BANK POLICY INSTITUTE

September 19, 2025

Via Electronic Mail

Jennifer Jones
Deputy Executive Secretary
Attention: Comments RIN 3064–ZA48
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Request for Information on Industrial Banks and Industrial Loan Companies and Their Parent Companies (RIN 3064–ZA48)

Ladies and Gentlemen:

The Bank Policy Institute[1] is writing in response to the Federal Deposit Insurance Corporation's "Request for Information on Industrial Banks and Industrial Loan Companies and Their Parent Companies."[2] ILCs offer banking products and services functionally indistinguishable from those other banks provide. However, the parents of ILCs are exempt from the requirements of the Bank Holding Company Act.[3] Therefore, they can avoid regulation and supervision by the Board of Governors of the Federal Reserve System and need not confine their activities to those "closely related to banking."[4] Thus, the ILC exemption effectively serves as a loophole through which commercial firms can own insured banks but not be subject to the federally mandated regulatory and supervisory framework intended to promote a safe, sound and stable U.S. banking system. The loophole also violates the longstanding U.S. policy that banking and commerce should remain separate. Therefore, as we have long advocated,

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[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations and represents the financial services industry with respect to cybersecurity, fraud and other information security issues.

[2] 90 Fed. Reg. 34271 (July 21, 2025).

[3] 12 U.S.C. § 1841(c)(2)(H) ("The term "bank" does not include […] [a]n industrial loan company, industrial bank, or other similar institution[.]")

[4] 12 U.S.C. § 1843(k)(4)(F). BPI has long recognized that parents of ILCs that are subject to consolidated supervision by the Federal Reserve do not pose additional risks to the system and need not be included in any limitation on ILC parent companies. These include both bank holding companies and foreign banking organizations with operations in the United States that are already regulated as bank holding companies under the International Banking Act.

Congress should close this loophole, and, until such time, the FDIC should not issue deposit insurance to any ILC applicant.

We urge the FDIC to consider the outsized risks to the deposit insurance fund and financial stability created by authorizing ILC charters that permit parent companies to engage in commercial activities. In particular, the FDIC should not proceed with any such charters without first studying and reporting publicly on whether it has an adequate number of sufficiently trained and qualified examiners to identify and address these supervisory risks. ILCs with commercial parents can present risks that are far more varied and complex than those associated with traditional banks, and the bank regulators naturally lack experience in assessing how commercial risks may affect the DIF and financial stability. Questions about the FDIC's ability to examine commercial ILCs effectively are even more pressing in light of the FDIC's increasing focus away from complex institutions.[5]

Closing the ILC loophole would not only protect the DIF, it would also be consistent with the foundational precept on which financial regulation in the United States is based: namely, that banking and commerce should remain separate. The risks of combining banking and non-financial businesses are a longstanding concern of US public policy. For example, the Bank Holding Company Act ("BHCA") limits the affiliation of banks and non-financial businesses by generally prohibiting bank holding companies from owning more than five percent of the voting stock of non-financial companies, with limited exceptions.[4] This prohibition addresses a number of potential problems, including:

- A concentration of economic power;
- Less stringent credit standards for and higher risk exposures to affiliates;
- Less attractive credit terms to unaffiliated non-financial businesses; and
- Other similar conflicts of interest.

These adverse effects also could reduce the availability of credit to unaffiliated businesses and create vulnerabilities for the DIF. Under the BHCA, the activities of affiliates of a bank are subject to "consolidated supervision."

Furthermore, the ILC exemption was not intended to provide an avenue for commercial, retail, or tech firms to enter into banking. The ILC industry has changed dramatically since 1987 when this statutory exemption was created as part of the Competitive Equality in Banking Act ("CEBA"). At that time, the size, nature, and powers of ILCs were limited.[6]

Today, however, the loophole allows large national and international financial and commercial firms to acquire an ILC, which is an FDIC-insured depository institution, and gain access to the federal safety net available to insured depository institutions. Indeed, dramatic changes have occurred with ILCs

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[5] Only two of the top 40 U.S. banks are primarily supervised by the FDIC (link).

