



(A Utah Industrial Bank in Organization)

October 4, 2006

Mr. Robert E. Feldman  
Executive Secretary  
Attn: Comments  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, D.C. 20429

Dear Mr. Feldman,

**BACKGROUND:** I have been a commercial banker for 42 years. Over half of that experience has been as a President and/or Chairman of several community banks. I have worked for a variety of owners including a closely held bank, a widely held community bank and a publicly traded regional bank holding company. Through my years of service, I have had the privilege of working with the FDIC, OCC, FRB as well as state authorities. While each bank was under my stewardship it received the highest regulatory ratings. I am also the former president of the Louisiana Banker's Association and served on the faculty of the Graduate School of Banking at Louisiana State University for 20 years.

Over the last 14 months, I have been involved in the organization of a Utah ILC, American Pioneer Bank. Our application for deposit insurance was submitted to the FDIC on November 23, 2005. As proposed American Pioneer Bank's majority owner will be FirstCity Financial Corp. which is considered financial services company and a minority interest will be owned by an affiliate of Cargill, Inc. which is considered a commercial concern.

Because of my experience, employment by a variety of owners and supervision by most regulatory bodies, it has been suggested that I may have a unique perspective in commenting on the issues at hand. In general, I have this to share. The best owners share a common thread. They recruit and empower a management accountable and responsible for the successful operation of the bank. A bank's measure of success doesn't concern financial or commercial, closely held or publicly traded ownership classifications. Rather, what weighs heavy is an owner's commitment to granting its management the power to run the bank and the responsibility to follow regulatory guidelines.

Following is some thoughts on the 12 questions posed by FDIC.

- 1. Have developments in the ILC industry in recent years altered the relative risk profile of the ILCs compared to other depository institutions?**

No. In the past 20 years the ILC industry has had an outstanding record of safety and success. Even with the active growth since 1986, this charter type accounts for less than 4% of the entire insurance fund. The relative risk to the fund is not significant. The FDIC and the various state agencies have successfully dealt with the problems within the ILCs and maintained an enviable record of success.

- 2. Do the risks posed by ILCs to safety and soundness or to the Deposit Insurance Fund differ based on whether the owner is a financial entity or a commercial entity?**

No. It is the bank that is examined and regulated by FDIC and state regulators. Given the rigorous enforcement of sections 23A and 23B, the ILCs, as a group, are probably scrutinized closer for affiliate transactions than a typical community bank. The transactions of ILCs are typically directed in a narrow niche area of banking, but in the end the transactions do not differ from those undertaken by "regular" commercial banks.

A good example of how the current system has operated is the WorldCom situation in 2001. The bank was isolated from the commercial parent and eventually merged into another industrial bank. The FDIC and state regulators successfully dealt with the situation of the failing commercial parent company without impact on the insurance fund.

- 3. Do the risks posed by the ILCs to safety and soundness or to the Deposit Insurance Fund differ based on whether the owner is subject to some form of consolidated Federal supervision?**

Over 90% of the assets of ILCs are currently subject to some type of consolidated Federal supervision. Be that as it may, the safety and soundness of the ILCs appear to be as good as commercial banks nationwide.

- 4. What features or aspects of a parent of an ILC should affect the FDIC's evaluation of the applications for deposit insurance or other notices or applications?**

It is appropriate for the FDIC and state regulators to evaluate the parent companies purpose in chartering an ILC. They should also consider if the parent company has the ability and resources to assist the profitable and safe operation of the ILC. It is also logical to consider the need for the services planned to be provided to the public or an industry. The soundness of the business plan of the ILC, just like any de novo bank or change of control, should play an integral part in the approval of the application for deposit insurance.

5. **Are the only factors the FDIC may consider in an application for deposit insurance or change of control the statutory factors? Should these factors be affected by the nature of the proposed owner?**

Beyond the strict regulatory scrutiny of an applicant's parent, the regulators may desire to evaluate the parent's corporate history and market standing. Companies with a long profitable and visible market history have a significant reputation to protect. Reputation risk will tend to make the parent increase support for the ILC to protect the parent's interests. While difficult to quantify, the stain of a bank failure would be an undesirable setback to any parent.

As a practical matter the FDIC and state regulators look at factors that are difficult to quantify in the approval process.

