (202) 898-6767, in the Division of Risk Management Supervision; or Michael P. Condon, Counsel, (202) 898-6536, in the Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

Section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829, (FDI 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 (covered offenses), 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 published in December 1998 (63 Fed. Reg. 66177) to provide the public with guidance relating to Section 19, and the application thereof.

The Financial Services Regulatory Relief Act of 2006, Pub.L. 109-351, §710, modified Section 19 to include coverage of IAPs of Bank Holding Companies, and Savings and Loan Holding Companies. In response to this amendment of the statute, the FDIC amended the SOP by including a footnote which noted the authority of the Board

of Governors of the Federal Reserve System and the Office of Thrift Supervision's in regard to bank and savings and loan holding companies under Section 19. (72 Fed. Reg. 73823, December 28, 2007 with correction issued at 73 Fed. Reg. 5270, January 29, 2008). In May of, 2011 the FDIC subsequently eliminated the footnote added in December of 2007 and incorporated the change directly into the text of the SOP. It also noted the coming transfer of authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-202, §312 (2010) (Dodd-Frank) of savings and loan holding company jurisdiction to the Board of Governors of the Federal Reserve System. In addition, the FDIC made certain clarifications regarding the scope of the *de minimis* exception to filing the requirement to file an application for the FDIC's consent under Section 19. (76 Fed. Reg. 28031, May 13, 2011). The FDIC now proposes to amend the SOP to address two *de minimis* exception factors regarding the potential fine and the jail time served.

The SOP, as revised herein, will be on the FDIC's website at www.fdic.gov.

II. Modifications to the Statement of Policy

The SOP will be clarified in the following areas:

B. Standards for Determining Whether an Application Is Required

De minimis Offenses

The 1998 SOP created a category of covered offenses that it would deem to be *de minimis* due to the minor nature of the offenses and the low risk that the covered party would pose to an insured institution based on the conviction. Based on its experience in

the processing and approving of numerous applications involving such minor crimes, the FDIC has recognized a category of offenses to which it would grant blanket approval under section 19 without the need to file an application. The FDIC is modifying in two ways which offenses fall within the *de minimis* offenses exception of the SOP.

The FDIC has received a number of Section 19 individual waiver applications where the filing did not meet one of the *de minimis* factors regarding the maximum potential fine or the jail time served. Experience has shown that a significant number of applications processed by the FDIC for approval involved individuals covered by Section 19 who are usually one time offenders for minor infractions, who may have served some limited jail time, and for which the jurisdiction could have impose fines of $2,500 or less. Adjusting the *de minimis* exceptions to permit an increase in the potential fine to $2,500 or less and a limited number days of actual jail time served for minor infractions appears just and reasonable. Additionally, we have seen numerous cases where minimal, actual jail time was included as part of the sentence, which has not been a significant factor in our decision.

First, currently under that portion of the *de minimis* exception to filing an application, the maximum potential fine is $1,000 or less. The FDIC is modifying this aspect of the SOP so that this element of the *de minimis* exception to filing an application will apply if the maximum potential fine is $2,500 or less.

Second, currently, the *de minimis* exception requires that no jail time was served as part of the sentencing or conviction. The FDIC is modifying this aspect of the SOP

so that the de minimis offenses provision will apply if the individual has not served more than three (3) days of actual jail time.

The change to the maximum amount of the potential fine will apply to both convictions and program entries. Similarly, the change as to actual jail time will apply to both but is unlikely to impact program entries since no actual jail time is usually involved. These proposed changes should not have a material impact on the Deposit Insurance Fund, provide immediate relief to those currently covered by Section 19, pose no significant additional risk to insured depository intuitions, and maintain the integrity of Section 19.

III. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995 , 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. These modifications to the Statement of Policy for Section 19 of the FDI Act include clarification of reporting requirements in an existing FDIC information collection, entitled *Application Pursuant to Section 19 of the Federal Deposit Insurance Act* (3064-0018) that should result in a decrease in the number of applications filed. Specifically, the revised policy statement broadens the application of the *de minimis* exception to filing an application due to the minor nature of the offenses and the low risk that the covered party would pose to an insured institution based on the conviction or program entry. By modifying these provisions, the FDIC

believes that there will be a reduction in the submission of applications in situations where blanket approval has been granted by virtue of the de minimis offenses section of the policy statement. This change in burden will be submitted to OMB as a non-significant, nonmaterial change to an existing information collection. The estimated new burden for the information collection is as follows:

Title: "Application Pursuant to Section 19 of the Federal Deposit Insurance Act".

Affected Public: Insured depository institutions and individuals.

OMB Number: 3064-0018.

Estimated Number of Respondents: 26.

Frequency of Response: On occasion.

Average Time per Response: 16 hours.

Estimated Annual Burden: 416 *hours*.