[6] ILCs were first established in the early 1900s to make small loans to industrial workers and, until recently, were not generally permitted to accept deposits or obtain deposit insurance. At the time of CEBA's enactment, most ILCs were small, locally owned institutions that had only limited deposit-taking and lending powers under state law. At the end of 1987, the largest ILC had assets of only approximately $410 million, and the average asset size of all ILCs was less than $45 million. The relevant states also were not actively chartering new ILCs. At the time CEBA was enacted, for example, Utah had only 11 state-chartered ILCs, and had a moratorium on the chartering of new ILCs. Moreover, interstate banking restrictions and technological limitations made it difficult for institutions chartered in a grandfathered state to operate a retail banking business regionally or nationally.

that make them a particularly attractive avenue for firms to gain access to the federal safety net *without* being subject to the activity restrictions and prudential framework that Congress established for the corporate owners of other full-service commercial banks. In the relatively recent past, commercial firms and tech companies like Wal-Mart, Home Depot, and Rakuten have sought to access the benefits offered through FDIC insurance and access to the federal safety net by the establishment or acquisition of an ILC. These firms are subject to market and other incentives that are distinct from, and may be in conflict with, serving as a source of financial strength for a subsidiary bank.

The FDIC adopted regulations in December 2020 that require certain conditions and written commitments in situations where an ILC would become a subsidiary of a company not subject to consolidated supervision by the Federal Reserve Board.[7] In commenting on the proposed rule, we asserted that the FDIC should ask Congress to remove the ILC exemption and recommended that the FDIC cease insuring ILCs.[8] However, we noted that until Congress takes that step and so long as the FDIC continued to grant insurance to ILCs, the FDIC should implement more robust and comprehensive requirements for ILCs and their parent companies.[9]

Indeed, we reiterate here that Congress should close the ILC loophole and the FDIC should cease insuring ILCs, but, in the absence of Congressional action or the FDIC's cessation of granting insurance to ILCs, we continue to believe that the FDIC should take further steps to mitigate the most significant risks posed by ILC arrangements, including their ability to mix banking and commerce and the lack of consolidated supervision of ILC organizations. Below, we reassert many of the recommendations we made in our letter to the FDIC in 2020. These recommendations would help ensure that ILC arrangements are subject to the same requirements as other banking organizations and that the risks those arrangements could pose to the DIF and the financial system more broadly are reduced.

I. <u>The FDIC should pause processing deposit insurance applications involving an ILC at a minimum until the FDIC has reviewed comments submitted in response to the RFI and finalized any regulatory or policy actions resulting therefrom</u>.

As noted, we believe that the FDIC should cease insuring ILCs for the aforementioned reasons. However, should the FDIC continue to consider insurance applications from ILCs, the FDIC should, at a minimum, pause processing applications that have been filed or that are filed before the FDIC completes its review and takes any subsequent action as a result of this RFI. The FDIC itself stated that it has initiated this RFI "to review the nature and structure of companies that ***have applied***, or may in the future apply, for an industrial bank charter and Federal deposit insurance, or for FDIC approval or non-objection to enter into other corporate transactions involving industrial banks, and the issues those applications and notices may present."[10] The FDIC states further that this "review will inform potential changes to how the agency evaluates the statutory factors in the context of the unique aspects of

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[7] FDIC, *FDIC Approves Rule to Ensure Safety and Soundness of Industrial Banks* (Dec. 15, 2020) (link); *see also* 12 CFR Part 354.

[8] BPI, *Comment on Parent Companies of Industrial Banks and Industrial Loan Companies* (Docket ID RIN 3064-AF31) (June 30, 2020) (link).

[9] *Id*.

[10] 90 Fed. Reg. at 34271.

industrial bank business plans and the issues presented by the range of companies that may form an industrial bank."[11]

Therefore, the FDIC has clearly contemplated that the information received in response to the RFI should inform potential changes to how the FDIC evaluates applications for deposit insurance by ILCs. The FDIC therefore appropriately recognizes that any changes to that evaluation should be adopted in a transparent manner and consistently applied to all applicants. Thus, it would not be appropriate for the FDIC to process applications and make policy decisions through that process while the FDIC simultaneously undertakes a comprehensive review of its approach to reviewing applications for deposit insurance from ILCs. Changes to regulations and policies should be accomplished through transparent processes that comply with the Administrative Procedure Act and not through the less transparent application process. Therefore, we urge the FDIC to pause processing applications involving an ILC until the FDIC considers the broad set of questions and issues on which it is seeking input. This pause should cover all relevant applications, including an application for a new entity, a change in control notice, a proposed material change to an entity's business plan, or a merger application involving an existing entity.

