

**From:** [George Sutton](#)  
**To:** [Comments](#)  
**Subject:** [EXTERNAL MESSAGE] RIN-ZA48  
**Date:** Wednesday, September 17, 2025 9:32:39 PM  
**Attachments:** [FDIC RFI 3064-ZA48.docx](#)  
[2025 Q2 Industry Trends & Ranking UAFS VERSION.pdf](#)

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Comment attached with exhibit

George Sutton



September 17, 2025

Federal Deposit Insurance Corporation  
550 17<sup>th</sup> St NW  
Washington, DC 20429

Attention: James P Sheesley, Assistant Executive Secretary

RIN 3064-ZA48

Re: Request for Information on Industrial Banks and Industrial Loan Companies and  
Their Parent Companies

Ladies and Gentlemen:

I appreciate the opportunity to submit the following responses to the request for information described in RIN 3064-ZA48 regarding industrial banks (IB), industrial loan companies (ILC) and their parent companies and affiliates.

My background and familiarity with industrial banks and banking in general began in 1983 when I became the first Deputy Commissioner at the Utah Department of Financial Institutions (UDFI). In 1987 I was appointed Commissioner and served in that position until 1992. The UDFI charters and regulates banks, credit unions, industrial banks and savings and loan associations. The department also administers the Utah Consumer Credit Code and other consumer protection laws and regulates other forms of consumer credit.

I joined the UDFI when significant changes were happening in the financial services industry and the markets. Inflation rates were in the high teens and low twenties and severely disrupted the economy causing what came to be known as "stagflation." Volatile rates caused many depository institutions, especially the savings and loans, to become structurally unprofitable. At the same time, the development of new electronic banking systems such as nationwide credit card networks and ATMs began the expansion of banking into nationwide markets from its previously mostly localized structure. Another development was that industrial loan corporations became eligible for FDIC insurance, and we began chartering industrial banks.

Stagflation and the breakdown of geographical limits on banking caused many traditional banks, credit unions and savings and loans to fail. I worked closely with the FDIC on the closure of several community banks in Utah and with the FDIC and FSLIC on the closure of all but one of the state chartered savings and loans. (As the chartering authority I had to start each closure by taking possession of the bank or savings and loan then appoint the FDIC or FSLIC as receiver.)

We also had to deal with the failure of two private deposit insurers, one for an earlier type of industrial loan company and the other for credit unions. Both insurers became bankrupt as economic conditions caused more failures than their reserves could cover. Some of the ILCs had to be liquidated at a loss and I learned first hand how devastating institutional failures can be for depositors, borrowers and their communities. One day I had to stand on a teller counter to announce the closure of a privately insured ILC that was having a pre-FDIC style bank run with lines of depositors extending out into a parking lot. We avoided similar problems with credit unions that, at the time, held one third of the personal checking accounts in the state, when the National Credit Union Share Insurance Fund, another federal deposit insurer, agreed to insure those credit unions. I learned only the federal government can insure deposits and the critical role that insurance plays in stabilizing the banking system and the economy.

The development of a new kind of branchless depository institution utilizing electronic systems to serve nationwide markets provided a stark and welcome contrast to the number of failures we had to deal with. One of the earliest industrial banks we chartered was particularly instructive for me in learning what was driving their development. It was a subsidiary of an insurance company. At the time the Bank Holding Company Act (BHCA) prohibited affiliations between an insurance company and a bank, but industrial banks were exempt and could be part of a diversified group. An insurance company could also affiliate at that time with a single savings and loan, or a new type of limited purpose bank named a credit card bank, or a Delaware chartered nonbank bank, and today such affiliations are permitted for all banks. This insurance company had already formed a savings and loan based in its home state to offer credit cards marketed primarily to its insurance customers. The credit cards were a stand-alone product developed in response to customer surveys and had no other connection to insurance or other services offered by that company. That savings and loan began in the late 70s by offering a plain MasterCard credit card to a few hundred thousand insurance customers. 49% of those customers accepted the offer. This was remarkable when most credit card marketing campaigns were considered successful if 1% or 2% accept. When I reviewed the financial reports on this savings and loan, I found it had the highest ratings from ratings organizations while it was operating in a state in which hundreds of other savings and loans had failed or were failing. The parent insurance company also had the highest ratings for financial strength and customer satisfaction. The contrast with the failing depository institutions could have not been starker. The company wanted to shift its credit card operations to Utah because usury laws in its home state capped the rates the savings and loan could charge on balances below the rates it had to pay on deposits due to inflation. This was the same kind of rate risk killing other savings and loans and many community banks. Moving to Utah, which did not cap rates, solved that problem. That bank continues to operate successfully today.

The advantage of diversified ownership and no cap on rates soon led to many additional industrial banks being formed in Utah. Utah has since developed into a national banking center. It ranks fifth in the nation in aggregate assets of state chartered banks and of aggregate assets in banks headquartered in the state. Banking and related operations are one of the leading employers in the state.

In addition to the size of the industry, Utah banks for decades have led the nation in key metrics of safety and soundness. Industrial banks in particular are as a group the strongest and safest insured by the FDIC and have generally held that distinction since they began to develop in the 1980s. For the past more than forty years, the industrial banks based in Utah and Nevada have consistently held higher capital ratios and been more profitable than any other group of banks. This can be seen in the attached charts prepared by the Utah Department of Financial Institutions (UDFI charts)<sup>1</sup> comparing key metrics for Utah's community, commercial and industrial banks. A few charts also include the national averages. During those four decades only one IB (as defined below) has failed or caused any loss to the FDIC.

After I resigned as commissioner, I spent the next nearly thirty years as an attorney specializing in bank regulation and new bank applications. I was involved in varying degrees in about half of the new IB applications. In the late 90s I joined the board of a federal savings bank that specialized in partnering with merchants to finance retail sales nationwide. During my time on that board the bank spun off from the original parent into a stand-alone operation and transitioned from regulation by the OTS to the OCC and the FRB. That bank continues to operate today and is, among other things, the largest private label credit card issuer in the nation. After that I joined the board of a regional commercial bank that primarily operates several community bank divisions throughout the intermountain west. It preserves the community bank model of each division as much as possible while providing the scale needed to make the technology investments banks need today and to serve more borrowers than lending limits would otherwise allow. This has given me broad experience as a regulator, counsel, advisor and director of traditional banks and industrial banks, and provides the background for my following comments.

I want to clarify that the following information relates to that group of industrial banks chartered mostly in Utah and Nevada that electronically deliver specialized products and services to customers nationwide and in some cases internationally. These are the true industrial banks. Most of these IBs operate without branches. This business model is fundamentally different than the pre-FDIC industrial loan corporations. Those ILCs were state supervised uninsured or privately insured depository institutions that functioned as local finance companies. With few exceptions, they no longer exist. The branchless model is essentially the polar opposite of this earlier model.

Branchless banking has developed in many kinds of banks since the 1970s. The cost savings this represents results in superior efficiency and profitability compared to traditional banks with branches. That has not displaced traditional banks but instead resulted in broad market specialization and segmentation. Branchless banks excel at

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<sup>1</sup> The attached UDFI charts show the efficiency of Utah industrial banks as of the end of the second quarter 2025 was 30% compared to 55% for Utah's community and commercial banks. ROE was 22% for IBs compared to 13% and 14% for the other banks and ROA is over 2.5% compared to about 1.5% for the other Utah banks, and slightly above 10% for community banks nationally. Tier 1 capital was 14% for IBs, about 12% for the other banks and 11% for community banks nationally. Total risk-based capital was 21% for IBs compared to about 16% for commercial banks and 13% for Utah community banks.

standardized products such as credit cards while traditional banks remain better suited to more customized loans and services for local businesses and developers.

Critics oppose IBs because they represent change, not risk. An exemption that Congress added to the Bank Holding Company Act (BHCA) in 1987 allows IBs to affiliate with a diversified group of businesses, which most other banks cannot do. The critics say allowing this “mixing of banking and commerce” conflicts with a long standing national policy intended to avoid concentrations and will result in widespread conflicts of interest. Despite these fears, the development of IBs over the past more than forty years has had the opposite result.

The BHCA was initially enacted to preserve the decentralized structure of the banking system in the US.<sup>2</sup> I strongly support decentralization. It ensures financial services are available everywhere to support economic development. Since the BHCA was enacted in 1956, new technologies, including those facilitating branchless banking, have created more diversification and decentralization of the banking system than existed when community banks operating in single states were the only kind of bank permitted by state and federal laws. The geographical structure of banking in the past worked well because the pre-80s paper based economy kept most transactions local and restrictions on ownership were needed to ensure deposits and services were widely dispersed and available to all. The new technologies and the diverse business models they produced made geographical limitations moot and geographical restrictions on banking obsolete, at least for products and services delivered electronically. Before these new technologies there was generally one kind of bank. Today diversification has exploded and increased the availability of financial services everywhere. IBs have added to diversification and decentralization, not undermined it. The banking industry in Utah today is one of the most diverse in the nation. The only real trend to market concentration now involves the largest nationwide full service national banks.

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<sup>2</sup> The BHCA was first adopted in 1956 specifically to prevent Transamerica Corporation, which was mostly an insurance company, from acquiring Bank of America. More broadly, the BHCA was designed to stop “chain banking,” which was ownership of multiple unit banks (which no longer exist) by a holding company that combined the units into a branch system. The Federal Reserve, led at the time by Marriner Eccles, first attempted to block the Transamerica/BofA merger as a violation of the antitrust laws. When the courts ruled against the Fed, it joined with the Independent Community Bankers Association, the leading opponent of chain banking, to convince Congress to adopt the BHCA. At that time, the BHCA only prohibited a company involved in any business other than banking from owning more than one bank. Before that time, commercial companies could own banks. For example, GM and Ford both owned the largest commercial banks in Michigan beginning in the 1930s. GM and Ford organized those banks to help revive Michigan’s economy after banking there largely collapsed during the Great Depression requiring the declaration of a bank holiday that quickly spread to other states and then nationwide. The FDIC was created in response to that crisis. GM and Ford had the capital needed to start those banks and needed the economy revived to create demand for their cars. The scope of the BHCA was expanded in 1970 to prevent diversified parents from owning even one bank. But even then, exceptions were allowed such as ownership of a single savings and loan. The development of “non bank banks” in the 1970s and 80s, again in response to developing market conditions relating to the proliferation of financial services in most kinds of businesses, relied on limiting the types of deposits a bank could offer to be exempt from the BHCA. In 1987 Congress made that exemption express in the BHCA for IBs based in states that required FDIC insurance at that time. Congress has preserved the exemption despite multiple studies and moratoriums afterwards.

Conflicts of interest are effectively prevented by laws and regulations covering affiliate transactions and relationships that were enacted long before the development of IBs. Those laws and regulations ensure that the interests of the bank's depositors, customers, other creditors and the communities the bank serves have priority over those of affiliates. Indeed, all transactions primarily intended to benefit an affiliate are prohibited even if they pose no specific risk to the bank. The effectiveness of these laws is an established fact, not just theory. ***In the past forty years, no IB has failed or suffered significant losses due to an affiliate transaction or other action taken primarily for the benefit of an affiliate.*** These laws and regulations include Section 18(j) of the FDI Act, 12 USC 1828(j), "Restrictions on Transactions With Affiliates and Insiders," which makes the restrictions on affiliate transactions in sections 23A and 23B of the Federal Reserve Act, 12 USC 371c and 371c-1, together with its implementing Regulation W, and provisions of section 22 Subsections (g) and (h) of the Federal Reserve Act, 12 USC 375a and 375b, governing "Extensions of Credit to Officers, Directors, and Principal Shareholders," along with its implementing Regulation O, applicable to all FDIC insured banks. The Anti-Tying Act also applies to all banks including IBs. It prohibits an IB from offering discounts on bank products and services if the customer obtains another product or service from an affiliate.

Other laws and regulations highlight what is misleading about characterizing industrial banking as "mixing banking and commerce." Section 24 of the FDI Act, 12 USC 1831a(a) generally prohibits any FDIC insured bank, including all IBs, from "engag[ing] as principal in any kind of activity that is not authorized for a national bank ..." The activities of an IB "mix" with those of its affiliates only in the limited instances where the bank shares operations or facilities with affiliates such as computer systems, and when it participates in an affiliate's marketing programs. In contrast to banks with a bank holding company parent that typically share the same boards and management, IBs are independent organizations within the corporate group with their own board of directors and management that are accountable to regulators who can penalize the bank and individual officers or directors for any violation of law or regulation or other actions detrimental to the interests of the bank. Management interlocks are generally prohibited. IB boards were required to have a majority of outside directors since before the adoption of Part 354.

It is also important to recognize the benefits of being part of a larger diversified group. The superior performance of IBs relative to other banks is due in part to the support a diversified parent can provide that very few bank holding companies (BHCs) governed by the BHCA can give to their banks.

One advantage of a diversified parent is capital support. It is the key to serving as a source of strength required of all bank parents. Many IBs are a part of a corporate group with substantial assets apart from the bank that can provide additional capital when needed to restore healthy capital levels or to expand when new opportunities arise. IBs have rarely needed this kind of support but it has happened a few times in the past. In one case a bankrupt parent provided a capital contribution of several million dollars to an IB subsidiary that had to temporarily write down good performing assets due to mark-to-market accounting rules during the Great Recession.

In contrast, most BHCs are shells with no assets apart from the bank. They have little or no ability to raise new capital or otherwise support a failing bank subsidiary. This weakness in the BHCA model becomes apparent in periods of economic stress such as the Great Recession. The FDIC reports that 530 insured banks failed between 2008 to 2015. 529 of those banks were commercial or community banks with BHCs regulated by the Federal Reserve. None of those BHCs were able or willing to infuse new capital to save their banks. At most, BHC regulation only prevents most parents from causing problems for the bank and should be more appropriately named the “don’t harm the bank” doctrine. The “source of strength” doctrine for most bank holding companies is effectively meaningless.

