



October 25, 2019

TO: Board of Directors

FROM: Doreen R. Eberley
Director

SUBJECT: Conversion of the Statement of Policy for Section 19 of the Federal Deposit Insurance Act to a Regulation

EXECUTIVE SUMMARY

The Division of Risk Management Supervision (RMS) recommends that the Board of Directors (Board) convert the Statement of Policy (SOP) for Section 19 of the Federal Deposit Insurance (FDI) Act to a regulation. Incorporating the SOP into the FDIC's regulations will provide for greater transparency as to its application, provide greater certainty as to the FDIC's process and aid both insured depository institutions and individuals who may be affected by Section 19 of the FDI Act to understand its impact and potentially seek relief from its provisions. The proposed regulation is attached as Exhibit A. In addition, RMS recommends that the Board authorize the Executive Secretary to publish the notice of proposed rulemaking in the Federal Register, attached as Exhibit B, which describes the regulation in detail.

The FDIC will solicit comments by asking a general question about the overall regulation and specific questions regarding the *de minimis* criteria for offenses that represent low-risk to the Deposit Insurance Fund, the applicability of Section 19 to crimes that have been expunged, and whether the current *de minimis* exception related to the use of a fake or false identification by someone under the age of 21 should be expanded and under what circumstances. By seeking public comment, the FDIC can consider the views of the industry and other interested parties about the functionality of the proposed regulation.

BACKGROUND

Section 19 of the FDI Act, 12 U.S.C. §1829(a)(1)(A) (Section 19), 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 entered into a pretrial diversion or similar program in connection with a prosecution for such offense (program entry), from becoming or continuing as an institution-affiliated party; owning or controlling, directly or indirectly, an insured institution; or otherwise participating, directly or indirectly, in the conduct

Concur:

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of the affairs of an insured institution. Further, 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 also imposes a ten-year ban on the FDIC's consent for a person convicted of certain crimes enumerated in Title 18 of the United States Code, absent a motion by the FDIC to allow consent, and approval by the sentencing court.

Currently, the FDIC follows the guidance provided by the SOP which sets forth the process and considerations the Agency applies regarding whether to grant its written consent pursuant to Section 19 to allow convicted individuals to participate in banking. RMS recommends that the Board approve the issuance of a regulation incorporating the guidance, and seeks comment on its provisions as stated above.

The FDIC originally promulgated the SOP in 1998 to replace prior guidelines. The SOP sets forth the FDIC's standards for implementing Section 19, defines key terms, establishes when an application is required, specifies which factors the FDIC will evaluate when considering an application, and describes the *de minimis* rules for granting automatic consent. Since it was promulgated in 1998, the SOP has been amended on four occasions. The Board approved the most recent amendment to the SOP in July 2018, after considering public comments. The amendments provided carefully measured changes to the SOP that reduced regulatory burden, promoted public awareness of the law, and decreased the number of covered offenses that required an application by expanding the *de minimis* criteria.

ANALYSIS OF THE PROPOSED REGULATION

By incorporating the current SOP into the FDIC's regulations, the FDIC believes that it will be able to provide greater transparency and clarity to the banking industry and public regarding the Agency's Section 19 process. The proposed regulation will not change the way in which the FDIC processes Section 19 applications. However, by seeking public comment on this proposed regulation, the Agency may receive input from the banking industry and interested parties on how the FDIC could better apply the requirements of Section 19, areas of confusion for the public and industry, or other feedback that would be useful in the Agency's exercise of its statutory obligations. The FDIC will consider such comments and may make changes to the regulation based upon such feedback.

RECOMMENDATION

In summary, staff believes that incorporating the SOP into the FDIC's regulations is appropriate and will provide for greater transparency and certainty regarding the FDIC's process. The proposed regulation will not impair the integrity of Section 19 and will not increase the risk to the Deposit Insurance Fund. In addition, comments received through the rulemaking process will allow the FDIC to consider the views of the industry and other interested parties about the functionality of the proposed regulation and the FDIC's Section 19 process. For these reasons, staff recommends approval of the attached Notice of Proposed Rule Making and its publication in the Federal Register.

Modifications to FDIC Statement of Policy on Section 19 of the FDI Act

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