II. **<u>The FDIC should further strengthen the regulatory framework applicable to ILCs</u>.**

Historically, ILCs have raised concerns primarily because the charter allows for the mixing of banking and commerce through the loophole that permits commercial companies to own ILCs without becoming bank holding companies under the BHCA.[12] Because of this loophole, ILCs and their parent companies are not subject to the consolidated federal supervision that applies to commercial banks and their bank holding companies. Some of the most significant differences between the supervisory frameworks applicable to bank holding companies and ILC parent companies are summarized in the <u>Appendix</u> to this letter.

As the FDIC acknowledges, there has recently been increasing interest in the ILC charter. The risks inherent in the ILC charter warrant a robust regulatory and supervisory framework to mitigate risk from ILC parent companies. The FDIC took an important step in 2020 by issuing updated regulations governing ILC parent companies. The rule provides that no ILC may become a subsidiary of a "Covered Company" – a company that is not subject to Federal consolidated supervision by the FRB and that controls an industrial bank: (1) As a result of a change in bank control pursuant to section 7(j) of the FDI Act; (2) As a result of a merger transaction pursuant to section 18(c) of the FDI Act; or (3) That is granted deposit insurance by the FDIC pursuant to section 6 of the FDI Act, in each case on or after April 1, 2021 – unless the Covered Company enters into one or more written agreements with both the FDIC and the subsidiary industrial bank which contain commitments by the Covered Company to comply with each of paragraphs (a)(1) through (8) in 12 CFR § 354.4 and such other written agreements, commitments, or restrictions as the FDIC deems appropriate, including, but not limited to, the provisions of §§ 354.4 and 354.5.13 The rule provides that the FDIC also has discretion to condition a grant of deposit insurance,

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[11] *Id*.

[12] *See*, *e.g.* Testimony of Scott G. Alvarez, General Counsel, Board of Governors of the Federal Reserve on "Industrial Loan Companies," Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate (Oct. 4, 2007).

[13] The FDIC proposed in 2024 to amend its 2020 ILC regulation to close loopholes in that rule. *See* 89 FR 65556 (Aug. 12, 2024). Specifically, the FDIC proposed to apply the regulations to instances in which an industrial bank is converted from a federal savings association charter pursuant to Sec. 5(i)(5) of the Home Owners' Loan Act, when there is a change in control or there is a merger where the parent company is the resultant entity, and any other

issuance of a non-objection to a change in control, or approval of a merger on an individual who is a controlling shareholder of a Covered Company joining as a party to any written agreement required by that provision.

The rule provides that the following commitments must be made in the written agreements and that the FDIC will condition each grant of deposit insurance, each issuance of a non-objection to a change in control, and each approval of a merger on compliance with those commitments to:

1. Submit to the FDIC an initial listing of all of the Covered Company's subsidiaries and update such list annually;
2. Consent to the examination by the FDIC of the Covered Company and each of its subsidiaries to permit the FDIC to assess compliance with the provisions of any written agreement, commitment, or condition imposed; the FDI Act; or any other Federal law for which the FDIC has specific enforcement jurisdiction against such Covered Company or subsidiary, and all relevant laws and regulations;
3. Submit to the FDIC an annual report describing the Covered Company's operations and activities, in the form and manner prescribed by the FDIC, and such other reports as may be requested by the FDIC to inform the FDIC as to the Covered Company's:
    a. Financial condition;
    b. Systems for identifying, measuring, monitoring, and controlling financial and operational risks;
    c. Transactions with depository institution subsidiaries of the Covered Company;
    d. Systems for protecting the security, confidentiality, and integrity of consumer and nonpublic personal information; and
    e. Compliance with applicable provisions of the FDI Act and any other law or regulation;
    f. Maintain such records as the FDIC may deem necessary to assess the risks to the subsidiary industrial bank or to the Deposit Insurance Fund;
4. Maintain such records as the FDIC may deem necessary to assess the risks to the subsidiary industrial bank or to the Deposit Insurance Fund;
5. Cause an independent audit of each subsidiary industrial bank to be performed annually;
6. Limit the Covered Company's direct and indirect representation on the board of directors or board of managers, as the case may be, of each subsidiary industrial bank to less than 50 percent of the members of such board of directors or board of managers, in the aggregate, and, in the case of a subsidiary industrial bank that is organized as a member-managed limited liability company, limit the Covered Company's direct and indirect representation as a managing member to less than 50 percent of the managing member interests of the subsidiary industrial bank, in the aggregate;