The parent of the one IB that failed specialized in the same business as the bank and both became insolvent simultaneously in 2010 due to market conditions causing increased loan losses among their small business customers. The lack of diversity in this case was a factor in the failure of both entities.

Another important advantage for some IBs is access to an established thriving market at inception. Many IBs are profitable immediately and benefit from marketing programs on a scale unimaginable for a bank that must build its business by itself from scratch. A new community bank usually starts with no customers and must speculate about its ability to build a place in the market and attract sufficient business to achieve real profitability before the end of the three year de novo period while maintaining healthy capital ratios.

The benefit for some IB organizers is transitioning an existing business into a bank that can serve those customers more efficiently. For example, a business providing consumer finance nationally must contend with fifty complicated and non uniform state laws governing credit if it is not a bank. The cost of that requires very large scale and generally only works for closed end single purpose loans. A federally insured bank avoids this complexity and inefficiency. That is one reason why all consumer credit cards are issued by a bank.

A similar benefit can be achieved by transitioning a financial services business such as a leasing company from funding through warehouse lines to deposits. During the Great Recession many leasing companies found that their business remained sound but funding became limited or suspended for a time by the banks that funded their leases. Those banks either downsized to increase capital ratios or failed. A good example is a leasing company that primarily leases medical equipment to hospitals and clinics. The demand for its leases remained strong despite the general economic downturn. Similar leasing companies that were IBs had no disruption in funding. Deposits were abundant at low rates and their businesses thrived.

Other IBs offer new products and services needed by customers of the parent or affiliates. For example, one of the early IBs provided basic banking services to independent long haul truckers at the parent’s nationwide truck stops. Previously, those customers were unable to access those services until they had completed their trip and returned home. Another IB finances postage and shipping costs for small businesses using equipment made by the bank’s parent. Similar diverse business plans are potentially as broad as the economy and represent natural developments of the market.

The benefit for the parent is not “captive” financing with the federal government taking all the risk. The benefit is increased overall corporate profitability and an expanded and stronger customer relationship. It benefits all parties and is pursued for normal and logical business reasons.

A broader factor is the massive development of the financial services markets beginning in the 1970s. The business model for a community bank previously relied on exchanging pieces of paper, mostly cash and checks. That made it impractical for most commerce to occur over long distances. Consumer credit was mostly limited to large purchases like houses and cars. Technology driven credit has exploded since then. Today the vast majority of transactions are electronic and use credit or debit cards. The distance between the parties is now mostly irrelevant. Businesses, especially local developers, still need community and commercial banks and those banks continue to thrive when well managed despite competition from tax advantaged credit unions. At the same time electronic banking has naturally led to the development of branchless banks such as credit card issuers and other specialized lenders. Their high efficiency and access to capital enables all branchless banks, including many national banks and federal savings banks, to still pay regular taxes and compete effectively against even the credit unions.

IBs are among the leaders in this new market segment. Their exemplary record of safe and sound operations since their inception over forty years ago clearly shows that they qualify for the privilege of a bank charter and federal deposit insurance.

With regard to regulation of IB holding companies in general and Part 354 of the FDIC regulations in particular, I generally consider the current version of the regulation adopted in 2021 to be well designed to give the FDIC the oversight and authority it reasonably needs to monitor the relationship between an IB and its parent and affiliates, ensure that they comply with laws and regulations, and do not pose other risks to the bank. This model, often referred to as “bank centric”, developed for years as the FDIC and state regulators gained experience regulating the IBs and their affiliates. Part 354 mostly codified those standards and practices.

With that background, I respond to the questions in the RFI as follows:

1. *How should the FDIC apply the statutory factors of the FDI Act to industrial bank applications? In what ways, if any, should the statutory factors be applied differently to industrial bank applicants than to other types of applicants? Which factors in particular and why?*

**RESPONSE:** All the statutory factors in Section 6 of the FDI Act are relevant to the success of any bank and should be evaluated in every application to organize a new industrial bank.

Having worked on many IB applications since the 1980s, I believe the FDIC and state regulators have done a good job of developing models to process IB applications and for regulating IBs, much of which is now specified in Part 354 and application guidelines. Processing new applications involves an in-depth and comprehensive review of every aspect of the business plan and the bank’s operations, not just evaluating the Section 6 factors. Problems with the plan need to be corrected before the



application will be accepted as complete for decisioning. Applications with problems or risks that can't be fixed or need substantial additional work are almost always withdrawn. Regulators can take whatever time they need to perform these reviews. I recommend that the FDIC and state regulators continue to process applications until they can reasonably conclude that the applicant will have the resources, facilities, expertise and leaders necessary to succeed if approved together with whether that plan will satisfy the statutory factors in Section 6.

*2. How should the FDIC's evaluation of the statutory factors be tailored based on the size, complexity, and nature of the parent and affiliates of a proposed industrial bank?*

RESPONSE: I agree it is important for the FDIC to obtain information about the bank's parent and the affiliates it transacts with including where they are based and have other facilities; their financial condition; the officers, directors and shareholders that control the parent and how well they have managed company; the other businesses controlled by the company and how it has conducted those businesses in the past; any history of legal violations or controversial practices; the sufficiency and reliability of the company's systems that may be utilized by the bank as well; and why the company wants to own a bank. It is also important to understand in detail the relationship between the bank and its parent and affiliates to evaluate how the bank will manage any risks inherent in that relationship. These are all pertinent to the bank's ability to comply with the statutory factors and operate safely and successfully.

This is significantly different from the process for evaluating a BHC that will be regulated by the Federal Reserve. The activities of most BHCs are much more limited and often indistinguishable from those of the bank, and only the Federal Reserve has the authority to approve and supervise a BHC. This disconnects the regulation of the bank from its affiliates. In contrast, the FDIC's and states' regulation of IB affiliates is an extension of their regulation of the bank and is coordinated. The FDIC and states have authority to monitor the financial condition of an IB parent and affiliates and ensure that any conditions at the parent do not adversely affect the bank, and that bank is prepared if they do arise. Regulators can issue cease and desist orders and restrict control over the bank if necessary to manage those risks.

Thus, the bank centric model differs from the BHC model in two important ways. First, it integrates and coordinates regulation of all people and organizations that will contribute to or pose a risk to the bank's success using the same regulatory authorities to do that as the Fed uses to regulate BHCs. Second, it does not extend regulation to parts of a corporate group that will have nothing to do with the bank's operations. The bank centric model focuses on the relationship between the bank and those entities and understanding the benefits and risks. The success of the bank centric model over more than four decades shows the FDIC and state regulators have done a good job of designing it.

The only significant problem that arose in the past, which is a flaw not in the model but in policy, was periods when former chairman Martin Gruenberg blocked the FDIC from approving a IB applications regardless of their merits and the law. I believe that was due to that chairman's unacknowledged but obvious bias against non

traditional banks. It was evident in the fact that during his terms only one IB application was approved by him although a second was approved by a majority vote of other directors over his objection. He did not acknowledge this policy but implemented it through a never ending process of asking questions followed by long periods of silence then more questions, and never accepting the application as complete. He averted an open examination of this policy by simply not approving any of the several pending applications during his terms. It was impractical to seek relief from this arbitrary and capricious policy in the courts because of the impact it would have on a bank's relationship with its regulator when a positive relationship is vital to any bank's success. This was blatantly improper, a classic "deep state" problem, but applicants do not file applications to engage in long disputes with regulators. One such application by an iconic US manufacturer that already owns a federal savings bank was pending for a number of years before being withdrawn. Regulators should take whatever time they need to thoroughly understand an application and be confident it is likely to succeed, but I hope this kind of abuse of authority will not occur again now that Mr. Gruenberg is no longer part of the FDIC leadership.

3. *How should the FDIC tailor its analysis if the parent of a proposed industrial bank is (1) a retail company, (2) a company that is financial in nature, (3) a manufacturing or other industrial company, or (4) a technology company?*

RESPONSE: (1) *a retail company.* Processing an application for deposit insurance by a retailer requires evaluating how the bank would comply with the affiliate transaction laws and regulations. The current laws, including the "attribution rule" in Section 23A, generally prohibit a federally insured bank from financing sales by the parent or an affiliate, or their operations.<sup>3</sup> Additionally, the Anti Tying Act prevents the bank from offering rewards for use of its card or credit at an affiliate. Applicants that fail this review do not get approved, and such deficiencies raise concerns about the applicant's capability to control a bank even if revised plans are submitted.

Many retailers that have organized IB subsidiaries provide new products and services to their customers that broaden the customer relationship and increase the combined profitability of the group. The operator of a nationwide chain of truck stops saw an opportunity to provide specialized banking services to its underserved trucking customers. Factoring bills of lading at the truck stop provides immediate income for a trucker who could otherwise not get paid for a completed trip until he or she returned home. The company that manufactures and sells postage meters saw an opportunity to offer specialized financing that enabled a small business to pay for postage from the Post Office and shipping costs owed to other shippers. These IBs offer convenience and are organized and can deliver their products and services in novel ways, due to the parent's broader understanding of its customers' needs. Capitalizing on this broader understanding of customer needs should be encouraged for the benefit of all parties.

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<sup>3</sup> There are a few limited exceptions including credit fully secured by a segregated deposit at the bank, accounts sold without recourse within the same business day, or if a program is specifically approved by the Federal Reserve. These are too limiting for most retailers because they eliminate the advantage of funding with deposits.

Other retailers have owned bank subsidiaries that were essentially independent businesses that just happened to be owned by a diversified parent. For example, until recently, General Electric owned two banks. One was a federal savings bank – another exemption to the BHCA along with credit card banks – that partnered with merchants to offer in store financing. None of those merchants were affiliates and none primarily sold GE products. The other bank was an IB that specialized in certain kinds of commercial credit such as financing fast food franchises. The only connection these banks had to the parent was ownership and the banks used some GE computer and communications systems in their operations. When GE decided to reorganize and scale down its financial operations, the FSB was spun off into a fully independent bank and operates today as Synchrony Bank. The IB self liquidated at no cost to the FDIC after selling its business and accounts.

Another example is Enerbank. It was organized as a subsidiary of a large Michigan electric and gas utility to finance home improvements such as energy efficient replacement windows. It serves a nationwide market, not just utility customers in Michigan, and markets through the independent replacement window manufacturers and installers. It was recently acquired by Regions Bank and continues to operate as a division of that bank.

Another retailer, Target, owned an IB that issued gift cards. This was legally compliant because the gift cards were debit cards fully secured with payment reserves at the bank. Target eventually sold that business to another bank along with a separate general purpose credit card program run through an affiliated but separate credit card bank Target owned in another state. Target organized an IB because its credit card bank could not issue gift or other debit cards.

I don't know Target's specific reasons for selling the bank and credit card program but I note that partnerships between banks and retailers have grown significantly and become the most common way to provide in-store credit. Many retailers today provide financing options as part of their business. For many this is a necessity as much as a convenience. Businesses like a furniture store would have significantly fewer sales if they only accepted cash and credit cards. Many customers do not want to make larger purchases with the credit cards they use for daily purchases. Most merchants do not have and could not justify the capital investment needed to organize and operate a bank or, especially for some smaller merchants, to offer their own financing. This provides an opportunity for many banks to offer tailored financing at retail stores. The market has grown to serve a broad array of merchants from the largest chains of nationwide retailers to the smallest local stores. The merchants often find they earn more in partnering with a bank that already has the capital and systems needed to offer these services.<sup>4</sup> These are branchless operations for the banks. The

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<sup>4</sup> A good example is a company named Rakuten that operates an internet based platform for independent retail merchants. Rakuten applied for an IB charter to offer credit with rewards to customers of the merchants. The application was opposed by some other banks that characterized Rakuten as the "Amazon of Japan" which would set a bad precedent for the development of concentrations by other major retailers. Eventually Rakuten withdrew its application. Instead, it recently announced that it would offer the same kind of credit card with rewards issued in partnership with American Express. Functionally, the only difference is the issuer of the card.

leaders in this market now include the largest national banks (CITI, Capital One, American Express, which operated as an IB for many years), one federal savings bank (Synchrony) and one IB (Comenity).

One past application by Walmart was designed to avoid the legal and regulatory restrictions by not offering credit. Instead, it would have served as the merchant depository for settling credit and debit card transactions at the parent's stores paid by customers with cards issued by other banks. That application was eventually withdrawn so the regulators did not need to determine if it would have satisfied the statutory factor requiring a bank to serve public needs and convenience. It would have only served the needs and convenience of the parent. This is a good example of how a Section 6 factor would apply to an application regardless of how well the plan was developed otherwise.

Concerns have been raised more generally about whether a large retailer like Walmart or Amazon could potentially disrupt the banking system in ways similar to how they have affected retail markets generally. Again, these companies have no option to organize a bank that would offer credit to customers such as a general purpose credit card that could be used to pay for purchases at Walmart or Amazon.<sup>5</sup> Without the ability to do full service banking they could only offer limited financial services, and they already offer most of those services. Walmart provides some consumer financial services such as check cashing and sale of money orders and gift cards. Amazon offers commercial financing to independent merchants that sell through the Amazon website. Both Amazon and Walmart offer sponsored credit cards with rewards through partnerships with independent banks. Apple also offers consumer credit and sponsored credit cards and other banking services through a partnership with Goldman Sachs Bank. None of these programs have disrupted markets, competed unfairly with other providers, or developed significant, let alone dominant, market share.

A manufacturer and retailer like Apple presents some additional issues. Its primary focus is developing a payment system embedded in its watches, phones and tablets that increases their functionality. Use of Apple's "wallet" would be drastically reduced if it was limited to a card issued by an Apple affiliate.

These examples illustrate the variety of plans that may be presented in an application. The challenge for the FDIC in connection with a broad array of banks, not just IBs, including the banks that partner with merchants, is ensuring the program operates safely and complies with the laws and regulations.