Comments are invited on:

(a) whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used;

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

(d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

All comments will become a matter of public record. Comments may be submitted to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/propose.html*

• *E-mail:* comments@fdic.gov. Include the name and number of the collection in the subject line of the message.

• *Mail:* Leneta Gregorie (202–898–3719), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comment may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. All comments should refer to the ''Application Pursuant to Section 19 of the Federal Deposit Insurance Act,'' OMB No. 3064-0018.

IV. Changes to FDIC Statement of Policy for Section 19

For the reasons set forth above, the entire text of the FDIC Statement of Policy for Section 19 is stated as follows. The revised text, as identified in this notice, is located in *B. Standards for Determining Whether an Application Is Required*, Paragraph (5):

FDIC STATEMENT OF POLICY FOR SECTION 19 OF THE FDI ACT

Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) prohibits, without the prior written consent of the Federal Deposit Insurance Corporation (FDIC), a person convicted of any criminal offense involving dishonesty or 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 becoming or continuing as an institution-affiliated party, 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. It imposes a ten-year ban against the FDIC's consent for persons convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the FDIC and court approval.

Section 19 imposes a duty upon the insured institution to make a reasonable inquiry regarding an applicant's history, which consists of taking steps appropriate under the circumstances, consistent with applicable law, to avoid hiring or permitting participation in its affairs by a person who has a conviction or program entry for a covered offense. The FDIC believes that at a minimum, each insured institution should establish a screening process which provides the insured institution with information concerning any convictions or program entry pertaining to a job applicant. This would include, for example, the completion of a written employment application which requires a listing of all convictions and program entries. The FDIC will look to the circumstances

of each situation to determine whether the inquiry is reasonable. Upon notice of a conviction or program entry, an application seeking the FDIC's consent prior to the person's participation must be filed.

Section 19 applies, by operation of law, as a statutory bar to participation absent the written consent of the FDIC. The purpose of an application is to provide the applicant an opportunity to demonstrate that, notwithstanding the bar, a person is fit to participate in the conduct of the affairs of an insured institution without posing a risk to its safety and soundness or impairing public confidence in that institution. The burden is upon the applicant to establish that the application warrants approval.

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. This Statement of Policy applies only to insured institutions, their institution-affiliated parties, and those participating in the affairs of an insured depository institution. 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. Further, "person" for purposes of section 19 means an individual, and does not include a corporation, firm or other business entity.

Individuals who file an application with the FDIC under the provisions of Section 19 who are participating in the affairs of a bank or savings and loan holding company may also have to comply with any filing requirements of the Board of the Governors of the Federal Reserve System under 12 U.S.C. §1819(d) in the case of a bank holding company, and the Office of Thrift Supervision under 12 U.S.C. §1819(e), in the case of a savings and loan holding company until the Transfer Date as that term is used in the Dodd-Frank Wall Street Reform Act (Public Law 111-203, §311, July 21 2010). Upon the Transfer Date applications related to savings and loan holding companies should be filed with the Board of Governors of the Federal Reserve System.

Section 19 specifically prohibits a person subject to its coverage from owning or controlling an insured institution. For purposes of defining "control" and "ownership" under section 19, the FDIC has adopted the definition of "control set forth in the Change in Bank Control Act (12 U.S.C. 1817(j)(8)(B)). A person will be deemed to exercise "control" if that person has the power to vote 25 percent or more of the voting shares of an insured institution (or ten percent of the voting shares if no other person has more shares) or the ability to direct the management or policies of the insured institution. Under the same standards, person will be deemed to "own" an insured institution if that person owns 25 percent or more of the insured institution's voting stock, or ten percent of the voting shares if no other person owns more. These standards would also apply to an individual acting in concert with others so as to have such ownership or control. Absent the FDIC's consent, persons subject to the prohibitions of section 19 will be required to divest their ownership of shares above the foregoing limits.

B. Standards for Determining Whether an Application Is Required

Except as indicated in paragraph (5), below, an application must be filed where there is present a conviction by a court of competent jurisdiction for a covered offense by any adult or minor treated as an adult, or where such person has entered a pretrial diversion or similar program regarding that offense.

(1) Convictions. There must be present a conviction of record. Section 19 does not cover arrests, pending cases not brought to trial, acquittals, or any conviction which has been reversed on appeal. A conviction with regard to which an appeal is pending will require an application until or unless reversed. A conviction for which a pardon has been

granted will require an application. A conviction which has been completely expunged is not considered a conviction of record and will not require an application. For an expungement to be considered complete, no one, including law enforcement, can be permitted access to the record even by court order under the state or federal law which was the basis of the expungement.

(2) Pretrial Diversion or Similar Program. Program entry, whether formal or informal, is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other noncriminal or nonpunitive alternatives. Whether a program constitutes a pretrial diversion is determined by relevant federal, state or local law, and will be considered by the FDIC on a case-by-case basis. Program entries prior to November 29, 1990, are not covered by section 19.

