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NAFCU

May 7, 2007

Robert E. Feldman
Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: RIN No. 3064-AD15; Industrial Bank Subsidiaries of Financial Companies

Dear Mr. Feldman:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the Federal Deposit Insurance Corporation's (FDIC) request for comments regarding its proposal on industrial bank subsidiaries of financial companies.

The proposed rule would strengthen the regulatory framework for consideration of deposit insurance applications or change in control notices for industrial banks or industrial loan companies (ILCs) owned by financial companies that are not subject to consolidated supervision by the Federal Reserve Board (FRB) or the Office of Thrift Supervision (OTS). For example, the proposal would require that, among other things, the parent financial company enter into an agreement with FDIC to maintain the capital of the ILC at specified minimum levels and to permit FDIC to examine or obtain reports from the company and its subsidiaries in order the safeguard the institution's safety and soundness. In effect, the proposed rule would provide enhanced supervision to ensure that the parent company serves as a transparent source of strength, rather than a source of risk, to the subsidiary ILC.

NAFCU firmly believes that ILCs should be appropriately regulated in order to ensure the overall safety of the American banking system. NAFCU generally supports the proposal; however, we would like to take the opportunity to submit the following specific comments.

Proposed Framework

FDIC has indicated that it does not believe that the industrial bank charter, in and of itself, presents any unique risks or harms; rather, the agency's concerns largely involve the ownership or control of the ILC and its business model. As such, the FDIC's proposed approach is directed *only* at ILCs that will become subsidiaries of financial companies that are not subject to federal consolidated bank supervision by the FRB or OTS (a "non-FCBS financial company"). With respect to these, the proposed rule would provide for enhanced transparency and a system of controls to address the safety and soundness risk and the risks to the Deposit Insurance Fund that are presented by this ownership model.

NAFCU believes that the proposed requirements are appropriately tailored to address the particular concerns raised by this ownership structure. However, we urge the FDIC to modify the scope of the regulation to also exclude ILC subsidiaries of financial companies subject to the examination and oversight of other federal financial regulators.

It is NAFCU's opinion that ILCs should be regulated to the same degree as other financial institutions, such that credit unions are not placed at an unfair disadvantage, and to ensure the safety and soundness of the banking system. Toward this end, we agree that ILCs should be prohibited from becoming subsidiaries of non-FCBS financial companies unless certain conditions and requirements are met and the company enters into written commitments with FDIC to enhance supervision of the parent company. In particular, NAFCU firmly supports the imposition of examination and reporting requirements with respect to ILC subsidiaries of non-FCBS financial companies. Transparency of the parent company is crucial to ensuring the safety and soundness of the Deposit Insurance Fund and the national financial system as a whole.

NAFCU also supports the proposed requirement for FDIC's written approval before an ILC owned by a non-FCBS financial company may take certain actions. Requiring agency pre-approval would provide the oversight necessary to help limit the parent company's influence, and to ensure that the ILC does not engage in unduly high-risk or otherwise inappropriate activities.

However, NAFCU does not believe that the proposed regulatory framework should apply in instances where the financial company is subject to the federal examination authority of other financial regulators. As proposed, the regulation would not apply to a financial company that is supervised by FRB or OTS. In NAFCU's opinion, this treatment should be extended to other federal financial regulators with examination authority. While recognizing that both FRB and OTS have the authority to examine holding companies, NAFCU believes that other federal financial regulators, including the National Credit Union Administration (NCUA) and the Securities and Exchange Commission (SEC), are no less suitable to examine the safety and soundness of financial companies and for their compliance with applicable law and regulation.

Remedies and Penalties

Pursuant to the Federal Insurance Deposit Act, the FDIC has the authority to issue cease and desist orders against ILCs or any institution-affiliated parties, including the parent company of an industrial bank, based on safety and soundness considerations. The agency can also impose civil money penalties when appropriate. *See* 12 U.S.C. 1818(b), (i). However, the FDIC has requested comment on whether the final rule, if adopted, should provide for more stringent remedies, for example, divestiture.

Generally, NAFCU does not believe that remedies beyond cease and desist orders and civil money penalties are necessary at this time. However, a number of NAFCU member credit unions have expressed concerns that, given the complexities that may exist relative to ILC subsidiaries of non-FCBS financial companies, divestiture may be an appropriate remedy for issues that are presently unforeseen based upon experience with more traditional financial services ownership models. NAFCU recommends that FDIC continue to monitor for the need for more stringent remedies, to include requiring divestiture of the industrial bank in appropriate circumstances.

FDIC Moratorium

Simultaneous with the proposed rule, the FDIC published a notice to extend for one year its moratorium on deposit insurance applications and change in control notices for ILCs that will be owned by commercial companies. The original six-month moratorium, first imposed in July 2006, was declared in response to controversy surrounding applications by corporations for ILC deposit insurance, including one by Wal-Mart, Inc. *See* 71 Fed. Reg. 43482 (August 1, 2006). The agency has indicated that the extension was intended to provide Congress with an opportunity to address the issue legislatively. As such, the FDIC has requested comment on whether, if the moratorium concludes without congressional action, the agency should implement regulations to address applications by commercial companies.

If Congress has not acted on any legislation prior to the expiration of the FDIC moratorium, NAFCU strongly urges the agency to take appropriate regulatory action to ensure adequate oversight of ILCs owned by commercial companies. NAFCU believes that commercial entities should, at minimum, be subject to the same regulatory framework as credit unions and other financial institutions. If Congress fails to act, the FDIC must exercise its authority to issue the regulations necessary to protect the Deposit Insurance Fund, and to promote the stability of—and public confidence in—the nation's financial system.

NAFCU would like to thank you for this opportunity to share its views on this proposed rulemaking. Should you have any questions or require additional information please call me or Pamela Yu, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,

Fred R. Becker, Jr.
President/CEO

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