

**§ 238.82**

section 19(e)(2) of the FDIA, which permits the Board to provide exemptions, by regulation or order, from the application of the prohibition. This subpart provides an exemption for savings and loan holding company employees whose activities and responsibilities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations, and a temporary exemption for certain persons who held positions with respect to a savings and loan holding company as of October 13, 2006. The subpart also describes procedures for applying to the Board for an exemption.

**§ 238.82 Definitions.**

The following definitions apply to this subpart:

(a) *Institution-affiliated party* is defined at 12 U.S.C. 1813(u), except that the phrase “savings and loan holding company” is substituted for “insured depository institution” each place that it appears in that definition.

(b) *Enforcement Counsel* means any individual who files a notice of appearance to serve as counsel on behalf of the Board in the proceeding.

(c) *Person* means an individual and does not include a corporation, firm or other business entity.

(d) *Savings and loan holding company* is defined at §238.2(m), but excludes a subsidiary of a savings and loan holding company that is not itself a savings and loan holding company.

**§ 238.83 Prohibited actions.**

(a) *Person*. If a person was convicted of a criminal offense described in §238.84, or agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense, he or she may not:

(1) Become, or continue as, an institution-affiliated party with respect to any savings and loan holding company.

(2) Own or control, directly or indirectly, any savings and loan holding company. A person will own or control a savings and loan holding company if 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.

**12 CFR Ch. II (1–1–24 Edition)**

(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 omission with respect to any property or fund which has been committed to a