situation where an industrial bank would become the subsidiary of a company not subject to federal consolidated supervision. BPI submitted a comment supporting the proposal. The FDIC recently rescinded the proposed rule (90 Fed. Reg. 33910 (July 18, 2025)), but we encourage the FDIC to propose amendments to its rule as discussed throughout this letter including proposed amendments to ensure that the regulatory framework, including the recommended enhancements we make herein, apply to ILC arrangements regardless of their method of creation or acquisition.

7. Maintain the capital and liquidity of the subsidiary industrial bank at such levels as the FDIC deems appropriate, and take such other actions as the FDIC deems appropriate to provide the subsidiary industrial bank with a resource for additional capital and liquidity including, for example, pledging assets, obtaining and maintaining a letter of credit from a third-party institution acceptable to the FDIC, and providing indemnification of the subsidiary industrial bank; and
8. Execute a tax allocation agreement with its subsidiary industrial bank that expressly states that an agency relationship exists between the Covered Company and the subsidiary industrial bank with respect to tax assets generated by such industrial bank, and that further states that all such tax assets are held in trust by the Covered Company for the benefit of the subsidiary industrial bank and will be promptly remitted to such industrial bank. The tax allocation agreement also must provide that the amount and timing of any payments or refunds to the subsidiary industrial bank by the Covered Company should be no less favorable than if the subsidiary industrial bank were a separate taxpayer.

While we supported the FDIC's promulgation of these rules, we noted at the time, and continue to believe, that the FDIC should take further steps and establish by regulation more robust requirements applicable to ILCs and their parent companies comparable to the requirements applicable to bank holding companies.[14] We highlight four areas of particular importance: supervision of ILC parent companies, limiting non-financial activities, capital and liquidity requirements, and privacy and data protection requirements.

A. <u>FDIC Supervision of Covered Companies Should be Comparable to Federal Reserve Supervision of Bank Holding Companies</u>

The FDIC has the statutory authority to examine any affiliate of an ILC, including the ILC's parent company, as may be necessary to disclose fully the relationship between the ILC and its affiliate, as well as the effect of such relationship on the ILC.[15] In addition, the parent company of an ILC is required to serve as a source of financial strength for an ILC.[16] The FDIC's 2020 ILC rule includes among the commitments Covered Companies must make a commitment to consent "to the examination by the FDIC of the Covered Company and each of its subsidiaries to permit the FDIC to assess compliance with the provisions of any written agreement, commitment, or condition imposed; the FDI Act; or any other Federal law for which the FDIC has specific enforcement jurisdiction against such Covered Company or subsidiary, and all relevant laws and regulations."[17] However, as noted, we believe these commitments should be mandated through operation of the regulation itself and further strengthened so that Covered Companies are subject to supervision comparable to bank holding companies under the BHCA.[18] We specifically recommend that the FDIC propose amendments to its ILC rule to include the following requirements.

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[14] *See* BPI, *Comment on Parent Companies of Industrial Banks and Industrial Loan Companies*

[15] *See* 12 U.S.C. § 1820(b)(4).

[16] *See* 12 U.S.C. § 1831o-1(b).

[17] 12 CFR 354.4(a)(2).