(2) *A company that is financial in nature.* See generally my response to question 2. Issues relating to IBs in this category have typically involved sharing facilities and personnel, routing applications to the bank out of the general flow of applications to the

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<sup>5</sup> A provision in Regulation W, 12 CFR 223.16(c)(4), allows a bank to offer a general purpose credit card that could be used to make purchases at an affiliate store if those purchases total less than 25% of all transactions in the account. This has not proven useful to most retailers. There is no practical way to ensure a card user always complies with that limitation and companies are hesitant to make the investments needed for a credit card operation if the regulation could be changed at any time. Another practical limitation is offering rewards to incent use of a card at a retailer. An affiliate bank cannot do that without violating the Anti Tying Act. Partnering with an unaffiliated bank avoids all those limitations.

parent, and ensuring the bank will control and exercise prudent underwriting standards for the accounts it approves.

(3) *A manufacturing or other industrial company.* The issues among this group are similar to those of a retailer parent. A bank is generally prohibited from financing sales of goods by an affiliate even if they are wholesale sales. For example, the attribution rule prohibits an IB owned by an auto maker from providing the flooring finance for a dealer to acquire inventory manufactured by the parent. An IB can finance the retail sale of cars if the dealer is independent and gets its flooring finance from an independent lender. The general rule for complying with the attribution rule is to follow the money. If it flows back to an affiliate, even through transactions with independent parties, it is a covered transaction subject to the restrictions in Section 23A. Even when an IB can finance retail sales, its ability to offer special terms is restricted by Sections 23B and the Anti-Tying Act.

(4) *A technology company.* The issues I have seen in this group of applicants often relate to the lack of proven success for products and services the bank would provide, potential concentration risks, and protecting the confidentiality of customer information.

Some so-called fintech companies are developing new and often novel ways of providing financial services through a bank. This is not limited to IBs. The risk is the lack of demonstrated viability of the products and services the bank would provide. The FDIC and state regulators are not venture capital funds insuring the funding source for unproven technologies. Many new technology companies feel a need to seek a bank charter early because they often need to lead the market from the beginning to survive even if their products are viable. I note that the FDIC has exercised its broad discretion to fashion special conditions to minimize risks for new financial products that have become somewhat seasoned such as those agreed to by Square Financial in connection with its financing of small businesses and small consumer credit based on novel underwriting standards. I encourage the FDIC to continue this cautious practice because of the risk to the banking industry's reputation generally for trust and safety if the FDIC were to insure a number of unproven banks that failed, not to mention the impact on the DIF. The importance of this risk was demonstrated recently with the failure of Silicon Valley Bank, Signature Bank and a smaller bank due in part to their exposure to crypto businesses.

Ensuring the confidentiality of customer information is another big risk involving technology companies. Companies like Meta (Facebook), Alphabet (Google) and to a lesser extent Amazon utilize a business model in which profit from sales of customer information to advertisers and other third parties. That is fundamentally incompatible with sound banking unless the customer requests that its information be shared to obtain other services such as sweeping idle balances in brokerage accounts into an insured deposit.

As mentioned above, another issue that has received attention by policy makers is the possibility of a large technology company entering the banking markets and having an impact on existing banks similar to what has happened to other related industries such as retailers, social networks and internet searches. Their size and

market dominance is the issue. In addition to potential antitrust issues, I believe two basic principles should apply if any such company did apply for a bank charter and deposit insurance.

One is that any bank business plan must serve customers in ways that promote trust and safety in the banking system. The integrity of that system is appropriately a fundamental concern of the FDIC as a public entity. Promoting trust and safety is the very reason the FDIC exists. Any bank that would breach confidence is clearly at risk of customer flight amounting to a run and notoriety that could harm banks generally.

The other principle is the importance of maintaining a decentralized banking system. That has been a foundational public policy since we became an independent nation. Its purpose is to ensure to the maximum extent possible the availability of financial services to every community. That helps ensure all communities can develop and thrive economically to the maximum extent possible. Decentralization has played a crucial role in the development of the US economy, especially in rural areas. I support this policy and believe each applicant for a new bank should add to the diversity of the nation's financial system. This applies to non technology retailers as well. One of the big concerns expressed when Walmart applied for an IB charter was whether it would result in the closure of local banks in the same way it drove local retail stores out of business, and then in some instances closed its store leaving that community with less access to needed goods and services without traveling long distances. I recommend requiring any such applicant to satisfactorily demonstrate that it would not disrupt or pose a risk to the stability of the current system or tend to constrain the availability of credit and other financial services beyond the scope of its own business interests. Needs and convenience should be evaluated across the whole community and not just as to the specific customers a particular bank would serve.

4. *How should the FDIC analyze an application in which an affiliate of a proposed industrial bank already provides the same lending (or other) services the proposed industrial bank would provide to customers of the parent organization?*

RESPONSE: See answers to questions 2 and 3(2) above.

5. *How should the FDIC assess an industrial bank applicant's capital adequacy? How should this assessment compare to other types of depository institutions?*

RESPONSE: The FDIC in past IB applications has set mandatory minimum capital levels based mostly on funding strategies and risk of losses as a condition to approve an application or as a basic safety and soundness standard for an operating bank.

Funding strategies for many IBs present unique liquidity risks because they are branchless. Some plan to rely on brokered deposits. They can only do that under current laws if the bank is well capitalized. Insolvency usually happens in a community bank reliant on core deposits when capital is fully depleted. An IB reliant on brokered deposits can become liquidity insolvent when it can no longer accept or roll over its deposits because its capital drops below well capitalized (or adequately capitalized with FDIC approval to take more brokered money). I believe it is appropriate for the FDIC to specify safe minimum capital levels, usually guaranteed by the parent, together with

robust liquidity plans to obtain funding from other sources such as securitizations, correspondent credit lines and parental guarantees to help ensure adequate liquidity in any market conditions.

6. *How should the FDIC assess an industrial bank applicant's risk to the DIF? Do certain industrial bank applicants' proposed business models, including those that involve significant or material reliance on their parent company—e.g., for the generation of deposit funding or the acquisition of lending assets—present unique risks to the DIF? How does material reliance on a parent company that is generally understood to be financial in nature compare to material reliance on a parent company that is generally understood to be non-financial in nature (including in the non-industrial bank context)? What different considerations, if any, come into play in evaluating these different types of parent companies?*

RESPONSE: See answers to each of the preceding questions.

I would add that every IB reliant on a parent or affiliate as a source of applications or referrals, or funding, or operations, should have an acceptable plan for dealing with any interruption in those services similar to plans by other banks for interruption in services provided by an unaffiliated party. In my experience resolution plans are already required for IBs and must be found adequate before an application will be approved and periodically updated afterwards.

Also in my experience, most banks outsource many functions, some of which are critical. This is hardly unique to IBs. All banks are reliant on things critical to their success. Outsource and reliance are essentially synonymous in that sense. Contingency planning, which all regulators emphasize, is the same regardless of who the bank relies on. Banks reliant on outside providers for transaction and account processing, cloud services, and similar technologies requiring large capital investments, would be unable to operate if that servicer failed. A typical community bank is reliant on the economic health of the community it serves. The closure of a large local employer or other disruption of the local economy often results in high loan defaults and in some cases rumors that spark a run, such as recently happened to Silicon Valley Bank and Signature Bank. Many of the 529 community banks that failed during the housing crisis beginning in 2007, which cost the FDIC billions of dollars, were reliant on the health of the local housing markets.

In some ways the risk is somewhat mitigated when an affiliate provides the services because the bank may have better access to inside information about developing problems and better leverage to get the servicer to modify its services to better meet the bank's needs. In my experience as a director, independent service providers serving many banks are generally unwilling to customize services for one bank.

The risk reliance on an IB parent or affiliate presents is unique in one noteworthy way. Many IBs have closed during the past four decades for reasons involving the parent but in all but one of these cases the bank was solvent and sold or liquidated. With that one exception, all IBs have closed without any loss to the FDIC. Reasons for IB closures range from insolvency of the parent to changes in the bank's market to sale or merger of the parent to complications in the parent raising new capital for other

purposes. None of those events caused the subsidiary IB to become insolvent. The lesson from these many cases is that closure of an IB does not present an inevitable or even a likely risk of loss to the FDIC if the bank is solvent.

In contrast, closure of a solvent community or commercial bank due to a problem at a bank holding company is almost unheard of because there is nothing but the bank that could fail. BHCs are typically shells. A community or commercial bank closes because it is insolvent, usually due to high loan losses or a run. Most bank holding companies fail as a consequence, not a cause, of the failure of their subsidiary bank. Losses for the FDIC are inevitable in these cases.

Most IBs can design resolution plans for a parent related risk that would avoid any loss to the FDIC in the event of a disruption of its business for any reason if its loans and other assets are good quality and performing. That might involve closure and liquidation of the bank by collecting its current accounts or selling its assets for an amount to pay all its depositors and other creditors in full. That has happened several times.

Of course, any bank can fail due to loan losses and that risk cannot be entirely eliminated for an IB or any other bank. But the risk is less with an IB than other banks because most IB parents can serve as a real source of strength. That is a statutory obligation made even more binding through a CALMA between the FDIC and a parent. This kind of backing is generally not possible for most traditional bank holding companies that have no other significant assets except the bank.

Another mitigating factor in many cases is the quality of the loans made by an IB getting referrals from a parent or affiliate or the minimal exposure to credit risk of some IBs. For some IBs that are subsidiaries of a parent that is itself a captive finance company of a large parent, a portion of loan applications originating at dealers or independent retailers are diverted to the bank for its review and decisioning. That portion of the applications is typically the strongest credits, minimizing default risks. Further mitigating credit risks is the fact that most IBs in a corporate group are getting applications through well developed and seasoned credit programs with well known characteristics and a strong secondary market for those loans. A bank like Target Bank only issued gift cards. It had no credit risk.

Again, the evidence substantiating all of this is the 529 community banks that failed due to their concentration in housing finance during the housing crisis and Great Recession beginning in 2007. All of those banks failed due to loan losses caused by a severe downturn in the markets they served. None of their Fed regulated holding companies were able or willing to assist their bank and most or all of those holding companies failed and closed as well.

In contrast, a typical example of problems at an IB involved the IB subsidiary of Lehman Brothers. It was named Lehman Brothers Commercial Bank but changed its name to Woodlands Commercial Bank after the parent's bankruptcy. The bank was based in Utah and made commercial loans to companies referred by its parent. The parent's bankruptcy ended its source of business and the bank began to liquidate. Its biggest problem initially was replacing some of the operating systems provided previously through the corporate group such as payroll. The bank's loans were high



quality and continued performing. The bank only held brokered CDs, which it had used to match fund its loans. Match funding eliminated rate risk and the brokered CDs were run proof. That enabled the bank to use loan payments to pay its CDs as they matured and cover the bank's operating expenses. The other problem the bank faced was that its loans had been booked as held for sale and under accounting rules the loans had to be marked to their market value when the secondary market for loans was severely disrupted by the recession. That caused a significant paper loss even though the loans continued to repay. The Lehman bankruptcy trustee with the consent of the parent's creditors committee contributed enough new capital to the bank out of the bankrupt parent's assets to cover that accounting loss. The trustee did that to protect the parent's investment in the bank that it was about to recover through the liquidation. Liquidation took about two years. In the end the bank paid all its deposits and other debts in full and a liquidating dividend to the Lehman trustee of several million dollars.

Another IB owed by AT&T in the 1990s issued a credit card with an embedded calling card feature that was popular before the development of mobile phones. When that market became obsolete the bank sold its accounts to another bank, paid its deposits in full and closed at no loss to the FDIC.

As mentioned previously, Enerbank was owned by a large Michigan based electric and gas utility. It financed home improvements nationwide. The parent often sold more stock to finance energy programs and new electric and gas facilities. It occasionally found interested buyers of new shares that already owned an amount of the utility's stock close to the statutory definition of control of a bank that were not willing to become regulated as an entity controlling a bank, even an IB. That parent recently sold the IB to Regions Bank where it continues to operate normally.

Another IB was owned by a company that operated a chain of insurance agencies. The bank financed insurance premiums for businesses. That bank sold its business to another bank and closed when a large insurance company offered to buy the insurance agency on the condition that it not own a bank. Another bank closed when regulatory approvals interfered with the merger of its parent. None of these closures resulted in a loss to the FDIC.

Contrast that example with a community bank in Utah named Barnes Bank that failed in 2009 during the housing crisis. It was one of the 529 community banks that failed in the Great Recession. That bank was based in a suburb of Salt Lake City named Bountiful. It had served that community since the 1880s. Beginning in 2007 it had significant losses in housing related loans due to the recession. Rumors began circulating about its problems and a depositor run developed even though its deposits were FDIC insured. Over a period of several days the bank lost about 15% of its deposits and became illiquid and was placed in receivership. All the deposits withdrawn were core deposits. The bank also held a large percentage of brokered deposits, none of which were withdrawn. The market chaos happening nationwide prevented the FDIC from finding another bank to merge the failed bank into and ended up liquidating its assets at a loss.

These examples illustrate the real difference in risks faced by an insolvent community and commercial bank compared to a solvent industrial bank that is part of a

diversified group. It belies any inference that affiliation has inherent risks greater than those of other banks. **The history of failures shows this conclusively.**

7. *How should the size and market share of the parent company and its affiliates and the diversity of products and services they offer relate to the risk presented by the proposed industrial bank? How should the FDIC analyze this in the context of an industrial bank application?*

RESPONSE: See generally answers to question 3 and 5. I would add that it is reasonable for the FDIC to consider the ability of a parent to meet the terms of a CALMA due to its size, operating history, or specialization in markets at risk of disruption, and the risk of a large parent disrupting existing diversified financial services providers in ways that might affect access to those services in the future.

I note the additional measures the FDIC required to approve Square's application such as elevated capital requirements and the maintenance of cash deposits at the bank to secure payment of the parent's obligations specified in the CALMA Square agreed to with the FDIC. These hedge against the risk that Square's novel credit underwriting and loan programs may prove unsuccessful over time.

