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Robert Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC

Re: RIN 3064-AD15

Ladies and Gentlemen:

We offer the following comments on the proposed rulemaking concerning Industrial Banks.

**Overview**

Our overall impression of the proposed regulations is that they seek to treat the parent companies of Industrial Banks ("IB's") as though they were financial or savings and loan holding companies under the BHCA or HOLA. We believe this approach goes too far and that the FDIC ought to adjust its approach along the lines of the legislation being proposed by Chairman Frank. Specifically, the FDIC ought, pending final Congressional action, to permit some level of non-financial activity by the parent and its non-bank subsidiaries (collectively, the "Parent"). Not to do so raises both legal and policy issues. From a policy perspective, the Industrial Bank as currently utilized (1) has not shown itself to be a danger to the deposit insurance system and (2) serves as a ground for innovative thinking that ought not to be discouraged. From a legal perspective, the proposed rules are in effect a legislative act by the FDIC by which the agency takes away by rulemaking a legitimate banking structure previously authorized by Congress.

**Specific Comments**

Financial Activities

We suggest that during the interim period pending Congressional action that IB Parents be permitted to engage in at least some level of non-financial activity, such at the 15% of revenues permitted by Chairman Frank's legislation. This would enable entities that are substantially financial services companies to own industrial banks without having to jettison incidental activities already engaged in by such companies. Moreover, while it is possible for the 15% to be wholly unrelated to financial services, it is more likely than not that a company receiving 85% of its revenues from financial activities is receiving the other 15% from activities that bear some relationship to its financial activities. In granting insurance, the FDIC could still look to the nature of the other activities and require appropriate safeguards, but a blanket prohibition would seem both legally questionable and unduly restrictive.

We also raise the question of whether there are really three categories of activities to be considered: (1)activities that may be engaged in by financial and savings and loan holding companies, (2) activities that are financial in nature, but due to legal or other structuring constraints cannot be done by financial and savings and loan holding companies (e.g., equity investments that are genuinely for the purpose of providing financing but which may run afoul of prohibitions on such investments), and (3) truly commercial activities (e.g., the sale of goods). We think the proposed regulations go too far in their elimination of any Parent activities that cannot be done by bank and thrift holding companies even where those activities are in fact financial in nature. Some of these activities - such as various tax credit programs - actually have the affirmative support of the Congress. It certainly seems appropriate that the rules should define and allow for some level of activities that are financial in nature even if not strictly within the scope of activities in which bank and thrift holding companies may engage.

Subsidiaries

The agency may want to preserve the power to receive reports on, and to examine, subsidiaries, and requiring the Parent's consent to this as part of the application process seems fine. But the application of this power to any given insurance application should turn on the specific facts and circumstances. It is completely conceivable that a Parent may have subsidiaries for which it would be pointless to require reporting or examinations, something which could be determined during the application process. Or it may turn out that a modified reporting and examination approach to subsidiaries would be desirable in a given case, with some subsidiaries being excluded and others aggregated in accordance with the nature of what they do. There is no point in blanket requirements that pose burdens without benefits. This applies not only to the applicant but to the agency, which would have to evaluate such reports and examine such entities. We strongly urge that reporting on the parent and its subsidiaries be limited to circumstances where there is truly something to be gained.

Control Issues

Why limit the Parent's representation on the Board to 25% rather than 49%? The latter creates the same level of control as the former without creating as much burden. For example, three or five person boards, which are common compositions, should be permitted to have 1 and 2 parental representatives (33% and 40%) respectively.

Also, we are somewhat at a loss to understand why an IB proposed to be owned by individuals is exempt from these regulations and is permitted to seek deposit insurance while an IB proposed to be owned by a company that has any level whatsoever of non-financial activities cannot seek insurance at all. There is just as strong an argument to be made - if not stronger - that a well-capitalized Parent with a modest amount of non-financial revenues provides much greater strength for the IB and the security of the deposit insurance system than an individually owned IB. In fact, given the proposal for financial support set forth in Section 354.4(h) of the proposed regulations, it seems like an IB with an economically solid Parent is much more desirable than an individually owned institution, even if the Parent has some level of non-financial revenue.

Similarly, requiring FDIC approval to employ a senior executive who is associated with the Parent or to enter into any contract for the Parent to provide services essential to the bank operations should be treated like other startup considerations and limited to the first three years of operation.

The real issue and the real protection with respect to each of the above concerns are adequate monitoring and enforcement of the rules on covered transactions. If the economic relationship between the Parent and the IB has adequate protections based on the rules on covered transactions, the other concerns pose much less risk.

Innovation

By restricting the Parent of an IB to exactly what financial and savings and loan holding companies can do, the agency discourages the type of innovation that might lead to different and better financial products. Instead, by allowing the Parent of an IB to have some income of the sort that bank and thrift holding companies cannot have, the agency could foster innovative, but still safe, financial products that could not, strictly speaking, be offered by banks and thrifts but which are nonetheless desirable and beneficial. We are personally familiar with a number of types of financing that are plainly "financial" activities, but due to legal or tax or other external structuring constraints, cannot be done by banks or thrifts, but could be done by the Parent of an IB. This ties as well to the point made above in the discussion of financial activities that there is an area of financial activity in between what bank and thrift holding companies can do, and the truly commercial. IB's represent an opportunity for a financial institution to offer both the financial products that banks and thrifts can offer, while at the same time using the Parent to offer other sought after financial products that allow for a more complete set of financial offerings.

**Conclusion**

We believe that IB's owned by Parent companies which have some level of non-financial activity income, or which have financial activity income of the sort not strictly available to bank and thrift holding companies, pose no distinct threat to the safety and soundness of the banking system or the deposit insurance fund. We urge the agency to leave IB Parents with the room to engage in such activities.

Sincerely,

Stephen A. Goldberg

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