[18] As we recommended in 2020, we continue to believe that the FDIC should amend its rule to adopt the definition of "control" in the BHCA rather than the definition of "control" in the Change in Bank Control Act.

a. Examinations

The FDIC should amend its ILC rule to establish a mandatory examination schedule of at least one examination per year for Covered Companies, and prescribe a list of examination topics that is comparable to the examination requirements of similarly situated bank holding companies.[19] Examinations should include review of, among many areas:

- An enterprise-wide risk management and risk governance framework that requires board of directors oversight, a broad risk assessment, and implementation of risk controls;
- An information security program that complies with the safeguards rule under the Gramm-Leach-Bliley Act ("GLBA") and Federal Financial Institutions Examination Council ("FFIEC") IT requirements; and
- An enterprise-wide review for compliance with the Volcker Rule across a Covered Company's U.S. and non-U.S. operations.[20]

ILCs with commercial parents necessarily engage in a wider variety of activities than other banks, creating more numerous and diverse risks with more complex interactions across those risks. Therefore, supervision of such institutions must be conducted only by the nation's most sophisticated, knowledgeable, and experienced examiners, ones with extensive experience examining the nation's most complex financial institutions (and only then with additional training on non-financial risks). Unless the FDIC or any other regulator can justify publicly that it has the absolute most experienced and sophisticated examination staff available, and that such staff has been trained in assessing commercial risks not presented by any non-ILC bank, that regulator cannot effectively supervise ILCs with commercial parents.

Before approving any ILC with commercial parents, the FDIC should candidly assess whether its examiners naturally lack expertise in identifying risks and unsound practices of commercial entities that could pose a threat to the safety and soundness of the subsidiary ILC or to the financial system more broadly. As recommended previously, the FDIC should not proceed with granting insurance to any ILCs without first studying and reporting publicly on whether it has an adequate number of sufficiently trained and qualified examiners to identify and address these supervisory risks. The FDIC should also identify what training and hiring it would need to do to ensure that it has sufficiently expert supervisory staff to mitigate the broad range of risks that commercial entities that own or could in the future own an ILC and/or be affiliated with an ILC could pose. The FDIC should then propose for public comment, after strengthening the ILC rules as recommended herein, an examination manual for how it would effectively supervise commercially owned or controlled ILCs.[21]

[19] BPI recognizes that the supervisory program applicable to bank holding companies is tailored based on the size and complexity of the bank holding company. BPI recommends that the FDIC take a similar tailoring approach with respect to ILC parent companies.

[20] The Volcker Rule in section 619 of the Dodd-Frank Act and regulations promulgated by various federal agencies, including the FDIC, applies to a Covered Company under the FDIC's Proposal, subject to amendments to the rule made by the Economic Growth, Regulatory Relief, and Consumer Protection Act for certain small depository institutions.

[21] The FDIC's public list of examiner training program appears not to list any courses covering risks presented by commercial firms such as commercial parents of ILCs (link).

Ultimately, however, even combined with the additional recommendations herein, to effectively mitigate the risks of Covered Companies and carry out Congressional intent that banking and commerce remain separate, Congress and the FDIC must act to end the ability of commercial companies to become affiliated with ILCs.

b. Strengthening limitations on affiliate transactions

Industrial banks are insured state nonmember banks and thus are subject to restrictions under sections 23A and 23B of the Federal Reserve Act governing transactions with affiliates.[22] However, given the risk that non-financial activities pose to the ILC subsidiary and the Deposit Insurance Fund, covered transactions as defined in sections 23A and 23B of the Federal Reserve Act between a Covered Company (and its non-ILC affiliates) and the ILC subsidiary are a cause for particular concern. Therefore, the FDIC's examination of Covered Companies should specifically include a review for compliance with the section 23A and 23B restrictions, which are essential for ensuring that the various benefits afforded the ILC as an FDIC-insured depository institution are not transferred to the Covered Company. Transfer of these benefits would place the Deposit Insurance Fund and ILC at significantly greater risk because the Covered Company is not subject to consolidated supervision. In addition, to ensure the safety and soundness of the ILC, the FDIC should require the Covered Company to have an affiliate transaction monitoring program that includes heightened processes for identifying and appropriately limiting covered transactions between the ILC and Covered Company or ILC and other affiliates.