I also note the importance of basing evaluations of companies that dominate their respective markets on market conditions and practicalities. For example, a company like Apple is unlikely to apply for a bank, or to disrupt current financial services markets if it does, for several reasons described above. It would make more sense for an Amazon desiring to form a large bank to buy an existing established bank and convert it to an IB, but that would not work for several reasons. The bank would have to prohibit use of its cards at the parent and eliminate its commercial checking accounts. Those steps would significantly impact the bank's customers and likely cause many to move their accounts to other banks resulting in dramatic shrinkage of the bank. Even for a de novo bank, those restrictions would significantly limit the bank's future growth and ability to compete with other banks.

As mentioned previously, companies such as Meta and Alphabet would present major risks in any bank application regarding the protection of customer information and it is hard to see how or why such a company would want to own a bank that would have to operate independently under an entirely different kind of business model than the parent and affiliates. It is doubtful that a company like Meta could gain the kind of customer trust necessary for the success of any bank. For Meta, customers are a source of personal information they can sell to third parties. Banks, on the other hand, can succeed only if their customers trust that their personal financial information will remain confidential.

I believe it is appropriate for the FDIC to consider these factors in any application filed by a company dominant in other markets along with the importance of avoiding situations that would potentially result in concentrations in the nation's financial markets.

8. *Do industrial banks present different types of resolvability concerns depending on the nature of the parent company and its affiliates or the business plan of the industrial bank? To what extent do such concerns vary depending on whether the parent and its affiliates are (1) retail companies (including internet-based); (2)*

*companies that are generally understood to be financial in nature (e.g., insurance companies and credit providers) (3) manufacturing companies (auto, agricultural); (4) companies based/ domiciled in a foreign jurisdiction; or (5) financial or other technology companies? If so, please explain how. How should such concerns factor into the FDIC's analysis of industrial bank applications, particularly with respect to risk to the DIF?*

RESPONSE: Due to the growing variety of banks and financial services, it is difficult to give a simple one-size-fits-all answer to this question. Generally, I have tried to address these questions in prior answers, especially questions 3, 5 and 6.

I note that the normal process of resolving the failure of a community bank is to first explore the possibility of selling the bank to another solvent bank with some assistance from the FDIC. That rehabilitates the business and avoids impacts on the failed bank's borrowers and depositors and the community generally. This is also possible for an IB. Many IBs have been acquired by regular banks through purchase or merger and there is usually a strong secondary market for the assets an industrial bank holds.

What is unique for an IB is resolution if the parent fails and stops providing referrals or systems necessary for the IB to continue operating. Some IBs can successfully self liquidate if they relied on brokered deposits for funding, particularly if they match funded loans using brokered CDs. There is no risk of a run in those banks. Loan payments can provide enough cash flow to pay maturing CDs and other expenses until all deposits are repaid in full. Other IBs such as GE Capital Bank have been able to sell their existing loans and other assets to cover deposit liabilities with enough left over for a liquidating dividend to the parent to recover its equity. The key to this kind of liquidation is the quality of the bank's loans and other assets.

A related issue unique to IBs is measures the bank and regulators may need to take when a parent liquidates or reorganizes under bankruptcy protection. A parent reorganizing under Chapter 13 of the bankruptcy code has a trustee and a creditor's committee concerned with maximizing the return to shareholders. A bank in this situation that intends to continue operating may have to block actions such as asset sales and cash transfers to the parent that would be detrimental to the bank. One bank was forced to inform a creditors committee of the parent that the committee could not obtain confidential information from the bank or give any direction to the bank that was not approved by the bank's board and officers. These are unusual cases because most trustees and creditor committees recognize the value of the bank as an asset of the parent and cooperate in preserving that value as part of a continuing reorganized parent or to sell or self liquidate in a liquidation.

Again, the best resolution plans will vary from case to case and must be developed and implemented in accordance with the unique circumstances of each bank.

9. *To the extent an industrial bank presents a heightened level of risk to the DIF, are there mitigants the FDIC should consider? For example, should the FDIC require the industrial bank and/or corporate parent of such an industrial bank to submit resolution plans, impose growth restrictions, or impose activities or other*

*restrictions as a condition of approval? To what extent are these conditions, or others, satisfactory mitigants?*

RESPONSE: We think it is reasonable for the FDIC to consider mitigants for heightened risks such as those listed in the question and imposed on other applicants when needed for approval. The wide variety of applications prevent any blanket use of particular mitigants in all cases. It depends on the circumstances and the nature of the risk. The appropriate test should be whether the applicant bank be likely to succeed with those mitigants in effect and are the mitigants proportional to the risk without imposing excessive restraints?

*10. How should the FDIC assess the convenience and needs of a community to be served by an industrial bank applicant? How should this assessment compare to other types of depository institutions?*

RESPONSE: I understand the community to mean the bank's customers, not the geographical area where it is based except in connection with CRA plans.

With that clarification, I note that the products and services provided by an IB do not generally differ in significant ways from those offered by other banks. Convenience and needs usually involves an applicant's marketing analysis and plans. Demand for a bank product or service is the basic measure of how it will serve a customer's needs and convenience. That is what creates demand. As in any application, the FDIC should closely evaluate the applicant's description of why it believes it will be able to attract enough bankable customers to sustain its operations.

That can be tricky for a typical community bank or another bank starting from scratch because it requires a degree of speculation about its opportunity to build a business in the target market.

It is less of a problem for some IB applicants that will either take over an existing business conducted by the parent or an affiliate or the parent will divert a portion of an existing program to the bank. In these cases, assuming the business involves bank quality credits, the bank will have a ready made customer base and the history of that business will eliminate most speculation about the scale and quality of that business. Another benefit is that a bank provided with an already established market will be profitable from inception.

As mentioned previously, I think the regulators could have denied Walmart's application for an IB to serve as the merchant depository for Walmart stores on the ground that it would not serve public needs and convenience. Withdrawal of that application before decisioning made that issue moot.

*11. If forming an industrial bank would enable the parent company or its affiliates to offer products and services (including the provision of credit) at a reduced cost, should the related consumer benefits be viewed favorably for purposes of the convenience and needs factor?*

RESPONSE: In most cases yes. Cost is clearly an important factor in meeting the needs of consumers and business customers. The FDIC could be accused of abusing its authority if it prevented borrowers from accessing lower cost options to meet their needs.

The caveat is that it is important for the FDIC to understand how a lower cost provider would affect other providers and if the lower cost program may not be sustained leaving a community without the same access to financial services it had in the past. While there is likely little precedent, we believe the FDIC could find an applicant did not meet the needs and convenience test if it would adversely affect the availability of financial services to others in that community,

*12. If a proposed industrial bank provides lower-cost credit for purposes of purchasing products that are essential to American households or commercial firms, how should this be considered for purposes of the convenience and needs factor?*

RESPONSE; See answer to question 11.

*13. How should the FDIC assess whether an industrial bank applicant's corporate powers are consistent with the purposes of the FDI Act? Are there certain types of applications that implicate this statutory factor?*

RESPONSE: I think it is appropriate for the FDIC to require each applicant to provide a copy of articles, bylaws, and other organizational documents to confirm that the organization will have the authority to comply with laws, regulations, CALMAs and other requirements in addition to applicable laws regarding the organization of a bank. For example, Utah law requires a bank to be a Utah corporation or LLC. I did not find providing this information difficult in any application in which I was involved.

*14. How should the FDIC assess the other statutory factors under the FDI Act, Change in Bank Control Act, and Bank Merger Act with respect to a filing involving a proposed industrial bank?*

RESPONSE: See generally answer to questions 1 and 10. It is appropriate for the FDIC to evaluate whether an applicant bank will comply with all applicable laws and regulations, and it routinely does that in all applications I am familiar with.

*15. Do applications relating to industrial banks controlled by foreign parent companies present unique considerations? If so, what are those considerations? Are there different types of foreign parents that present different issues?*

RESPONSE: I recommend that the FDIC be able to obtain the same information about a foreign parent and affiliates as one based in the US and to apply the same tests regarding compliance with Part 354.

In some cases, financial statements for a foreign entity may be prepared under different accounting standards and rules. I think the FDIC should be satisfied if the financial information it receives adequately describes the parent's financial strength and resources and its ability to support the bank. Once again, circumstances will vary widely in significant ways and that can make blanket requirements impractical or unjustified. I do not recommend a blanket requirement for an applicant to provide US compliant financial information if, for example, the parent is a large publicly traded entity that is profitable under any accounting standard and hundreds of times larger than the proposed US based IB. An applicant should be required to provide sufficient information about significant investors and other parties that control the bank including who they

are, their background and reputation and affiliations and connections with other organizations.

One practice I recommend reconsidering is requiring a parent to list all affiliates regardless of whether some may never have any dealings or other connections to the bank other than common indirect ownership. Large manufacturing companies operating internationally report having thousands of subsidiaries and connections with other entities that might amount to technical or operational control. I recommend requiring an applicant to provide an org chart prepared for shareholders together with a list of all affiliates that may have direct or indirect control over the bank and with which the bank may transact, and to require the list be updated before transacting with any affiliate not previously included.

*16. Are there mitigants the FDIC could consider with respect to foreign- based parent companies? For example, should a foreign parent be required to pre-position resources (e.g., capital, liquidity) in the United States for the benefit of the industrial bank? If so, how could such a pre-positioning requirement be structured? What other measures, if any, should the FDIC consider to address concerns raised by foreign ownership?*

RESPONSE: The circumstances of applicants vary too widely to justify a blanket requirement to pre-position assets in the US to support an IB subsidiary.

For example, the current IBs owned by foreign auto makers are subsidiaries of large US based manufacturing, marketing and finance subsidiaries of that ultimate parent with substantial U.S. based assets under their control. Similarly, one existing IB that is subsidiary of a large foreign bank is directly under a US based subsidiary BHC regulated by the Federal Reserve. In these cases it would appear to make more sense to have US based affiliates sign a CALMA along with the ultimate parent.

If an applicant would have no US based affiliates the FDIC should evaluate its ability to enforce a CALMA against a foreign owner. If issues arise in that regard, the FDIC might require a US enforceable surety bond, letter of credit issued by a US bank or the type of deposit in the bank the FDIC has required in other applications.

*17. How should the FDIC evaluate industrial bank applicants with parents that are dominant in one or more nonfinancial industries? To what extent should this analysis depend on (a) the size and market share of the parent, (b) the businesses the parent company is engaged in, and (c) the proposed size and proposed business model of the industrial bank?*

RESPONSE: See generally answer to questions 3, 6, 7 and 10.

*18. With respect to the proposed business model of an industrial bank applicant with a large parent that dominant in certain markets, how should the FDIC view proposals to establish a full-service bank serving customers nationwide, a “captive” bank serving only customers of the parent company, or other models?*

RESPONSE: See generally answer to questions 3(1) and 7.

It is important to note that no IB could operate as a full service bank unless its parent was a BHC. The statutory restrictions on an IB are in the exemption for its

affiliates in the BHCA. To qualify for the exemption an IB cannot offer commercial checking accounts. That constrains full service commercial banking to a degree making it impractical to compete with commercial and community banks. Full service banks generally need branches to deliver some products and services such as private banking, wealth management and a full range of development and business loans. The effect of these constraints can be seen in the UDFI charts showing that IBs have zero CRE concentrations compared to 150% of capital for commercial banks and 200% of capital for community banks. The graphs are similar for construction concentrations. IBs and traditional banks are each designed to serve different markets. They basically do not compete.

The term “captive” bank can be somewhat misleading. A true captive finance company operates to support a parent’s operations. An IB cannot do that. Even with an affiliate, an IB operates like an independent bank partnering with a merchant except the IB cannot provide in store financing. An IB is “captive” only in the sense and to the extent it relies on the parent’s marketing. For example, IB subsidiaries of an auto company offer financial products and services to independent dealers and car owners. The bank’s customers come from the general public and could shop anywhere and get financing from any source. Exclusivity due to reliance on an affiliate’s marketing program is specialization, which is common throughout the nation’s financial markets, and not a kind of discrimination designed to restrain trade or unfairly compete against other lenders. An IB cannot finance sales that would pay down wholesale accounts owed to an affiliate without violating Section 23A or offer preferential terms to increase sales of the parent’s cars or other goods without violating Section 23B and possibly the Anti Tying Act. The main regulatory concern in those cases is ensuring the bank complies with these laws and has a sound contingency plan if the parent’s marketing is disrupted for any reason.

Other models of IB subsidiaries of a parent dominant in certain markets include IBs such as the one owned by GE that have a truly independent business model and just happen to be owned by a large parent.

*19. Does an industrial bank with a parent of a certain size and/or market share have a greater ability to scale? To what extent should this be viewed positively or negatively? What potential impact would this have on the banking industry and the provision of banking services in the United States? Please explain the characteristics of such companies, and whether and how such consideration should influence the FDIC’s analysis of such applications.*

RESPONSE: The issues this presents are the advantage of almost unlimited support compared to the risks of rapid growth.

A good example of the support advantage occurred during the Great Recession. Many banks were told to increase their capital ratios and did so by shrinking when they could not obtain additional capital from their parents and affiliates. They shrank by curtailing new lending and in some cases selling existing loans and assets. Some IBs were able to grow during that period by increasing lending to those customers and buying those assets. The parent provided whatever additional capital they needed to support that growth.

We understand that managing rapid growth is a well known risk that has caused many banks to fail in the past. It is clearly appropriate for the regulators to evaluate the ability of a bank to manage its growth. An IB that is involved in transitioning an existing business into the bank may acquire the already established and tested facilities and people needed to manage that business. In all cases it is appropriately the bank's burden to demonstrate its ability to manage its growth.

More to the point, there is no evidence that a parent dominant in one or more non bank markets could grow a de novo bank to a size that would affect and potentially disrupt banking markets or financial services generally. Some have tried and found they have only limited market power to promote a bank. Apple has tried through its partnership with Goldman Sachs Bank. The results have been disappointing. Meta began a project to form an entire crypto based banking system that failed before it could be launched.

