Community Bankshares, Inc.

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By

Edwin B. Burr
President &
Chief Executive Officer

MEMORANDUM TO: Ms. Sheila Barr
Chairman
Federal Deposit Insurance Corporation

FROM: Edwin B. Burr
President & CEO
Community Bankshares, Inc.

SUBJECT: Industrial Loan Company Charters
PR 77-2006

BACKGROUND

The writer of this memorandum is a retired 30-year FDIC employee (1958-1988). During the career, he served as Regional Director (DBS) in both the Boston Region (1976-1978) and the Atlanta Region (1980-1988). He also served as Special Assistant to former Chairman Frank Wille (1973-1975) and Assistant to former Chairman William Isaac (1978-1980) while Mr. Isaac was a Director. The writer has extensive experience in activities involving de novo applications of Banks, Branches, etc. A thesis submitted to the Stonier Graduate School of Banking was titled "Statewide Branch Banking — An Analysis" and was accepted for graduation (1970).

GENERAL

The following general comments are submitted prior to attempting to answer specific questions (addressed later in this memorandum).

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CONCERNS EXPRESSED REGARDING ILC's

The concern over the undefined "some form of consolidated supervision" is bogus. There is no "form of consolidated supervision" over thousands of FDIC insured institutions owned by individuals, groups of individuals, trusts and the like, that do not have Holding Companies.

The FDIC insures the Banks (ILC's) — not ownership, and any sanctions brought under Section 8 apply to the Bank. To effect ownership changes, the procedure is to force the Institution to make changes. C & D Orders, etc. are issued against the Institution and its Directors. This procedure has been used over time and has been mostly successful.

The FDIC has the authority to sanction any insured institution and there is no greater risk posed to the FDIC fund, regardless of the ownership. The risk is manifested in the actions of ownership, i.e., insider abuse, which is detected by examination and dealt with as a part of examination process. For instance, if ownership has loans in the Bank that fail to meet industry standards and/or expense accounts are being abused, a C & D order can be issued to correct the problem. Failing that, withdrawal of insurance is always available as the "Death Penalty"..

The type of ownership does not pose the problem, it is the attitude and/or actions of ownership that pose the Safety and Soundness concern and risk to the FDIC fund.

The real issue concerning "some form of consolidate supervision" (not defined) is not related to the substantive issues. Currently, ILC's are presenting a high profile in the financial world with the Federal Reserve System not involved and, thus, FRS is attempting to be involved by this "red herring". FDIC does not need the Fed to supervise ILC's, and a "form of consolidated supervision" is only an attempt by FRS to acquire TURF. It is noted that

"consolidation" of Federal Banking Regulators has been considered for almost 50 years and has not occurred, nor is it likely to.

QUESTIONS 1 & 2

The FDIC has tailored its Examination Program to changes in the risk profile of insured institutions and updated to react to those changes. The Program has been successful and no changes are needed. Risks do not differ based on type of ownership, and no changes in approach by FDIC are needed.

QUESTION 3

Bogus — No different approach is needed.

QUESTION 4

See Question 5.

QUESTION 5

The statutory factors (Section 5) are broad enough to cover all aspects of an application. For instance, under "General Character of the Management", a discussion of ownership is appropriate and almost always is analyzed. Factors would not be affected by "some form of Federal supervision". Again, a bogus item.

QUESTION 6

FDIC routinely places conditions on various applications and type of ownership does not dictate the conditions. The phantom "some form of consolidated Federal supervision" is not in play.

If the condition is "acquire more capital", it is incumbent upon the Bank to fulfill the condition, not ownership, although ownership may end up producing the capital.

If the Bank is in need of a credit officer and that is a condition to approval, ownership does not pick the officer and should not, the Board of Directors and Management does.

Conditions are monitored as part of the examination process and are appropriate. To retain the needed flexibility, a rigid Regulation would not be helpful.

QUESTION 7

No conditions can protect from any and all risks, but the ownership of "Financial Company" may be more knowledgeable of the risks. However, commercial companies do not present any more ownership risk than financial companies because of structure.

Limiting ownership to financial companies (must be defined) would be difficult, given previous approval to such companies as Target.

A precedent has been established on these prior approvals and would be legally challenged in any substantially different conditional approval. Precedent for the DC legal profession is gospel.

Further, to define "Financial Company" is tricky. Does it include brokers, finance companies, payday lenders? It could be so far reaching as to ensnare an individual owner if he incorporated himself to operate a non-financial business, i.e., Widget Maker, thus making him ineligible as an owner.

Such limits should not be imposed.

QUESTION 8

Bogus. Tying and conflicts of interest occur by action of ownership, not structure. See General Prgs l, 2, 3.

QUESTIONS 9, 10

Commercial entities may be able to provide some services to ILC's in the area of research, marketing and the like at lesser prices, but this should not be viewed as a serious competitive advantage. No real potential public benefits are present with commercial entity ownership.

QUESTION 11

No comment.

QUESTION 12

FDIC's authority is not limited due to ILC's being exempt from Bank Holding Company Act. The ILC is being supervised, not its owners.

WAL-MART APPLICATION

Prior to any decision, a thorough review of all previous approvals for ILC's by commercial companies should be completed by legal and Bank supervision senior officials.

Consistent with those approvals, the Wal-Mart application should be approved, subject to the following conditions.

1) Substantial reliance is placed on applicant management that all commitments will be honored and no attempt to broaden the banking activities vis-a-vis Wal-Mart will be made.

2) In the event that applications are submitted by the applicant vis-a-vis Wal-Mart to produce banking activities in a commercial setting, such applications will be summarily denied. Further, this application will likely rescinded.

3) The commitments in this application are that the applicant's banking powers will be used solely for processing checks, vis-a-vis Wal-Mart.

Edwin B. Burr