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

FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY: Federal Deposit Insurance Corporation (FDIC)

ACTION: Clarification of 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 is restating that previous change to the SOP in a slightly modified form, and addressing certain other issues that have arisen in the FDIC's interpretation of the policy since its original publication. The FDIC is clarifying what the FDIC views as a complete expungement of a conviction, and 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 (FRS) and the Office of Thrift Supervision's

(OTS) 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). The FDIC is now eliminating the previous footnote, incorporating the change directly into the text of the SOP, and noting 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 is making certain clarifying changes regarding when an application for the FDIC's consent must be filed.

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

II. Clarifying Changes to the Statement of Policy

The SOP will be clarified in the following areas:

A. Scope of Section 19

Section 19 covers IAPs, as defined by 12 U.S.C. 1813(u), and others who are participants in the conduct of the affairs of an insured institution. However, because of changes to Section 19, the FDIC has identified the possibility that any persons covered by Section 19, because they are participating in the affairs of an insured depository institution, may also be participating in the affairs of a bank or savings and loan holding company and, therefore, fall within the scope of the changes to Section 19 related to the supervision of individuals participating in bank and savings and loan holding companies. This potential requirement was noted in the previous amendment to the SOP. This change eliminates

the previous footnote and places the discussion in the text of the SOP. Although jurisdiction under Section 19 for the purpose of granting consent for an individual to participate in the affairs of a bank or savings and loan holding company, is currently vested in the FRS or OTS, respectively, the policy statement is clarified to note the authority to grant consent to participate in the affairs of a savings and loan holding company will change effective on the Transfer Date as that term is used in §311 of Dodd-Frank.

B. Standards for Determining Whether an Application Is Required

(1) Convictions.

This subsection has been changed to address the interpretation of what is a complete expungement, as that term is used in the SOP. Historically, it has been the FDIC's position that unless the expungement is complete, a section 19 application would be required. The FDIC is amending the SOP to explain that an expungement is complete, and thus an application will not be required, only if the records of conviction are not accessible by any party, including law enforcement, even by court order. In all other circumstances an application will be required.

B. (5) *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 clarifying in two ways which offenses fall within the *de minimis* offenses exception of the SOP.

First is a change in the language in the SOP that addresses the maximum sentence, in terms of jail time and/or fine, which a party might face, based on the covered crime of which they are convicted, but where the offense would still be considered *de minimis*. The current language can be read not to allow the *de minimis* offense exception to apply if the potential sentence for the covered crime is one year and/or $1,000. The FDIC is clarifying this aspect of the SOP so that the *de minimis* offenses provision will apply if the potential sentence could be one year or less and/or $1,000 or less. The change will remove any uncertainty in the existing language, and will add greater clarity to the public and insured institutions in evaluating whether an application is necessary.

A second clarification addresses when an offense involves an insured depository institution or insured credit union. The current language can be read not to allow the *de minimis* exception to apply when the covered party was convicted of writing a check that was returned for insufficient funds (i.e. a bad check), since the process of writing a check which is dishonored for insufficient funds usually involves depositing the check into the banking system at some point. However, the FDIC has determined that a conviction for issuing a bad check that does not cause loss to an insured depository institution or insured credit union, may, in limited circumstances, be subject to the *de minimis* offense exception. Therefore, subject to meeting the other provisions of the *de minimis* offenses exception, the FDIC is clarifying the language to allow, in certain limited circumstances,

convictions for insufficient funds checks (bad checks) to fit with the *de minimis* rule. If there is one conviction for issuing an insufficient funds check (bad check) based one or more checks which have an aggregate face value of $1,000 or less, and no insured financial institution or insured credit union was a payee on any of the checks, the conviction will qualify under the *de minimis* offense exception, and a section 19 application will not be required.

III. Changes to FDIC Statement of Policy for Section 19

For the reasons set forth above, the FDIC hereby revises the FDIC Statement of Policy for Section 19 as follows:

1. Revise subsection *A. Scope of Policy*, first paragraph, and add a new paragraph after the first paragraph, to read:

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.

2. Revise subsection *B. Standards for Determining Whether an Application Is Required* to read:

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(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.

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(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 $1,000 or less, and the individual did not serve time in jail;
- 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.

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By Order of the Board of Directors.

Dated at Washington, DC, the ____ day of _____, 2011

FEDERAL DEPOSIT INSURANCE CORPORATION

Executive Secretary
(SEAL)