(3) Dishonesty or Breach of Trust. The conviction or program entry must be for a criminal offense involving dishonesty, breach of trust or money laundering. "Dishonesty" means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest. "Breach of trust" means a wrongful act, use, misappropriation or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's

official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Whether a crime involves dishonesty or breach of trust will be determined from the statutory elements of the crime itself. All convictions for offenses concerning the illegal manufacture, sale, distribution of or trafficking in controlled substances shall require an application.

(4) Youthful Offender Adjudgments. An adjudgment by a court against a person as a "youthful offender" under any youth offender law, or any adjudgment as a "juvenile delinquent" by any court having jurisdiction over minors as defined by state law does not require an application. Such adjudications are not considered convictions for criminal offenses.

(5) *De minimis* Offenses. Approval is automatically granted and an application will not be required where the covered offense is considered *de minimis*, because it meets all of the following criteria:

- There is only one conviction or program entry of record for a covered offense;

- The offense was punishable by imprisonment for a term of one year or less and/or a fine of $2,500 or less, and the individual did not serve more than three (3) days of actual jail time;

- The conviction or program was entered at least five years prior to the date an application would otherwise be required; and

• The offense did not involve an insured depository institution or insured credit union.

A conviction or program entry of record based on the writing of a "bad" or insufficient funds check(s) shall be considered a *de minimis* offense under this provision even if it involved an insured depository institution or insured credit union if the following applies:

• All other requirements of the *de minimis* offense provisions are met;

• The aggregate total face value of the bad or insufficient funds check(s) cited in the conviction was $1000 or less; and

• No insured depository institution or insured credit union was a payee on any of the bad or insufficient funds checks that were the basis of the conviction.

Any person who meets the foregoing criteria shall be covered by a fidelity bond to the same extent as others in similar positions, and shall disclose the presence of the conviction or program entry to all insured institutions in the affairs of which he or she intends to participate.

C. Procedures

When an application is required, forms and instructions should be obtained from, and the application filed with, the appropriate FDIC Regional Director. The application must be filed by an insured institution on behalf of a person unless the FDIC grants a

waiver of that requirement. Such waivers will be considered on a case-by-case basis where substantial good cause for granting a waiver is shown.

D. Evaluation of Section 19 Applications

The essential criteria in assessing an application are whether the person has demonstrated his or her fitness to participate in the conduct of the affairs of an insured institution, and whether the affiliation, ownership, control or participation by the person in the conduct of the affairs of the insured institution may constitute a threat to the safety and soundness of the insured institution or the interests of its depositors or threaten to impair public confidence in the insured institution. In determining the degree of risk, the FDIC will consider:

(1) The conviction or program entry and the specific nature and circumstances of the covered offense;

(2) Evidence of rehabilitation including the person's reputation since the conviction or program entry, the person's age at the time of conviction or program entry, and the time which has elapsed since the conviction or program entry;

(3) The position to be held or the level of participation by the person at an insured institution;

(4) The amount of influence and control the person will be able to exercise over the management or affairs of an insured institution;

(5) The ability of management of the insured institution to supervise and control the person's activities;

(6) The degree of ownership the person will have of the insured institution

(7) The applicability of the insured institution's fidelity bond coverage to the person;

(8) The opinion or position of the primary Federal and/or state regulator; and

(9) Any additional factors in the specific case that appear relevant.

The foregoing criteria will also be applied by the FDIC to determine whether the interests of justice are served in seeking an exception in the appropriate court when an application is made to terminate the ten-year ban prior to its expiration date.

Some applications can be approved without an extensive review because the person will not be in a position to constitute any substantial risk to the safety and soundness of the insured institution. Persons who will occupy clerical, maintenance, service or purely administrative positions, generally fall into this category. A more detailed analysis will be performed in the case of persons who will be in a position to influence or control the management or affairs of the insured institution. Approval orders will be subject to the condition that the person shall be covered by a fidelity bond to the same extent as others in similar positions. In cases in which a waiver of the institution filing requirement has been granted to an individual, approval of the application will be conditioned upon that person disclosing the presence of the conviction to all insured

institutions in the affairs of which he or she wishes to participate. When deemed appropriate, approval orders may also be subject to the condition that the prior consent of the FDIC will be required for any proposed significant changes in the person's duties and/or responsibilities. Such proposed changes may, in the discretion of the Regional Director, require a new application. In situations in which an approval has been granted for a person to participate in the affairs of a particular insured institution and subsequently seeks to participate at another insured institution, approval does not automatically follow. In such cases, another application must be submitted.

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By Order of the Board of Directors.

Dated at Washington, DC, the ____ day of _____, 2012

FEDERAL DEPOSIT INSURANCE CORPORATION

Robert Feldman
Executive Secretary
(SEAL)