

**BUSINESSES PLANNING ON GIVING HOLIDAY GIFTS
TO THEIR CONTACTS AT CERTAIN U.S. FINANCIAL FIRMS
SHOULD BE AWARE OF THE FEDERAL BANK BRIBERY ACT**

Businesses that typically send holiday gifts to their contacts at U.S. financial firms should confirm with the recipient the permissibility of such gifts in order to avoid an inadvertent violation of the Federal Bank Bribery Act (the “Act”) or the corporate ethics policy of the recipient’s employer.

Background

Over the last few years, many formerly private or nonbank financial firms have converted to federally regulated status as bank holding companies or other types of financial institutions subject to the Act, which prohibits anyone from giving, offering, or promising “anything of value” with the corrupt intent of influencing or rewarding “an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution.”¹ The Act also prohibits individuals who hold such positions with a financial institution from corruptly soliciting, demanding, accepting, or agreeing to accept anything of value in connection with “any business transaction” of the institution. A violation can result in a fine of up to \$1,000,000 and imprisonment for up to 30 years for unlawful gifts valued at more than \$1,000, with lesser penalties for smaller impermissible gifts.

The Act includes an exception for holiday gifts (among others), provided that the covered institution’s code of conduct expressly adopts the exception.

Covered Institutions

Financial institutions subject to the Act (“covered institutions”) include, among others, federally regulated bank holding companies, banks, thrift institutions, member banks of the Federal Reserve System, small business investment companies, and the U.S. branches of foreign banks. However, in some cases, even a noncovered affiliate of a covered institution could effectively be subject to the Act’s prohibitions (though not its penalties) if the covered institution or its parent has adopted an enterprise-wide code of business conduct that includes the Act’s prohibitions and governs all affiliates, subsidiaries, or divisions of the firm.

¹ 18 U.S.C. § 215.

Regulatory Agency Guidelines

The Act is implemented through the *Guidelines for Compliance with the Federal Bank Bribery Law* (the “Guidelines”) issued jointly by the Treasury Department, the Federal Reserve, and other federal financial regulatory agencies.² The Guidelines encourage covered institutions to address the Act’s prohibitions, and permissible exceptions, in their internal codes of conduct or ethics policies.

Permissible Gift-giving

The Guidelines acknowledge certain circumstances in which a covered institution official or employee may accept something of value—without risk of a violation—from someone who does, or seeks to do, business with the institution. Under the Guidelines, certain types of gifts can be excepted from the prohibitions, including business lunches and “gifts of reasonable value related to commonly recognized events or occasions,” including “[a] wedding, retirement, [or] holiday. . . .” The Guidelines also allow a covered institution to set a specific dollar limit for exempted gifts, or to ban gifts altogether.

However, the Act’s exceptions are not automatically applied to every covered institution. Rather, a particular covered institution must specifically adopt an exception in its policies or internal code of conduct in order for the exception to be available to the employees of that particular institution. Therefore, whether an officer or employee of, or others associated with, a covered institution can accept a holiday gift and, if so, the permissible value of such a gift, are within the discretion of the institution itself and should be set forth in its ethics policy.

In addition, firms giving gifts should be mindful that the policies of securities broker-dealers³ and many investment advisory firms also limit the gifts employees may receive.

Recommendation

In view of the fact that a number of prominent financial firms are covered institutions, we expect that they have implemented various requirements arising from that status, including compliance policies that conform to the Act. Businesses having long standing professional relationships with officers or employees of, or others associated with, these firms should be aware of the different regulatory environment in which these business contacts are now operating and should

² See, e.g., Federal Deposit Insurance Corporation, *Guidelines for Compliance with the Federal Bank Bribery Law* (Nov. 10, 1987), available at <http://www.fdic.gov/regulations/laws/rules/5000-2300.html>.

³ Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 3220 limits gifts that a FINRA member broker-dealer firm and its associated persons may give to \$100 per person per year to any person where such gift is in relation to the business of the person’s employer. Many firms have adopted limits on gifts their employees may receive as well as on those they may give. Investment Advisers have in many instances adopted similar gift restrictions.

be sensitive to policies regarding gifts, especially during the holiday season. Therefore, it is especially appropriate to ask a business contact whether his or her employer's code of conduct would permit the intended gift and to obtain confirmation so that a record of the discussion can be retained.

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If you have any questions about this memorandum, please contact Martin R. Miller (212-728-8690, mmiller@willkie.com), Barbara Block (202-303-1178, bblock@willkie.com), or the Willkie attorney with whom you regularly work.

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