If a Covered Company is engaged in non-financial activities, the FDIC also should establish a rebuttable presumption of control analogous to the Federal Reserve's merchant banking rules for determining whether a company is an "affiliate" of the Covered Company for purposes of sections 23A and 23B. Specifically, if the Covered Company controls more than 15 percent of the total equity of the company, that company would be presumed to be an affiliate of the ILC and therefore subject to the requirements in sections 23A and 23B.[23] This approach is consistent with the same separation of banking and commerce principles that underlie the merchant banking rules, which, unlike the ILC rules, also prohibit financial holding companies from managing the operations of the target entity and impose holding period limitations.[24] We make recommendations about the definition of "control" generally that the FDIC should adopt in its ILC regulations, but this would be an exception to that general recommendation.

c. Reporting

The FDIC should update its ILC rule to subject ILCs to periodic reporting requirements that are comparable to the reporting requirements that apply to bank holding companies. These reports would be in addition to the annual reports required under the FDIC's existing regulation applicable to ILCs and their parent holding companies.

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[22] 12 U.S.C. § 1828(j)(1)(A); 12 U.S.C. §§ 371c, 371c–1.

[23] *See* 12 CFR § 225.176(b)(1).

[24] 12 U.S.C. § 1843(k)(4)(H).

III. **The FDIC Should Impose Conditions and Constraints on Non-Financial Activities of Covered Companies**.

The key feature that distinguishes the ILC charter from the commercial bank charter is the ability of the ILC parent company to engage in unlimited non-financial activities. The ability of Covered Companies to engage in commercial activities represents a significant risk to the ILC and to the Deposit Insurance Fund and could potentially pose risks to the financial system more broadly. Through its parent company, the ILC may be exposed to the commercial risks of the parent company's industry. Currently, there are no activity restrictions imposed on Covered Companies. The ability to engage in non-financial activities also gives ILCs and their parent companies a distinct advantage over other charter types. In particular, ILCs and their parent companies may have commercial or mixed business models that generate revenues from activities that are impermissible for commercial banks and bank holding companies, and access to such revenues by commercially controlled ILCs disadvantages commercial banks and bank holding companies that provide credit more broadly to the U.S. economy.

As noted, in the absence of Congressional action, the FDIC should impose limitations on the commercial activities of ILC parent companies to the extent that these activities could impact the safety and soundness of the ILC subsidiary. For this reason, BPI recommends that the FDIC, at a minimum, amend its regulations to not only require a Covered Company to describe all its activities, but to describe all of the activities of each of its subsidiaries. The FDIC also should coordinate with the Department of Justice Antitrust Division and the Federal Trade Commission's Bureau of Competition, as appropriate, to monitor any potentially anti-competitive developments in the marketplace. For example, the FDIC should consult with those agencies in connection with the proposed establishment or acquisition of an ILC by a Covered Company for broader competitive implications, including for the commercial industries in which the Covered Company or its non-financial subsidiaries operate, that could arise from approval by the FDIC of such an application. While the FDIC has discretion to evaluate the competitive effects of such proposals, its review is focused on the statutory factors of the risk to the DIF and the convenience and needs of the community to be served, in order to ensure the market for the provision of banking services remains competitive and safe and sound. Coordination with the DOJ Antitrust Division and the FTC will ensure review of competition concerns in the relevant commercial markets as well.

In addition, the FDIC should establish standards and requirements related to the activities of Covered Companies and their subsidiaries that would support the safety and soundness of the subsidiary ILC and facilitate the FDIC's oversight. For example, the FDIC should propose amendments to its ILC rule to:

- Require a Covered Company to demonstrate that its and its subsidiaries' non-financial activities do not have an adverse effect on the ILC;
- Establish concentration limits that would prohibit a Covered Company from having a non-financial business line (including through a subsidiary) that accounts for more than a maximum percentage (*e.g.*, 10 percent) of the Covered Company's total assets or revenues; and
- Require a Covered Company to obtain FDIC approval to acquire a subsidiary engaged in non-financial activities or to engage in new non-financial activities, which would prompt the FDIC's review of the adequacy of the Covered Company's capital, liquidity and other requirements to which it is subject in light of the new

non-financial activities and their risk to the ILC.[25]

Furthermore, a Covered Company engaged in non-financial activities, and any company of which the Covered Company owns or controls more than 5 percent of such company's voting shares, assets, or ownership interests, should be prohibited from cross-marketing the products and services of the ILC and its subsidiaries, and vice versa. This restriction would be consistent with the regulations applicable to financial holding companies under the Federal Reserve's merchant banking rules, which allow financial holding companies to make investments in companies that are not engaged in financial activities ("portfolio companies").[26] Specifically, a financial holding company may not offer or market, directly or indirectly through any arrangement, any product or service of a portfolio company held by the financial holding company under the merchant banking rules, and vice versa.

