April 20, 2007

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington, D.C. 20429

VIA E-MAIL TO comments@FDIC.gov

Re: Proposed Rule Part 354—Industrial Bank Subsidiaries of Financial Companies, RIN number 3064-AD15

Dear Mr. Feldman,

On behalf of Exante Bank ("Exante"), we appreciate the opportunity to submit the following comments regarding the draft rule titled "Part 354—Industrial Bank Subsidiaries of Financial Companies" (the "Rule"), issued for comment on January 31, 2007.

Exante is a Utah industrial bank and a wholly owned indirect subsidiary of UnitedHealth Group ("UHG"), which is the largest private health care services organization in the nation. Although the Rule as it is currently written would not apply to any parent of a currently operating bank, we believe it will be helpful to comment on the substantive provisions in the Rule because they may apply more broadly in the future and potentially affect Exante and UHG.

In general, we do not oppose adoption of a regulation summarizing the FDIC's authority over industrial bank holding companies under current law. Those authorities and procedures are set forth in various statutes, regulations, policy statements, guidelines and informal practices, and can be difficult for parents, affiliates, boards of directors and the banks themselves to locate and comprehensively understand. A rule would also provide a more open system for considering and adopting new standards and procedures as the FDIC's oversight of holding companies evolves in the future.

As it is currently drafted, the Rule mostly implements procedures utilized for many years to regulate existing industrial bank holding companies and affiliates. In our experience, examiners obtain current financial information about parents and affiliates during each regular examination. Examiners regularly examine facilities operated by a parent or affiliate that provides services to a bank to determine that it complies with all terms and conditions of the services contracts and the systems utilized to perform those services are adequate to comply with current banking standards. In these respects, the Rule only formalizes and reiterates the FDIC's current practices which are, for the most part, reasonable, prudent and not unduly burdensome, and we support the adoption of those provisions of the Rule.

The changes we would recommend are described below.

§ 354.4(c)—This subsection will prohibit a holding company from engaging directly or indirectly in non financial activities. It should be deleted unless authorized by new legislation. It functionally repeals the current exemption for industrial bank parent companies in the Bank Holding Company Act.

One argument for this subsection relates to the policy separating banking and commerce. Until about thirty years ago, banks were the primary sources of credit for the whole economy and it was important then to isolate them from other businesses to ensure that everyone had equal access to credit. One byproduct of the information age is the explosion of financial services throughout the economy. Today, companies operating outside the scope of the Bank Holding Company Act may provide more credit than banks. This is a natural and logical development for most kinds of businesses and it has made the U.S. economy the most prolific and innovative producer of credit ever known. As a result, access to credit is no longer an issue. What is an issue is how efficiently and effectively companies can serve their customers.

It makes sense for UHG to provide health savings accounts for individuals as an option to full cost health insurance or to pay for expenses not covered by insurance, and there is no valid reason why UHG should not be able to provide that beneficial and high demand service along with insurance and other kinds of medical services when it is one of the leading health care providers in the nation. For these reasons, we believe a prohibition on UHG engaging in any activity that would not qualify as financial as a condition of owning Exante would be arbitrary and capricious, and we would object to it in the strongest possible terms.

If the proposed rule were extended further to cover existing banks, it would cause major concerns about retaining a bank subsidiary even for companies qualified as financial under standards allowing some commercial activities such as in HR 698, the Industrial Bank Holding Company Act of 2007. In some instances, including UHG, an industrial bank subsidiary is less than 1% of the corporate group's total assets. The rest of the company may be engaged in a broad array of activities serving a particular market, such as health care, or be engaged in multiple markets, similar to General Electric. It simply would not work to limit such a corporate group from ever engaging in an activity that would not qualify as financial regardless of how closely related that activity is to the group's primary products and services and how much of a benefit and opportunity it would present to the group and the people and businesses it serves. It would impede the natural development of the company potentially to a degree that would outweigh the value of the bank. It would truly be the tail wagging the dog.

Insurance companies - particularly health insurance companies are engaged in a range of ancillary health and well being services that are technically non-qualifying activities under the 85-15 rule. However, those activities are supportive of and align very closely with many of the banking related products and services that will facilitate a more efficient healthcare delivery and administration system. Examples of this are the direct delivery of healthcare services followed by point-of-service payment linked to Health Savings and Medicare Savings accounts. Many health insurers administer hospitals and clinics (a non qualifying activity) but there are enormous advantages to consumers and providers alike to tightly couple the back-office facility administration to the healthcare bank. The ILC charter offers the only model in which this can be done without concern about a forced decoupling because of the 85/15 rule. If this rule is retained the definition of what constitutes non-qualifying activities should be reexamined such that we don't prevent very useful integration and simplifications that might not be possible as a result of the application of the 85/15 rule.