Perhaps auto and equipment manufacturers are the closest example to a company dominant in non bank markets that have obtained significant market share in financial services. Their captive finance companies that finance sales of the parents' cars and equipment have a significant but not dominant share of auto loans. These programs have operated for years and achieved about as much market share as they are ever likely to get. After more than 100 years in some cases, those markets remain highly competitive.

More to the point, the IBs organized as subsidiaries of manufacturing companies only take a share of the applications already flowing to the parent. Those banks are not and could not take additional market share to an extent that would significantly affect competing lenders. Some of those IBs only offer credit to auto dealers not including flooring to buy inventory from the bank's affiliate, and branded credit cards.

It would make more sense for a large parent to acquire an existing bank as a way to become a significant part of the financial services markets. But that is not feasible due to the restrictions in Sections 23A, 23B and the Anti Tying Act. Consider if a large retailer or manufacturer offered to buy a large national bank. That bank would have to first convert to an IB and to do that it would have to close all its commercial checking accounts. If the bank had a significant credit card program it would not be able to offer any rewards for using the card to buy stuff from the parent and it might need to prohibit use of a card to pay for transactions with an affiliate. That would result in significant shrinkage of the bank. Economically it would likely not be possible to recover the lost equity over time from profits of the remaining bank.

This is why almost all large retailers and manufacturers partner with an independent bank to offer branded rewards cards. That is not likely to change while the current affiliate transaction laws remain in effect.

*20. What tools can the FDIC use to address such concerns, if any? Can/ should the FDIC consider imposing size, product, and activity limits on an industrial bank as a condition of the approval or non-objection order? If so, what type of limitations would be appropriate? How should such limitations be structured, implemented, and enforced over the long term?*



RESPONSE: One obvious tool is simply not approving the application unless the applicant demonstrates it has the people, facilities and expertise to manage the projected growth and would not pose a risk of disrupting or destabilizing existing financial markets in ways that would reduce or impair the availability of financial services within that market.

The FDIC already has an array of other tools to mitigate risks including conditions agreed to in a CALMA, cease and desist orders, civil money penalties, removal orders and, if necessary, putting a severely troubled or mismanaged bank into receivership.

As a rule, the FDIC does not allow a new bank to deviate from its approved business plan during the first three years of operation without prior approval. Also as a general rule, a new bank would not seek approval to deviate from its original plan unless the new opportunity was unforeseen when the original plan was developed. Otherwise it would appear that the applicant did not fully disclose its plans in its application, what would mean it could not be trusted. Similarly, unusually fast and unanticipated growth during the de novo period raises important questions about the ability of management to adequately plan. In these cases, it may be appropriate to impose limits on growth until the competence and honesty of the management is better established.

Similar measures would be appropriate if the bank experiences unexpected or poorly managed growth after the de novo period. The actions a regulator would take are well established to deal with that kind of problem in all banks.

*21. Would a larger, more complex parent with diverse product lines (e.g., retail ecommerce, cloud hosting, AI, etc.) be better able to weather economic downturns and thus be better able to serve as a source of strength to the industrial bank? On the other hand, could a bank in a larger corporate organization be subject to inattention or low prioritization by a parent?*

RESPONSE: In many cases a larger diverse parent will be less likely to fail in an economic downturn and can support its bank subsidiary better than a BHC. **The history of bank failures during the Great Recession demonstrates that conclusively.**

Banks in a larger corporate organization face a unique challenge in remaining independent but also important and valuable to the parent. This is why it is important to have representatives of the parent on the bank's board. They cannot be a majority under current IB standards in Part 354 but they provide a direct connection to inform the parent about how the bank is doing and the value it adds to the group. There have been instances where an IB lost its mentors at the parent and ultimately closed. None of those instances resulted in loss to the FDIC.

*22. How should the FDIC view the potential benefits that may stem from the extension of affordable banking/ credit products and services from an industrial bank with a large parent company dominant in certain markets?*

RESPONSE: See answers to questions 10 and 11.

*23. How should the FDIC view the costs and risks that may stem from an industrial bank with a large parent company dominant in certain markets? What impact would such institutions have on the competitive landscape for Banking?*

RESPONSE: See answers to questions 3, 7, 10 and 18.

*24. What are the potential societal costs and benefits of permitting companies that are generally non- financial in nature to establish an industrial bank? How should such costs and benefits be factored into the FDIC's analysis of the statutory factors? Are there approaches the FDIC can pursue to mitigate any potential societal costs?*

RESPONSE: See generally answers to questions 3 and 7.

Generally, diversification and decentralization of the banking system remains a foundational public policy of the US. It ensures that financial services are available to the maximum extent in every part of the nation, which facilitates economic development everywhere. It also promotes innovation.

The prospect of an IB (or any bank) dominating banking in the same way its parent dominates another market should be a major concern for the FDIC and state regulators. But as mentioned previously, an industrial bank cannot compete as a full service bank. It can only compete in limited segments of the markets which effectively prevents an IB from reaching the scale that some nationwide national banks have achieved.

Regarding innovation, it is important to understand how integrated financial services are becoming throughout the economy and how much non financial companies see the need and opportunities to provide specialized financial services to their customers. The company operating truck stops saw better than any regular bank how inadequate financial services were for the long haul truckers who largely live at the truck stops and the corresponding opportunity to broaden its customer relationships by providing better services. Many technology companies see opportunities to deliver financial services more efficiently and at lower cost while developing other technologies. These are clearly societal benefits and they will be less common if all banking is isolated from the rest of commerce. The extent these innovations are happening increasingly diversifies and strengthens the banking system.

A related consideration is the basic societal advantage of having financial services available to the maximum extent in every community. For a long time many states only permitted unit banking so that deposits and other financial resources remained localized as much as possible. The drawbacks were lack of convenience and what would replace a failed unit bank in a small community. When I was commissioner, many community banks failed in rural areas due to weakness in the local economies. In most cases, it was the Salt Lake based banks with state wide branching systems that continued or stepped in to provide banking services in those areas. Those drawbacks eventually killed unit banking. Today, diversification is the key to maximizing access to financial services and industrial banks along with many other kinds of banks will drive much of that innovation in the future.

Another thing to consider was mentioned previously in footnote 2. Commercial companies could own banks prior to 1956, and some played an important role in reviving banking in some parts of the nation during the Great Depression. In the early 30s, banking collapsed entirely first in Michigan and then across the nation. GM and Ford each organized large commercial banks to restart the economy in Michigan, showing once again how the source of strength doctrine actually works – and doesn't for bank holding companies. GM and Ford continued to hold major interests in those banks until the 1950s. In that situation the societal benefit was restoring a functioning economy.

*25. What are the advantages and disadvantages of retail companies forming industrial banks?*

RESPONSE: See generally answers to question 3(1). There are primarily two benefits. One is broadening the customer relationship. The other is increasing the combined profitability of the group.

The IB that provided banking services to truckers at the parent's truck stops helped draw business. Truckers appreciated the convenience and help it provided and grew more loyal to that brand. Building customer loyalty is fundamental to all businesses and explains why most IBs are formed. Dividends paid by the bank added to the parent's consolidated income.

Another potential benefit is innovation. The truck stop saw a need for certain kinds of banking services that other banks either did not or were unable serve. The bank's management saw novel ways to serve those needs and became highly specialized in that market as a result. Much innovation does not develop in a vacuum. Businesses are best positioned to see and understand the needs of their customers and design highly tailored products and services for those people and businesses.

The main disadvantage encountered thus far is constraints on some transactions by the parent or affiliates. Some parent companies have found it difficult to raise capital if investors would become subject to regulation as a bank affiliate. One parent closed its IB subsidiary in order to sell itself to a company that would not own a bank. Another IB closed when delays in obtaining regulatory approval blocked a merger of the parent. None of these cases caused a loss to the FDIC.

*26. What are the advantages and disadvantages of manufacturing and other industrial companies forming industrial banks?*

RESPONSE: See generally answer to question 25.

*27. What are the advantages and disadvantages of technology companies forming industrial banks?*

RESPONSE: See generally answer to questions 7, 24 and 25.

*28. To the extent nonfinancial companies are already offering financial products and services, how should this impact the FDIC's framework for analyzing industrial bank applicants?*

RESPONSE: Usually, it is an advantage. It allows the FDIC to evaluate the viability of the business, the quality and expertise of the management, and the market characteristics, without speculating.

*29. If nonfinancial companies begin offering payment stablecoins, how, if at all, should that impact the FDIC's analytical framework?*

RESPONSE: There are obvious risks in a bank being involved in crypto. It contributed to the recent failures of Silicon Valley Bank, Signature Bank and another smaller bank, even though they were not dealing in crypto directly. The extreme volatility in crypto markets, frequent incidents of fraud and criminality, and the viability of the bank's own crypto program should be carefully examined when considering the risk of events outside the bank's control impacting its business and reputation and causing some panic in broader financial markets.

As of now, payment stablecoins are mostly an idea, not a proven payment system. The idea raises lots of questions. If the coin is secured by dollars, why layer another kind of payment instrument on top with very limited acceptance instead of just using the dollars? What oversight would be utilized to monitor the party that would hold the collateral? If an asset other than government issued currency or government securities would serve as collateral, how reliable would it be? What would happen to the bank if a stablecoin it supported experienced a major fraud or defalcation? Such problems have been endemic to crypto. Satisfactory answers to all of these questions should be obtained before approving any stablecoin program for an insured bank.

*30. Do nonfinancial companies present particular privacy or data protection issues? When, if at all, would it be appropriate for the FDIC to consider imposing heightened requirements specific to industrial banks and nonfinancial parent companies and affiliates regarding the use of consumer financial data for commercial purposes?*

RESPONSE: See generally answer to questions 3(4) and 7. Simply put, the business model of companies that sell customer information is antithetical to any bank. I do not support approving an application by a company that sells customer information to third parties without the customer's express consent without a clear commitment to keep bank customer information confidential together with a robust system to protect that information along with a clear and convincing explanation of why the bank would thrive within that corporate group when its operation would not fit with the rest of the company.

*31. Should the FDIC consider factors such as funding sources and degree of leverage for purposes of determining the ability of the parent to serve as a source of strength? For example, are publicly traded and/or less-levered firms better able and more likely to serve as a source of strength to a subsidiary industrial bank in comparison to private and/or more-levered firms? What other aspects of the parent's funding profile should be considered for this purpose, e.g., contingent lines of credit, on-balance sheet liquidity?*

RESPONSE: Yes. This kind of analysis is unique for the FDIC and for IBs. The ability of most IB parents to serve as a real source of strength for the bank is one of their unique advantages. The FDIC should understand the parent's ability to support the bank in

detail and confirm the obligation to provide support when needed in a CALMA and perhaps in other ways if necessary. This type of analysis is not usually done when a bank will be owned by a BHC that has little or no real ability to support its bank. It would be pointless. The most the Federal Reserve can do is try to prevent the BHC from causing a problem for the bank.

As a side note, I recommend having BHCs sign CALMAs as well. There have been instances where shareholders of a BHC fought the FDIC for assets held by the holding company after the bank had failed. While most BHCs are shells, the Federal Reserve requires in some instances that the bank dividend cash to be held at the BHC as a contingency to pay dividends to shareholders and perhaps other purposes. I believe the FDIC should have a priority claim on those funds if the bank fails.

*32. What conditions should the FDIC consider including in an order of approval or non-objection to ensure the parent company for an industrial bank serves as a source of strength? Should these conditions be tailored to the size and complexity of the parent and the types of products and services it provides and, if so, how? Should certain enhanced conditions apply to parent companies that meet or exceed a certain size or complexity threshold? If so, what should they be and why?*

RESPONSE: I believe the FDIC has developed a good process for evaluating the unique strengths of each IB parent and ensuring enforceability of commitments in contracts and other non standard conditions for approval.

*33. In general, how effective is the regulatory and supervisory framework for industrial banks? To what extent, if at all, should the existing regulatory and supervisory framework inform the FDIC's evaluation of applications?*

RESPONSE: I believe the system for regulating both the banks and the affiliates is well designed and effective. The IB's record of superior financial strength and only one failure in over forty years confirms this.

*34. How effective are existing restrictions that apply to industrial banks, such as Sections 23A and 23B of the Federal Reserve Act and Regulation W, and limits on lending to a single counterparty? Are there modifications that can be made to those restrictions— through policymaking or in the form of nonstandard conditions—to better address potential concerns?*

RESPONSE: Very effective. No IB has failed or suffered significant loss due to affiliate transactions or violations of these laws in the history of the industry.

*35. The FDIC requests all comments regarding the industrial bank charter and supervision of industrial banks. To the extent possible, provide specific examples, including data, to support or illustrate your comments.*

RESPONSE: See introduction.