IV. **Covered Companies Should be Subject to Minimum Capital and Liquidity Requirements by Rule**.

As state nonmember FDIC-insured banks, ILCs are subject to the regulation and supervision of the FDIC,[27] including the FDIC's minimum capital and liquidity requirements,[28] and the FDI Act's prompt corrective action regime.[29] The FDIC's regulations require Covered Companies to commit to maintain the ILC subsidiary's capital and liquidity at levels deemed appropriate by the FDIC and take other action necessary to provide the industrial bank with a resource for additional capital or liquidity.[30] However, the FDIC does not impose capital or liquidity requirements on the ILC parent company on an entity or consolidated basis.

ILCs and their parent companies and affiliates should be subject to consolidated capital requirements that are comparable to those that apply to their commercial bank and bank holding company counterparts. To this end, BPI recommends that the FDIC establish minimum capital and liquidity requirements through regulation that would apply on a consolidated basis to the Covered Company and its subsidiaries. BPI also recommends that the FDIC establish minimum capital and liquidity requirements via regulation tailored specifically to ILCs. Such requirements should be greater than the requirements applicable to other FDIC-insured depository institutions due to the enhanced risk of the Covered Company to the ILC and the Deposit Insurance Fund.

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[25] We note that 12 CFR 354.5 generally requires an ILC to obtain preapproval from the FDIC before undertaking a material change to its business plan. The requirement we are recommending is intended to address the activities of the Covered Company itself and the non-financial activities in which it seeks to engage.

[26] *See* 12 CFR 225.176(a).

[27] See 12 U.S.C. § 1813(q) (definition of "appropriate federal banking agency").

[28] See generally 12 CFR Parts 324 and 329.

[29] See generally 12 CFR Part 324, Subpart H.

[30] 12 CFR 354.4(a)(7).

The FDIC also should continue to have the authority to increase the requirements that apply to an ILC if warranted by the particular risks (*e.g.*, risks from the business activities of the Covered Company or other factors).[31]

V. Covered Companies Should Comply with Privacy and Data Protection Requirements

ILCs that are engaged in providing financial products and services to consumers are subject to regulations restricting the disclosure of consumers' non-public personal information to non-affiliated third parties,[32] and to interagency standards regarding information security.[33] Similar regulations apply to commercial banks.[34] Likewise, bank holding companies and their non-bank subsidiaries are subject to the same financial privacy requirements and the interagency information security standards,[35] among other consumer privacy and information security requirements. However, ILC parent companies are not subject to the same information security requirements because they are not covered by the GLBA safeguards rule as interpreted and enforced by the FFIEC, and their non-financial activities likewise would not be subject to the same financial privacy requirements in the GLBA financial privacy regulation, Regulation P. The absence of enterprise-wide privacy and information security requirements creates risk for ILC customers, regardless of whether they also obtain products and services from a Covered Company.

Indeed, a significant criticism of the ILC charter is that Covered Companies' ownership of ILCs presents unique concerns about the usage of consumer financial data for commercial purpose; these same concerns are not presented by a company subject to consolidated federal supervision because such a company would be subject to information security standards and financial privacy requirements. The heightened interest of commercial and technology companies (including large, integrated technology companies with access to large volumes of online consumer data) in potentially using the ILC charter amplifies this concern. For this reason, in addition to applying existing financial privacy and information security requirements to Covered Companies in the final rule, the FDIC should consider other safeguards specific to ILCs and their parent companies regarding the protection and use of consumer financial data for commercial purposes. For example, a Covered Company should be required to develop and implement an information security program that complies with the safeguards rule under the GLBA and FFIEC IT requirements.