Another problem would be the limitation this would impose on changes in ownership of the group. The parent might be presented with a very promising opportunity to merge with or acquire other companies engaged in similar or complementary activities. Those would be blocked if the other company engaged in non financial activities in any degree or if the bank's parent engaged in commercial activities operating under grandfather provisions such as those in HR 698.

A "change of control" could also occur involuntarily if any entity such as a large institutional investor acquired 10% or more of the parent's stock in the open market and that shareholder also held substantial interests in commercial enterprises, even as a passive investor. In that event, the group would have to divest the bank even if doing so would be very disruptive to the group's overall business.

These risks would be a disincentive to own a bank even if the holding company and group were otherwise very strong financially and of no risk to the bank itself.

The risk of insider dealing and the policy separating banking and commerce are the two primary arguments are cited for prohibiting companies that own banks from engaging in other activities. For the reasons set forth below, we do not believe either of these arguments justifies prohibiting commercial activities by a bank's affiliates.

Sections 23A and 23B of the Federal Reserve Act and other federal and state laws governing transactions between banks and their affiliates have proven effective in controlling risks of insider dealing between a bank and its affiliates. Those laws are vigorously enforced by the bank regulators. Penalties and remedies for violations can be quickly and effectively enforced against a bank's affiliates and other "institution affiliated parties" by both state regulators and the FDIC. Policies adopted by the FDIC to ensure the independent control of industrial banks by boards of directors and officers who are competent and independent of the banks' affiliates have effectively isolated the banks from undue influence. Given the success of these measures to control insider dealing risks, there is simply no reason to conclude that it is either necessary or appropriate to prohibit companies such as UHG from owning a bank subsidiary.

§ 354.4(g)—This subsection will limit holding company representation on the bank's board to 25% of the bank's directors. The current informal standard requires a majority of the bank's directors to be independent. We recommend keeping the current standard and not replacing it with the 25% limit. The majority standard appears to have worked very well and we are aware of no reason why it should be changed. We agree with the FDIC's concern about the independent control of each industrial bank but believe the current measures to ensure structural independence at the board and senior executive level are adequate.

There are important reasons why it is desirable to allow a minority of a bank's directors to be connected to a holding company. The parent typically provides all of the bank's capital and the bank also operates with the parent's most valued asset—its reputation. A holding company has a natural and legitimate interest in overseeing its subsidiary bank's operations and a fiduciary responsibility to its shareholders to do so. A holding company is not a mere sponsor of its bank, it has a substantial economic interest that the FDIC's interests supersede only in controlling risks of undue influence.

The irreducible factor in the creation of any bank is a decision by an investor to commit money and other resources to the bank. The key considerations for a corporate parent investing in a bank that will operate independently are the value the bank will add to the corporate group and the parent's trust and confidence in the bank's management. Experience has shown that the most successful banks have a deep relationship with the parent even though they operate as an independent entity within the corporate group. This is facilitated by allowing key representatives of the parent to sit on the bank's board. These people play critical roles in bridging the relationship between the bank and its affiliates. They ensure that the parent and affiliates understand the bank's role, requirements and limitations and reassure the parent that the bank is well managed and cognizant of its responsibilities to the corporate group.

In addition to these comments on the Rule, we offer the following responses to the request for comments to specific questions set forth in the supplementary information regarding the Rule.

1. Cure period—We think permitting a discretionary cure period is prudent and reasonable for all requirements, particularly if a violation arises inadvertently and poses no or only a minimal risk to the safety and soundness of the bank. This is the standard generally used for the bank itself. Imposing inflexible standards on a holding company may result in more harm to both the holding company and the bank than would be warranted in most circumstances, particularly when the penalty would be divestiture of the bank. Divestiture would result in a loss of some or all of the holding company's investment in the bank and probably result in closure of the bank as well. Such extreme consequences could be justified only if the safety of the bank was seriously threatened. The period to cure a problem should provide for taking strong actions without delay when needed to address a serious issue but also allow for a longer period to resolve less serious problems or implement solutions that may take longer than a specific term would allow.