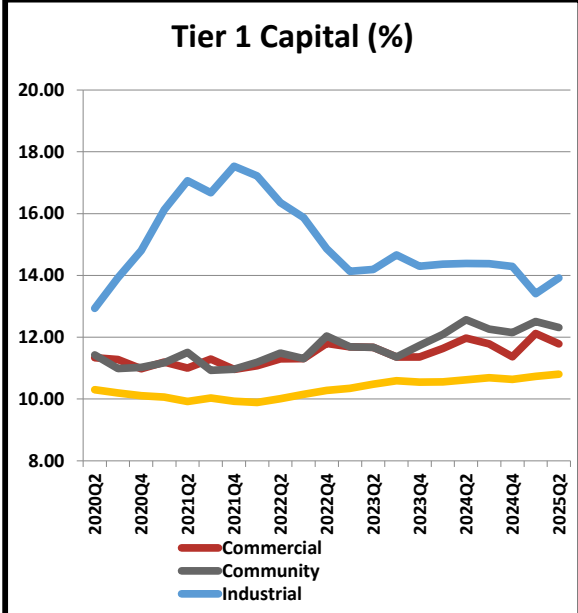
Respectfully submitted,

/s/

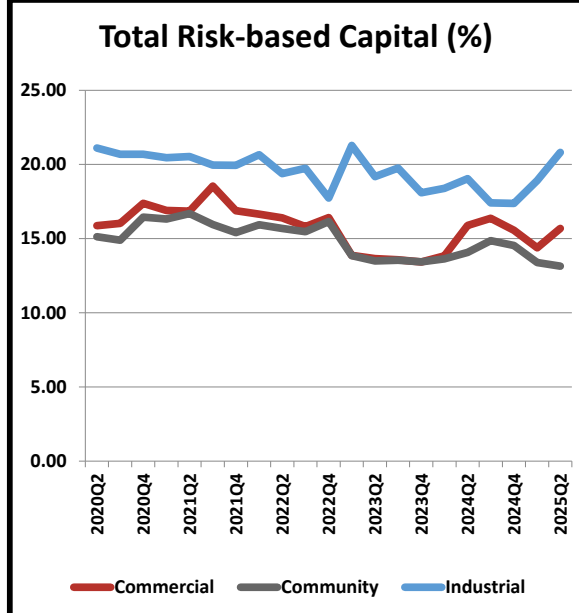
George Sutton

Attachment: UDFI performance charts

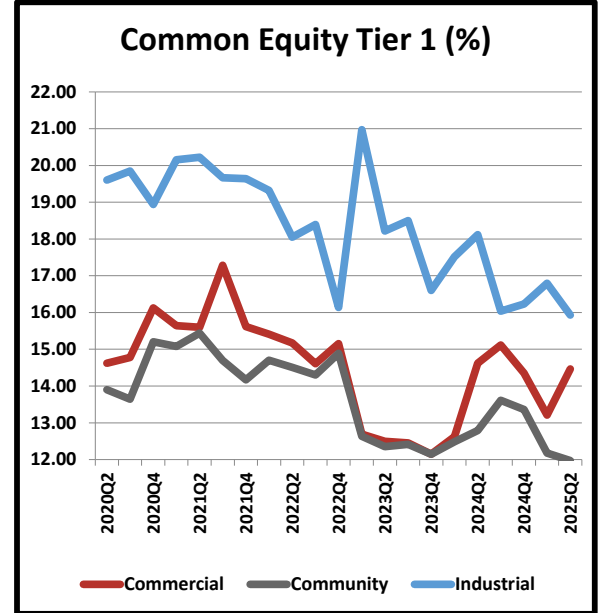
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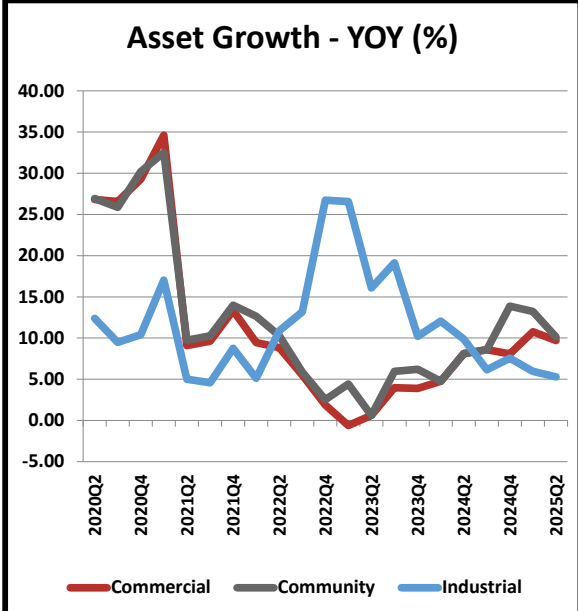
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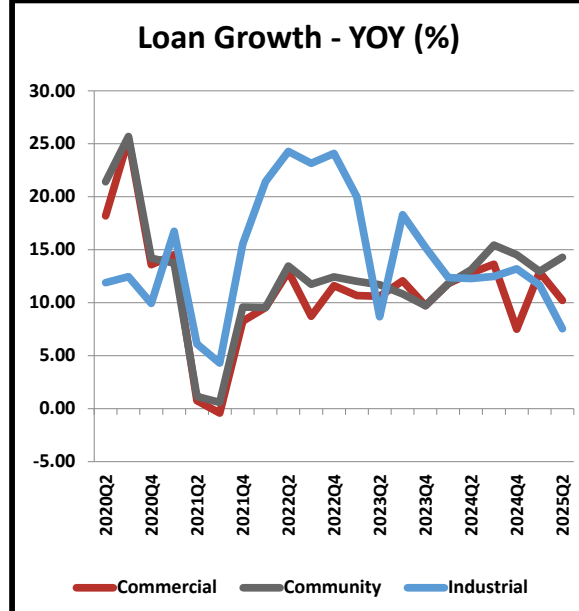
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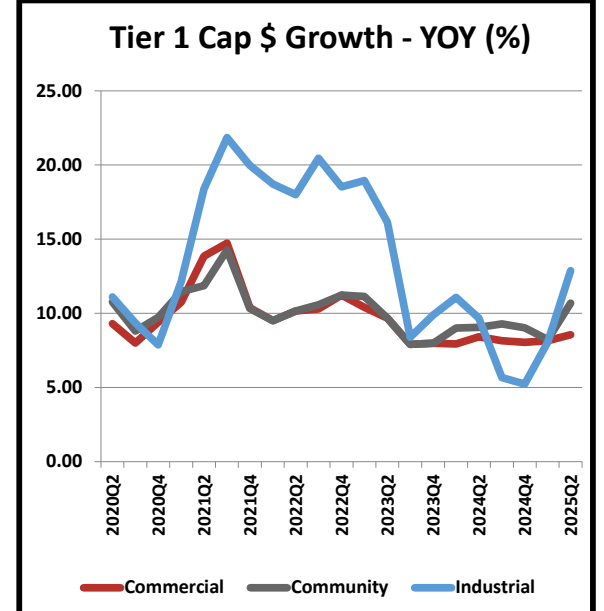
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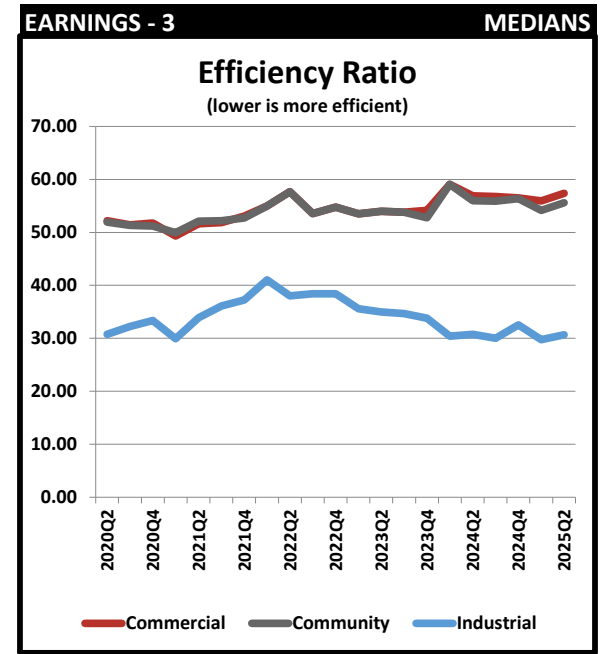
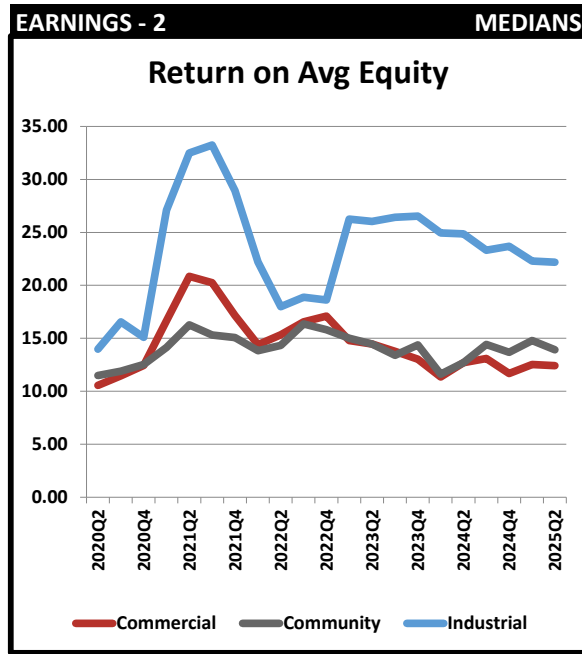
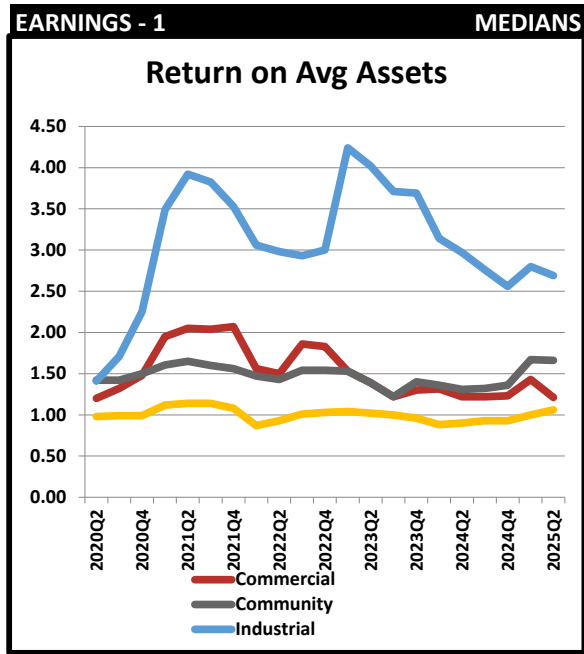
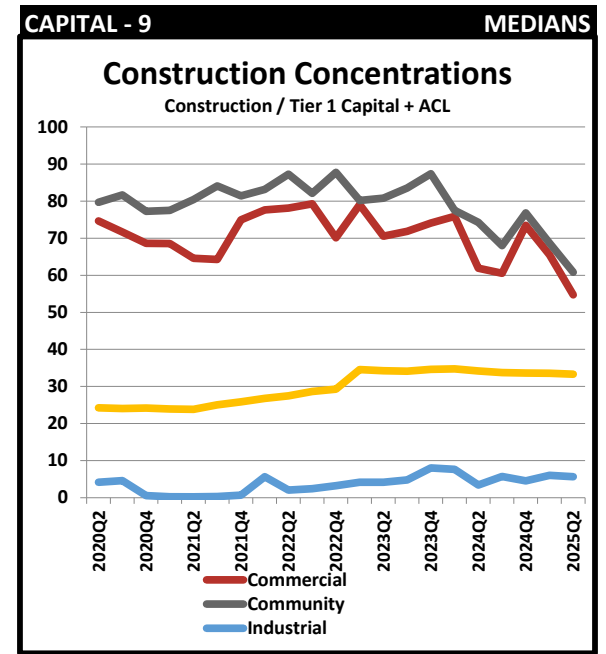
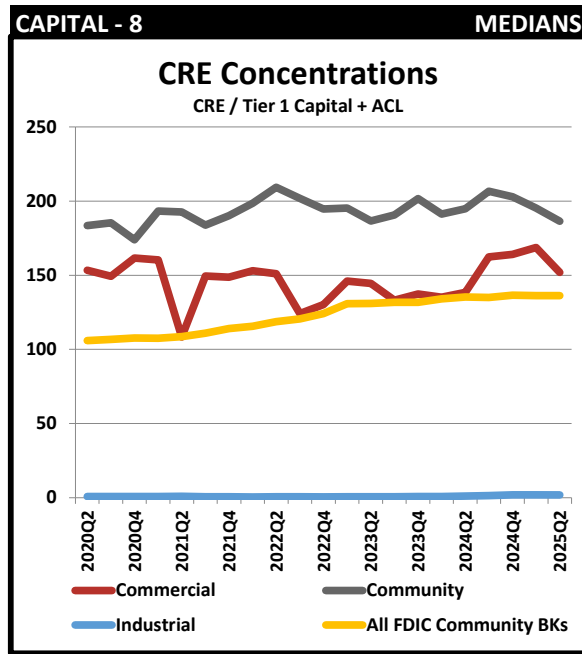
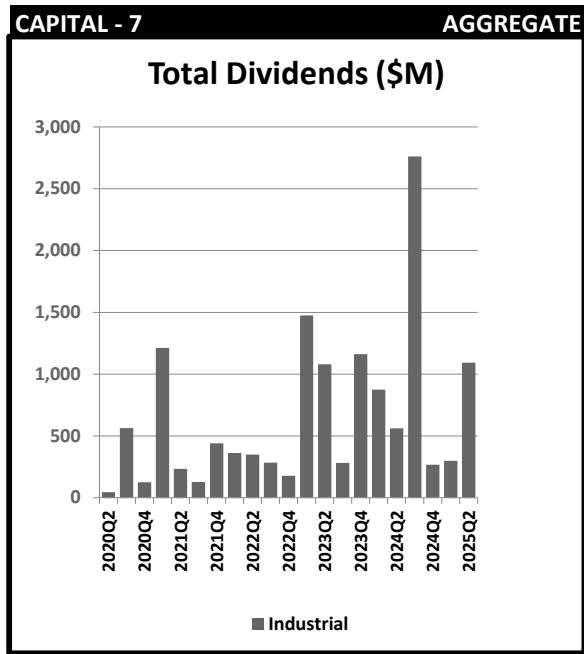
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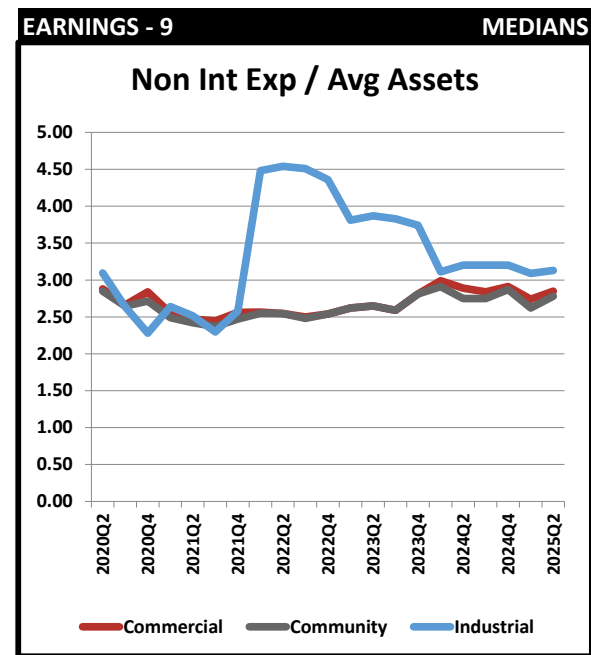
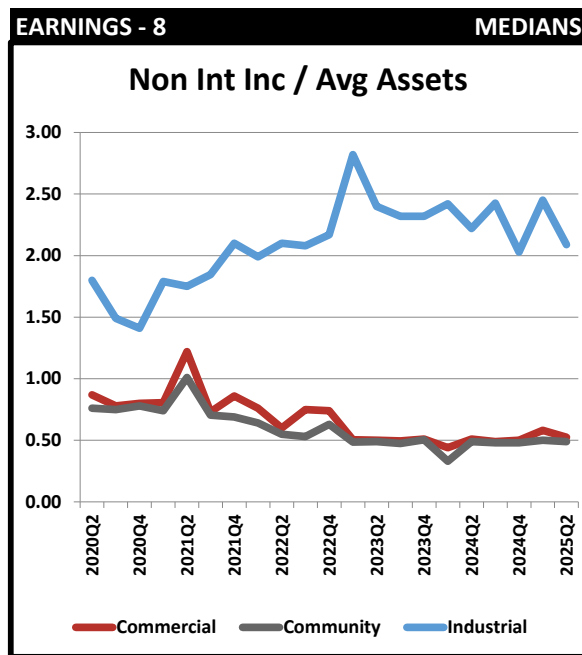
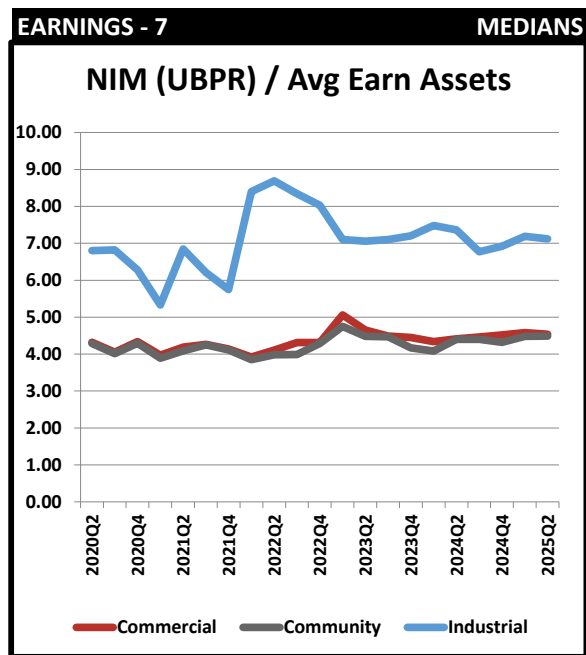
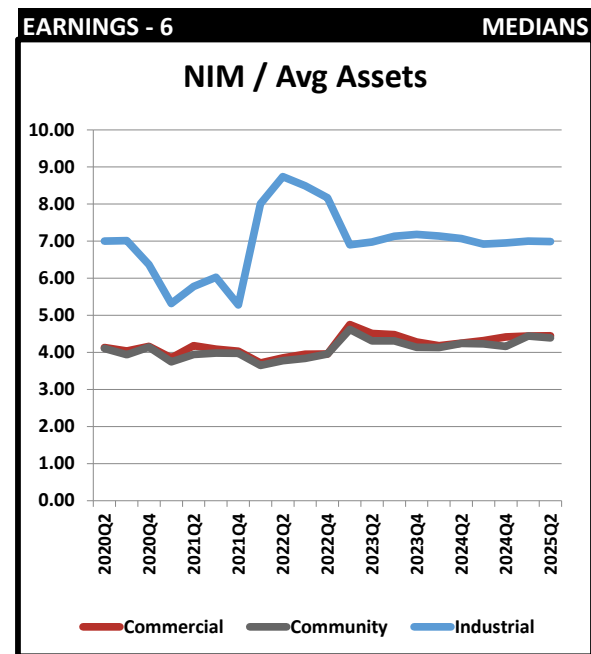
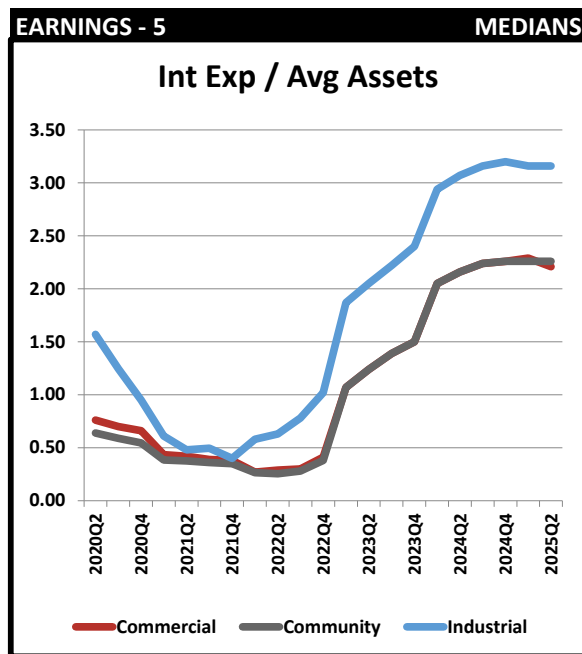
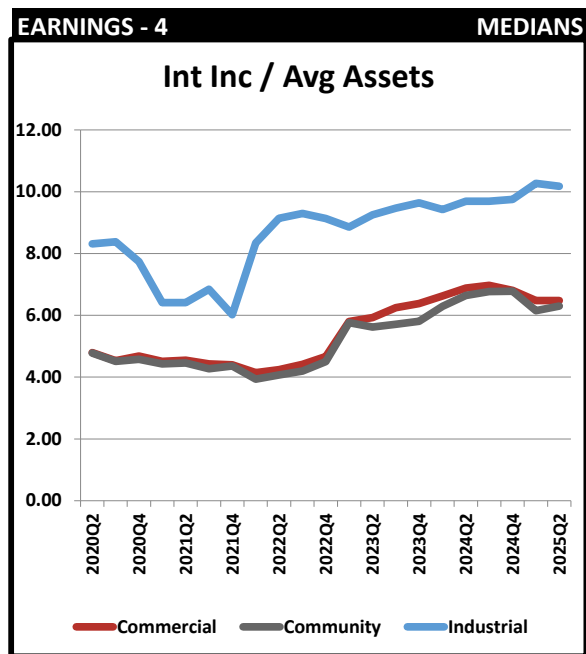