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[31] The FDIC has exercised this authority previously. For example, the FDIC imposed a 20 percent leverage ratio on Square Financial Services, Inc., *see* FDIC, Approval Order for Deposit Insurance of Square Financial Services, Inc., Salt Lake City, Utah (March 17, 2020), and a 12 percent leverage ratio requirement on Nelnet Bank, *see* FDIC, Approval Order for Deposit Insurance of Nelnet Bank, Salt Lake City, Utah (March 17, 2020). These leverage ratio requirements are a significant increase from the minimum leverage ratio of 4 percent applicable to other FDIC-supervised institutions and the 8 percent leverage ratio expected of de novo FDIC-insured institutions. *See* 12 CFR 324.10(a)(iv); FDIC, Applying for Deposit Insurance: A Handbook for Organizers of De Novo Institutions, p. 19 (Dec. 2019).

[32] *See* 12 CFR Parts 332 and 1016.

[33] *See* 12 CFR Part 364, Appendix B.

[34] *See, e.g.,* 12 CFR Part 30, Appendix B (interagency information security standards applicable to national banks); *id.* Part 208, Appendix D-2 (interagency information security standards applicable to state member banks).

[35] *See* 12 CFR Part 225, Appendix F.

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We would welcome the opportunity to discuss the topics set forth in our response with FDIC staff. If you would like to set up such a meeting or if you have any questions, please contact me by phone at [redacted] or by email at [redacted]

Respectfully submitted,

/s/ Paige Pidano Paridon

Paige Pidano Paridon
EVP, Senior Associate General Counsel & Co-Head of Regulatory Affairs
Bank Policy Institute

APPENDIX A

Comparison of BHC and ILC Parent Company Supervisory Frameworks

Supervisory Requirement	BHCs	ILC Parent Companies
Consolidated Federal Supervision	Yes	No
Visitorial Examination Powers and Defined Examination Schedule	Yes	Limited *Covered Companies (along with all subsidiaries) must consent to FDIC jurisdiction for limited-scope examinations*
Consolidated Capital and Liquidity Requirements	Yes	No *Capital and liquidity requirements apply to the ILC subsidiary only*
Restrictions on Non-Banking Activities	Yes	No *Covered Companies may engage in unlimited non-banking activities*
Reporting (*e.g.*, FR Y9-C)	Yes	Limited *Annual reporting would be required for:* *describing the Covered Company's operations and activities, in the form and manner prescribed by the FDIC, and such other reports as may be requested by the FDIC to inform the FDIC as to the Covered Company's: (i) Financial condition; (ii) Systems for identifying, measuring, monitoring, and controlling financial and operational risks; (iii) Transactions with depository institution subsidiaries of the Covered Company; (iv) Systems for protecting the security, confidentiality, and integrity of consumer and nonpublic personal information; and (v) Compliance with applicable provisions of the FDI Act and any other law or regulation;*

Rigorous "Control" Standards	Yes	No *Covered Companies are subject to CIBCA control standards rather than BHCA standards*

Privacy	Yes	Depends *Covered Companies' non-financial products and services are not subject to privacy requirements*
Information Security examinations	Yes	No
Resolution Planning and Recovery Planning	Yes *Resolution planning requirements generally apply only to BHCs with $250 billion or more in total consolidated assets*	Limited *FDIC has the authority to require contingency planning*
Potential Divestiture Requirement if Subsidiary Becomes Undercapitalized and in Other Supervisory Scenarios	Yes	No
Banking Agency Guidance on Sound Incentive Compensation Policies	Yes	Guidance applies to ILC sub only (Guidance states that it "applies to all the banking organizations supervised by the" federal banking agencies, including State nonmember banks. Under section 3 of the FDIA, "State nonmember bank" means any State bank which is not a member of the Federal Reserve System, and "state bank" means "any bank, banking association, trust company, savings bank, industrial bank…")

New Activity Restrictions Based on CRA Rating	Yes *Activity restrictions apply to BHCs that are FHCs and have failed to maintain a satisfactory or better CRA rating*	No
Enhanced Prudential Standards for Large BHCs	Yes	No
Source of Strength Obligations	Yes	Yes
Volcker Rule Requirements	Yes	Yes