

Federal Reserve System

§ 238.86

he or she owns or controls that company under subpart D of this part.

(3) Otherwise participate, directly or indirectly, in the conduct of the affairs of any savings and loan holding company.

(b) *Savings and loan holding company.* A savings and loan holding company may not permit any person described in paragraph (a) of this section to engage in any conduct or to continue any relationship prohibited under that paragraph.

§ 238.84 Covered convictions or agreements to enter into pre-trial diversions or similar programs.

(a) *Covered convictions and agreements.* Except as described in § 238.85, this subpart covers:

(1) Any conviction of a criminal offense involving dishonesty, breach of trust, or money laundering. Convictions do not cover arrests, pending cases not brought to trial, acquittals, convictions reversed on appeal, pardoned convictions, or expunged convictions.

(2) Any agreement to enter into a pretrial diversion or similar program in connection with a prosecution for a criminal offense involving dishonesty, breach of trust or money laundering. A pretrial diversion or similar program is a program involving a suspension or eventual dismissal of charges or of a criminal prosecution based upon an agreement for treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternative.

(b) *Dishonesty or breach of trust.* A determination whether a criminal offense involves dishonesty or breach of trust is based on the statutory elements of the crime.

(1) “Dishonesty” means directly or indirectly to cheat or defraud, to cheat or defraud for monetary gain or its equivalent, or to wrongfully take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving a 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.

(2) “Breach of trust” means a wrongful act, use, misappropriation, or omis-

sion 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.

§ 238.85 Adjudications and offenses not covered.

(a) *Youthful offender or juvenile delinquent.* This subpart does not cover any adjudication by a court against a person as:

(1) A youthful offender under any youthful offender law; or

(2) A juvenile delinquent by a court with jurisdiction over minors as defined by state law.

(b) *De minimis criminal offense.* This subpart does not cover *de minimis* criminal offenses. A criminal offense is *de minimis* if:

(1) The person has only one conviction or pretrial diversion or similar program of record;

(2) The offense was punishable by imprisonment for a term of less than one year, a fine of less than \$1,000, or both, and the person did not serve time in jail.

(3) The conviction or program was entered at least five years before the date the person first held a position described in § 238.83(a); and

(4) The offense did not involve an insured depository institution, insured credit union, or other banking organization (including a savings and loan holding company, bank holding company, or financial holding company).

(5) The person must disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates.

(6) The person must be covered by a fidelity bond to the same extent as others in similar positions with the savings and loan holding company.

§ 238.86 Exemptions.

(a) *Employees.* An employee of a savings and loan holding company is exempt from the prohibition in § 238.83, if all of the following conditions are met:

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(1) The employee's responsibilities and activities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations.

(2) The savings and loan holding company maintains a list of all policymaking positions and reviews this list annually.

(3) The employee's position does not appear on the savings and loan holding company's list of policymaking positions, and the employee does not, in fact, exercise any policymaking function with the savings and loan holding company.

(4) The employee:

(i) Is not an institution-affiliated party of the savings and loan holding company other than by virtue of the employment described in paragraph (a) of this section.

(ii) Does not own or control, directly or indirectly, the savings and loan holding company; and

(iii) Does not participate, directly or indirectly, in the conduct of the affairs of the savings and loan holding company.

(b) *Temporary exemption.* (1) Any prohibited person who was an institution affiliated party with respect to a savings and loan holding company, who owned or controlled, directly or indirectly a savings and loan holding company, or who otherwise participated directly or indirectly in the conduct of the affairs of a savings and loan holding company on October 13, 2006, may continue to hold the position with the savings and loan holding company.

(2) This exemption expires on December 31, 2012, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 238.87 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

(i) The date of issuance of a Board approval of the application under § 238.89(a);

(ii) The expiration of the 20-day period for filing a request for hearing under § 238.90(a) provided there is no timely request for hearing following the issuance by the Board of a denial of the application under that section;

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(iii) The date that the Board denies a timely request for hearing under § 238.90(b) following the issuance of a Board denial of the application under § 238.89(b);

(iv) The date that the Board issues a decision under § 238.90(d); or

(v) The date an applicant withdraws the application.

§ 238.87 Filing procedures.

(a) *Who may file.* (1) A savings and loan holding company or a person who was convicted of a criminal offense described in § 238.84 or who has agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense may file an application with the Board seeking an exemption from the prohibitions in this subpart.

(2) A savings and loan holding company or a person may seek an exemption only for a designated position (or positions) with respect to a named savings and loan holding company.

(3) A savings and loan holding company or a person may not file an application less than one year after the latter of the date of a denial of the same exemption under § 238.89(b), § 238.90(a) or § 238.90(d).

(b) *Prohibition pending Board action.* Unless a savings and loan holding company or a person is exempt under § 238.86(b), the prohibitions in § 238.83 continue to apply pending Board action on the application.

§ 238.88 Factors for review.

(a) *Board review.* (1) In determining whether to approve an exemption application filed under § 238.87, the Board will consider the extent to which the position that is the subject of the application enables a person to:

(i) Participate in the major policymaking functions of the savings and loan holding company; or

(ii) Threaten the safety and soundness of any insured depository institution that is controlled by the savings and loan holding company, the interests of its depositors, or the public confidence in the insured depository institution.

(2) The Board will also consider whether the applicant has demonstrated the person's fitness to hold