The 180 day cure deadline imposed on some conditions in the case of a Financial Holding Company is a good example of the potential problem. The conditions covered by that cure deadline include a capital impairment, poor management rating and below satisfactory CRA rating at the subsidiary bank. The bank regulators will be attacking those problems at the bank level and could be near a resolution when the cure period expires. It could take longer than 180 days to conduct a nationwide search for a new CEO or management team. The bank would have to find the best qualified person, allow time for that person to leave his/her current position and take over the troubled bank, and have time to make substantial progress to resolve its problems sufficient to warrant raising the management rating. Implementing new CRA programs could take longer than 180 days, especially if the solution is to develop a strategic plan, and time must be allowed to conduct a new examination within that period to confirm that a new rating is warranted. These constraints are potentially unworkable and are themselves a threat to the safety and soundness of the bank. Regulators should be able to weigh the seriousness of a violation, the efforts undertaken to cure the problem and the likelihood of a successful resolution in determining whether further sanctions are needed.

2. Actions beyond cease and desist orders and civil money penalties under current legal authority—We do not believe additional authority is needed beyond what is currently available to the FDIC and the state regulators. Divestiture of a bank is an extreme action that would be warranted only in rare and unusual circumstances directly threatening the safety and soundness of the bank. A more effective authority in extreme circumstances is the ability to take possession of the bank, a power the Utah Commissioner of Financial Institutions has over Exante and other Utah chartered institutions if he believes that is necessary to protect the bank from a serious risk. It would be prudent for the FDIC to ensure that state regulators have this authority and can use it expeditiously if needed.

3. Period to divest commercial activities or industrial bank—This question describes actions beyond the authority of the FDIC absent changes in federal law that only Congress can make. Congress is likely to answer the question if it passes new legislation. If it doesn't, the question is moot.

4. Further define "services essential to the operations of the industrial bank"?—We do not think that is desirable. It is unlikely that a general list could anticipate or adequately define what is essential in every instance. A service that is essential in one case may be only marginally important in another. The FDIC and state regulators already closely regulate all interactions between a bank and it affiliates even if they are not deemed "essential". Continuing that practice should be sufficient to ensure that all affiliate relationships and transactions are conducted appropriately.

5. What is needed to assure transparency regarding a bank's parent and affiliates?—We do not think the Rule is unreasonable in providing for the FDIC to examine holding companies and affiliates for compliance with the Federal Deposit Insurance Act or other laws administered by the FDIC provided it doesn't unnecessarily duplicate examinations conducted by other regulators, such as insurance examiners, that are available to the FDIC.

We would be concerned if an agreement authorizing the FDIC to examine any affiliate leads to unnecessary regulatory burdens on affiliates that have no connection to the bank other than common ownership. This would be an issue if the Rule is expanded to cover existing industrial banks. For example, affiliates of Exante Bank engage in activities that are outside the expertise of bank examiners, such as providing health care insurance and administration, medical services, software products and medical publications. Subjecting those entities to examinations and possibly new reporting requirements could be both burdensome and nonproductive. The FDIC and state examiners should have the ability to examine transactions between a bank and its affiliates and to examine an affiliate that may have a material impact on the bank but requiring regular separate reporting by all affiliates could be very expensive and of no particular use to the bank's regulators.

We believe no change is needed from the current practice that allows the FDIC to decide what information it needs and examinations it should conduct to properly supervise the bank.

6. Recordkeeping requirements on parents and non bank affiliates.—See answer to preceding question.

7. Regulation of insurance and securities affiliates of a bank?— The regulatory burden must be weighed against the possible benefit to the FDIC of imposing concurrent authority over affiliates subject to primary regulation by another regulator. UHG has extensive insurance operations in every state of the nation and it would be a major undertaking for the FDIC to examine those operations independently from each of the states' insurance regulators. In the insurance industry each state has a different set of regulations that must be followed by insurers. There would also be concerns about the FDIC's ability to properly understand and supervise insurance or other operations outside the FDIC's expertise.

It would seem prudent to defer to the insurance regulators (and securities regulators in other companies) to the extent the other regulator provides the same oversight and obtains the same information the FDIC would if it directly regulated that entity. The FDIC should be sure that the other regulator can and will share its information with the FDIC if it is pertinent to the FDIC's oversight of the bank. It would also seem prudent for the FDIC to reserve the authority to ask for additional information and conduct examinations if the information is necessary for the FDIC to properly regulate the bank.