\* Community = all commercial banks, excluding : Ally, Continental, Green Dot, TAB

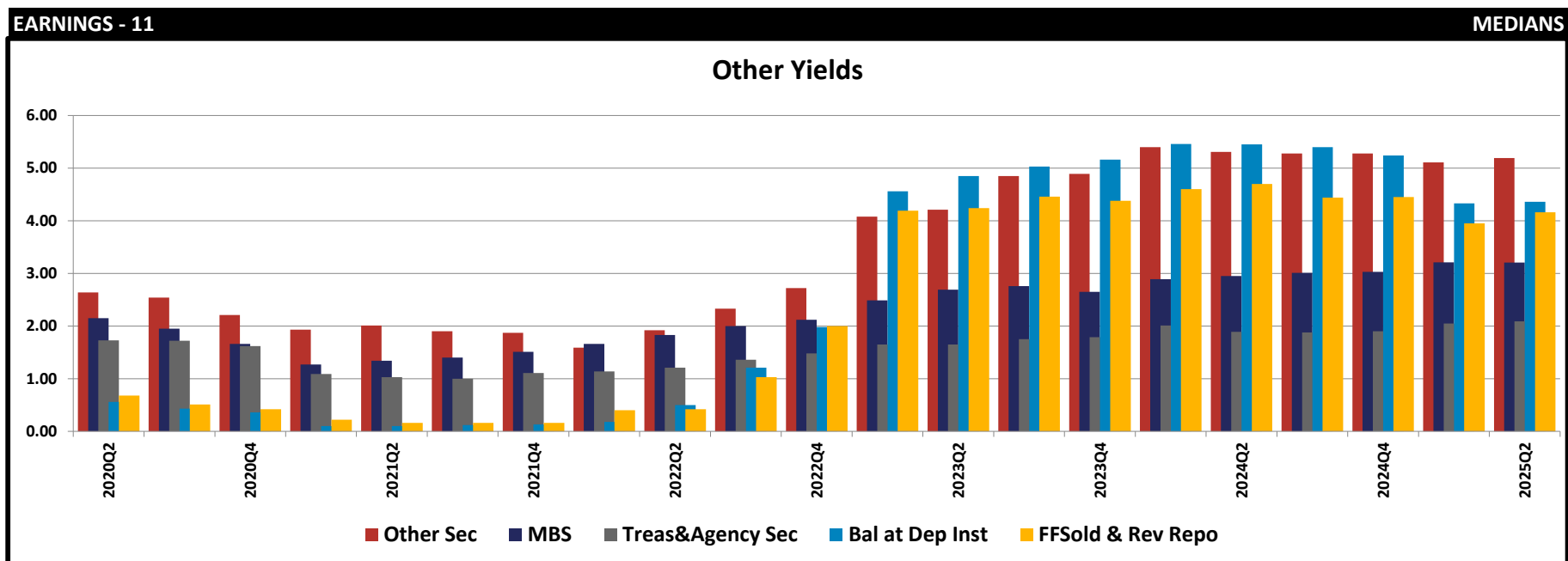
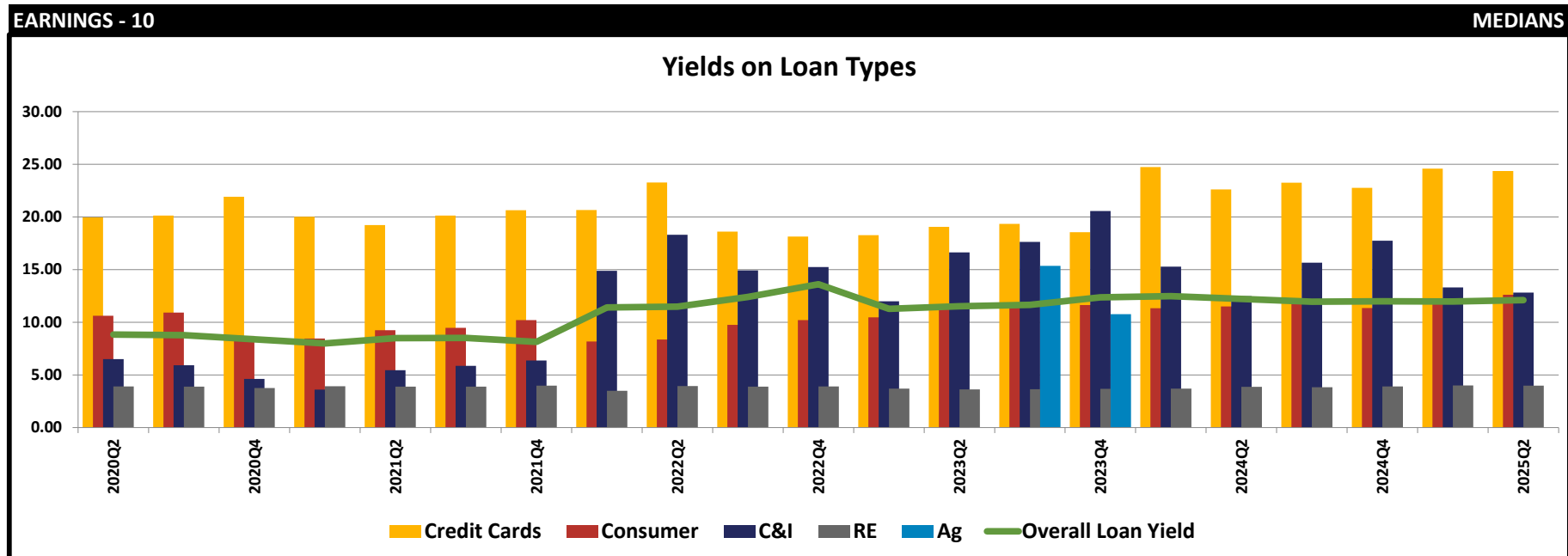