6. **Should the FDIC routinely place certain restrictions or requirements on all or certain categories of ILCs that would not necessarily be imposed on other institutions?**

No. If a restriction were necessary in a specific instance it should be placed for cause on an institution and not by category of ILC.

7. **Can there be conditions or regulations imposed on deposit insurance applications or changes of control of ILCs that are adequate to protect an ILC from any risks to safety and soundness or to the Deposit Insurance Fund that exist if an ILC is owned by a financial company or a commercial company? In the interest of safety and soundness, should the FDIC consider limiting ownership of ILCs to financial companies?**

The history of existing ILCs shows they have had no greater risk of failure or safety and soundness problems than commercial banks. Consider the case of a large and profitable financial or commercial company that desires to pursue an ILC charter. This company faces a significant reputation risk in a failure of the bank. To protect its own reputation, the company would be more likely to infuse capital into the bank and protect its interests. Commercial ownership has not been a factor in causing ILC failures. There would seem to be no justification for placing additional conditions or regulations on applicants.

8. **Is there a greater likelihood that conflicts of interest or tying between an ILC, its parent, and affiliates will occur if the ILC parent is a commercial company or a company not subject to some form of consolidated Federal supervision?**

Sections 23A and 23B plus the anti-tying provisions of the Bank Holding Company Act are powerful regulations to prevent or stop improper activities. These controls have been historically effective.

**9. Do ILCs owned by commercial entities have a competitive advantage over other insured depository institutions?**

No. The ILCs have a narrow breadth of business plan. Very narrow segments of a customer base are served, often because they have no other financial institution with the expertise and desire to serve them. The consistent beneficiary of these services is the consumer. They get service that would not otherwise be available to them at an attractive price.

**10. Are there potential public benefits when a bank is affiliated with a commercial concern?**

Many ILCs serve a narrow segment of customers that often have no other available source for their needs. In the case of American Pioneer Bank we will serve commercial banks by providing them with a competitive source of liquidity. In addition, ILCs are subject to the Community Reinvestment Act (CRA). They support their local communities just like the other banks.

**11. In addition to the information requested by the above questions, are there other issues or facts the FDIC should consider that might assist the FDIC in determining whether statutory, regulatory, or policy changes should be made in the FDIC's oversight of ILCs?**

Even with the growth over the last 20 years, the ILCs are operating successfully and safely. With the exception of the failure in California, the soundness of the ILCs and the adequacy of regulatory supervision has been an outstanding success. What is not broken does not need to be fixed.

**12. Given that Congress has expressly excepted owners of ILCs from consolidated bank holding company regulation under the Bank Holding Company Act, what are the limits on the FDIC's authority to impose such regulation absent further Congressional action?**

It is my belief the FDIC and state regulators have sufficient authority to regulate the ILCs. The record of safety and soundness speaks for itself. As a group, the ILCs are better capitalized than the average bank and have fewer failures over the last 20 years than similar sized commercial banks.

The Congress provides the statutory framework for the regulators. The current statutes allow for commercial and financial companies to own an industrial bank. Absent of a change in statute, the FDIC has no explicit authority to impose such regulation or to change the current approval process.

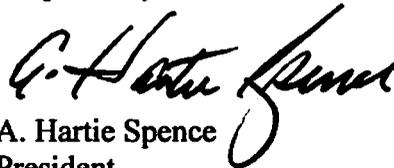
**SUMMARY:**

I sympathize and understand the political situation with the issues leading to the current moratorium and ask that the FDIC empathize and remain cognizant that an extension of the moratorium period will further affect a momentum drain on American Pioneer Bank and other pending applications. The added expense of the delay is one issue and the time lost in executing our business plan is also significant.

My owners have recruited a strong group of independent board members each with more than 20 years of banking and finance experience. Our management team has similar depth of experience. I am excited by this opportunity. It represents the best of all possibilities. With owners that are committed to allowing management the latitude to run the bank and the responsibility to follow regulatory guidelines, American Pioneer Bank will provide significant benefits to its owners and the markets we serve.

I urge you to take that next step and notify all the pending applicants that the moratorium will end as scheduled. This will allow us to prepare for your hopefully positive decision on deposit insurance and minimize additional expense in starting the bank.

Respectfully Submitted,



A. Hartie Spence  
President

American Pioneer Bank (In organization)  
Salt Lake City, Utah