8. Should the SEC be recognized as a consolidated federal regulator?—Yes. This is not directly pertinent to UHG or Exante but since UHG has extensive insurance operations regulated by the insurance regulators, we can appreciate how the SEC would understand the business and needs of a securities company better than other regulators and is best suited to regulate that type of company. It would not be appropriate to impose the standards of a bank holding company on a securities company or an insurance company without first determining that those standards are compatible with a company primarily engaged in another business.

9. Require minimum capital standards at each parent company?— We strongly oppose imposing a minimum capital requirement on a bank parent company.

Minimum capital requirements similar to a bank holding company make sense for a company that only owns a bank and whose only activity is supporting its subsidiary bank. The capital needed to properly support a traditional bank holding company is relatively easy to determine based the same factors used to determine adequate capital for the bank.

The capital needed to support other kinds of activities will vary significantly depending on the activity and will often depend on different factors than those pertinent to a bank. Adequate capital for a bank is mostly a function of what is needed to absorb reasonably foreseeable loan losses and other risks unique to banking. These considerations are not pertinent to a typical manufacturing or retailing company or even an insurance company. Requiring a company in another industry to hold more capital than it needs may be economically unrealistic or result in a competitive disadvantage, which would functionally preclude ownership of a bank even if it were allowed by law.

It could also make a holding company with inadequate capital appear very healthy if its capital should be substantially larger than that required of a bank holding company. For example, as of December 31, 2006, UHG had a capital to assets ratio of about 43%, substantially above the minimum capital requirement for a bank or bank holding company. However, the bank holding company capital standards do not take into account whether a healthy balance sheet for a company such as UHG should have more capital than is required by a banking business model. The capital requirements for a parent company should be based on the risk profile of its business as a whole, for which in many cases the FDIC does not have the expertise to make such determinations. That makes a minimum capital requirement for a company other than a bank holding company unavoidably arbitrary and capricious.

Furthermore, the relevance of the parent's capital ratio decreases when the bank is just a small portion of the parent's total assets. In that event, the parent will be able to support the bank better than any traditional bank holding company even if its capital to assets ratio is much lower than a bank holding company. For instance, as of December 31, 2006 UHG's total assets and total capital were 123 times and 53 times the size of Exante's total assets respectively. It is also unreasonable for the regulator of a bank subsidiary of a much larger diversified holding company to intrude into the basic management of the holding company when the bank regulator is not qualified to understand the parent's other businesses.

We believe the FDIC should retain the current system in which the FDIC considers each holding company's ability to provide support to its subsidiary bank on a case by case business and utilizes specifically designed conditions in approval orders to protect the bank based on the resources available from each company. In practice, this has resulted in the strongest and best capitalized banks in the nation. According to the FDIC's latest state profiles, Utah banks in the aggregate have the highest tier 1 capital ratios of all 50 states. This includes all banks in Utah, not just industrial banks, but the industrial banks constitute about 80% of the total assets in Utah and generally have higher capital ratios than commercial and community banks. These ratios reflect the fact that capital is simply not an issue for most industrial banks, especially those that are subsidiaries of much larger diversified holding companies. That type of parent can easily provide any amount of capital the bank may need and this relative abundance of capital explains why the capital ratios for Utah industrial banks are so high. This system is not broken and does not need to be fixed. On the contrary, the facts would argue for making this the model for all other banks rather than forcing the industrial bank holding companies to conform to the demonstrably weaker model used for bank holding companies.

10. What should the FDIC do if Congress passes no legislation affecting industrial banks before the moratorium expires?—The FDIC is responsible for administering the laws Congress has passed, not those it may pass. Congress enacted a law in 1987 exempting holding companies of industrial banks from the Bank Holding Company Act (except the tying provisions). If Congress does not change that law, the FDIC will have no choice but to process applications for new banks and acquisition of existing banks by companies with the resources, expertise and integrity to successfully operate a bank even if they are also engaged in commercial activities that do not present any threat to the bank.

With regard to the proposed rule, we believe it would be appropriate for the FDIC to adopt it provided that it makes the changes described above.

We appreciate the opportunity to submit these comments and I hope you find them helpful.

Very truly yours,

D. Dean Mason
President- Exante Bank