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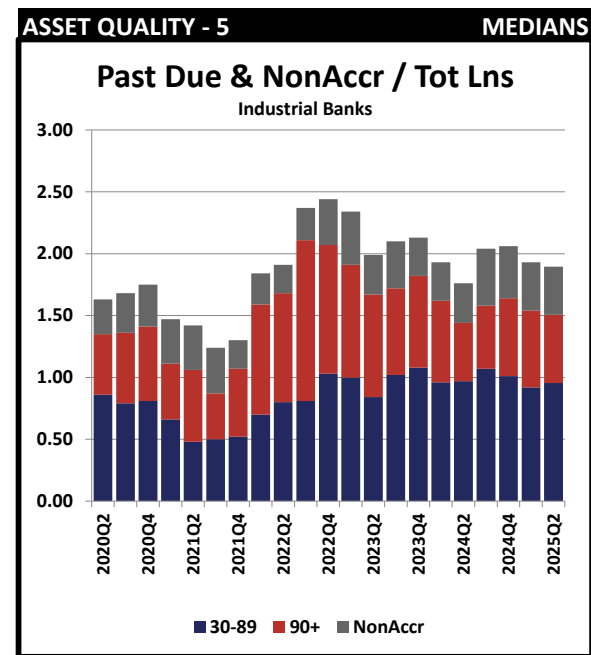
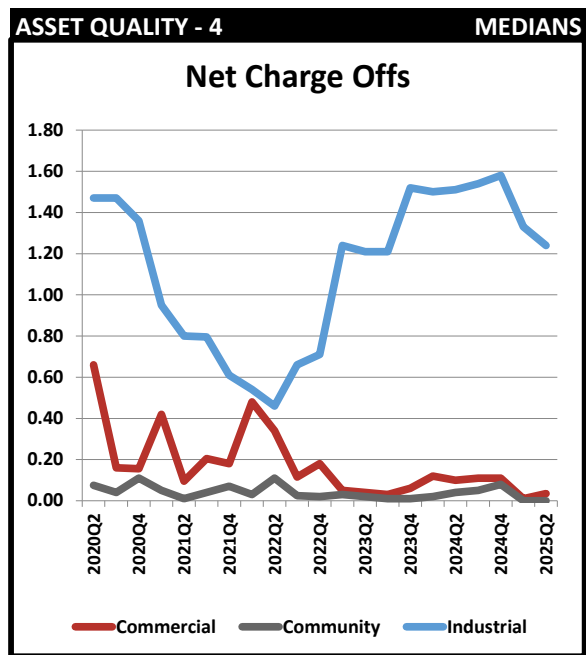
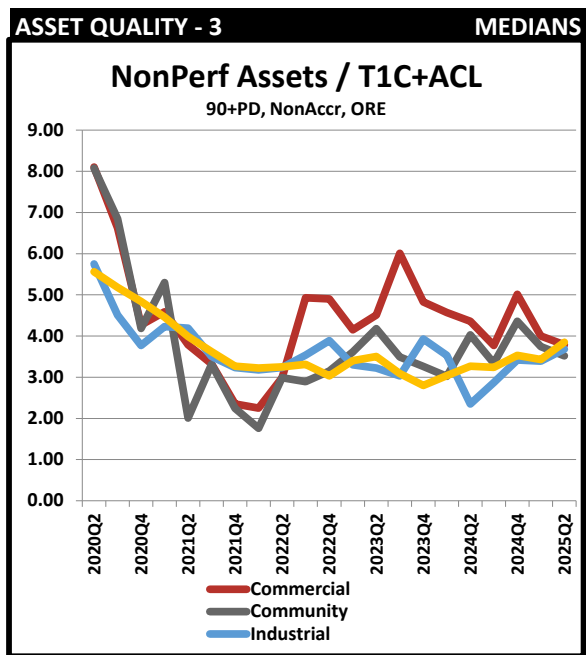
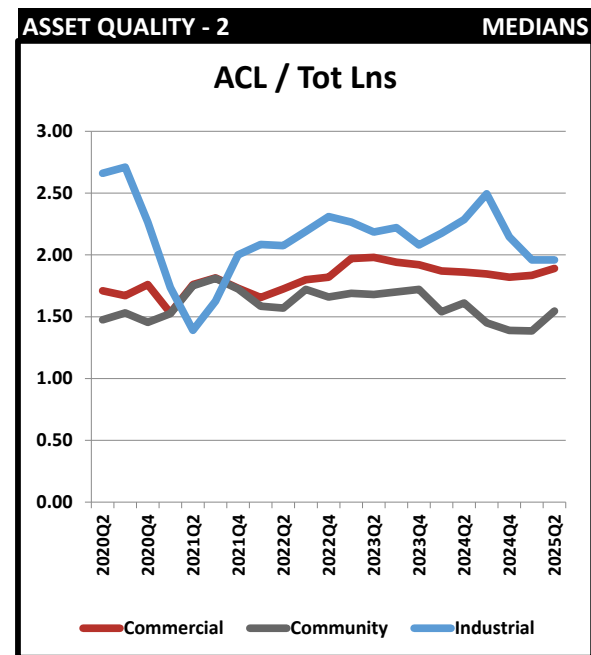
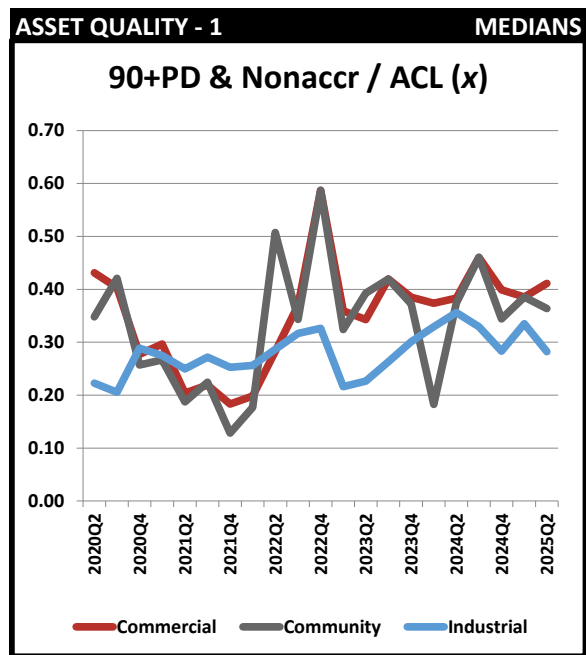
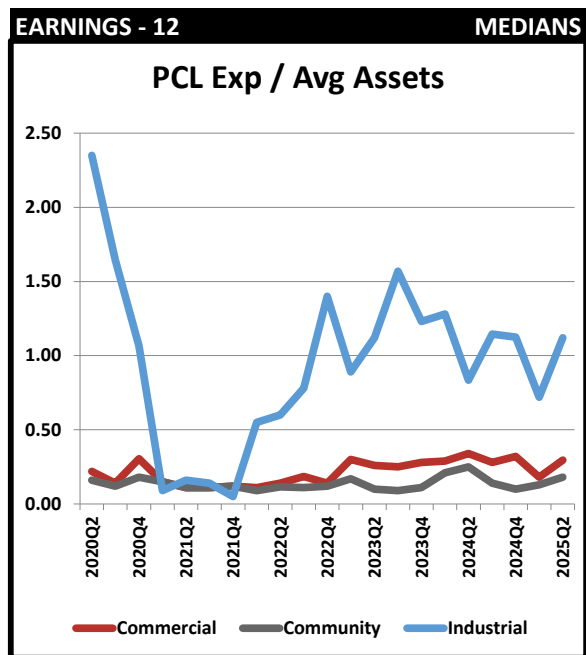




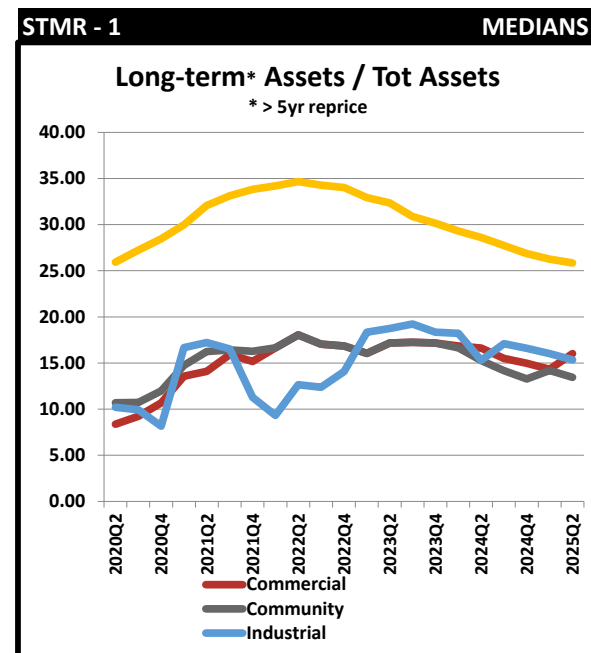
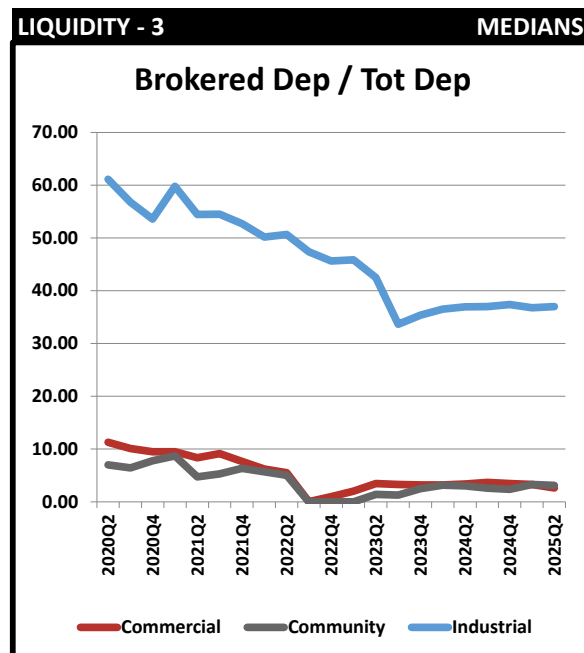
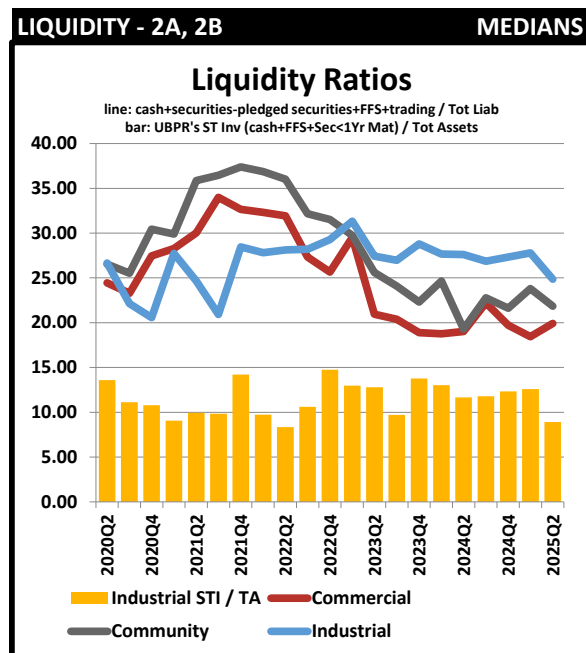
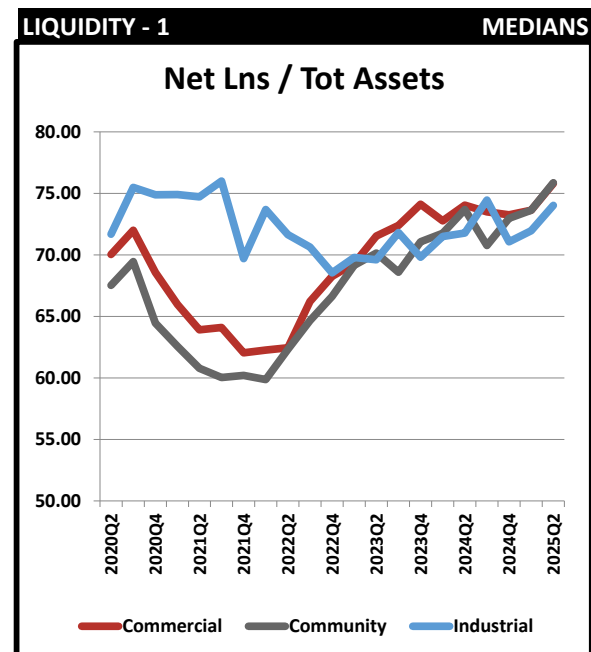
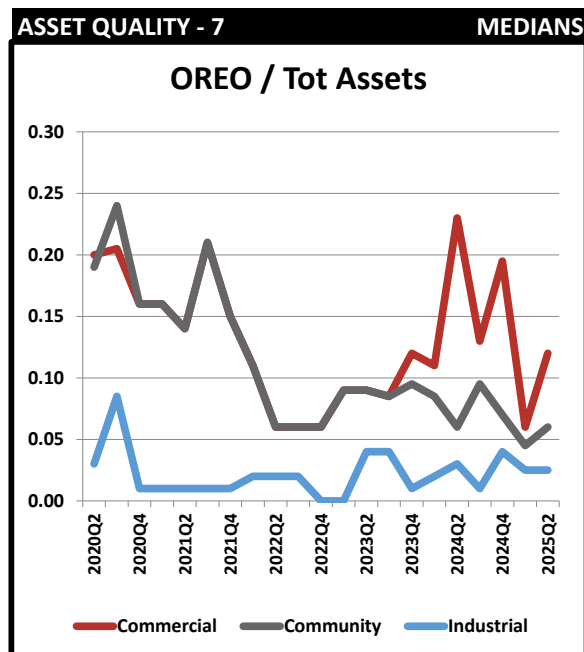
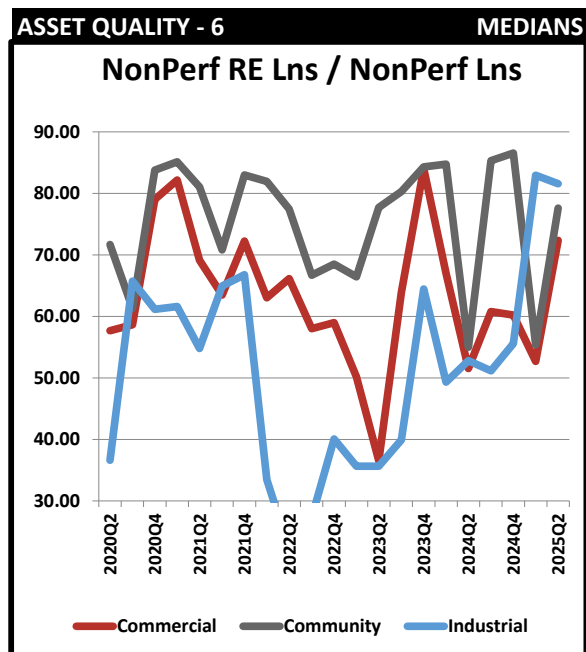
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