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Federal Communications Commission

**Marlene H. Dortch,**

Secretary.

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Moratorium on Certain Industrial Loan Company Applications and Notices

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice; The Imposition of a Moratorium.

**SUMMARY:** This notice announces the imposition of a six-month moratorium on FDIC action to accept, approve, or deny any application for deposit insurance submitted to the FDIC by, or on behalf of, any proposed or existing industrial loan company, industrial bank or similar institution (collectively, ILC),<sup>1</sup> or accept, disapprove, or issue a letter of intent not to disapprove, any change in bank control notice submitted to the FDIC with respect to any ILC. The FDIC Board of Directors (Board) may exclude from the moratorium any particular application or notice if it determines that the moratorium would present a significant safety and soundness risk to any FDIC-insured institution or a significant risk to the deposit insurance fund, or failure to act would otherwise impair the mission of the FDIC.

**DATES:** The moratorium is effective through Wednesday, January 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding the moratorium: contact Robert C. Fick, Counsel, (202) 898-8962; Federal Deposit Insurance Corporation, Washington, DC 20429.

#### SUPPLEMENTARY INFORMATION:

<sup>1</sup> See 12 U.S.C. 1813(a)(2), 1841(c)(2)(H).

## I. Background

### Nature and Brief History of ILCs

ILCs were first chartered in the early 1900's as small loan companies for industrial workers. Over time the chartering states have gradually expanded the powers of their ILCs to the extent that ILCs now generally have the same powers as state commercial banks.<sup>2</sup>

ILCs are state-chartered banks, and all of the existing FDIC-insured ILCs are "state nonmember banks" under the FDI Act. As a result, their primary Federal banking supervisor is the FDIC. The FDIC generally exercises the same supervisory and regulatory powers over ILCs that it does over other state nonmember banks. The only material exceptions to the FDIC's authority over ILCs are that the cross-guarantee liability provisions, the golden parachute provisions, and the management interlocks provisions are not applicable to ILCs, their affiliates or holding companies. Legislation to make these provisions applicable to ILCs is currently pending.

While ILCs are "banks" under the FDI Act,<sup>3</sup> they generally are not "banks" under the Bank Holding Company Act (BHCA).<sup>4</sup> One result of this difference in treatment is that a company that owns an ILC could engage in commercial activities and may not be subject to Federal consolidated supervision. By contrast, domestic bank holding companies and financial holding companies that are subject to Federal consolidated supervision are prohibited from engaging in commercial activities. As a result of these differences, some of the companies that own ILCs are not subject to Federal consolidated supervision. The FDIC has noted a recent increase in deposit insurance applications for, and change in control notices with respect to, ILCs that will be affiliated with commercial concerns or other companies that will not have a Federal consolidated supervisor. Some members of Congress, the Government Accountability Office, the FDIC's Office of Inspector General, and members of the public have expressed concerns regarding the lack of Federal consolidated supervision, the potential risks from mixing banking and commerce and the potential for an unlevel playing field.

<sup>2</sup> If an ILC is authorized to, and does, in fact, offer demand deposits, any company that owns such an ILC may be required to register as a bank holding company. As a result, most of the ILCs have chosen not to offer demand deposits.

<sup>3</sup> 12 U.S.C. 1813(a)(2).

<sup>4</sup> See 12 U.S.C. 1841(c)(2)(H).

### Summary of ILC Portfolio

The ILC industry has evolved since the enactment of the Competitive Equality Banking Act (CEBA) in 1987, when Congress initially exempted ILCs from the BHCA. As of July 24, 2006, there were 61 operating insured ILCs; 48 of the 61 were chartered in Utah or California. ILCs also operate in Colorado, Hawaii, Indiana, Minnesota and Nevada.

As of year-end 1987, 105 ILCs reported aggregate total assets of \$4.2 billion and aggregate total deposits of \$2.9 billion. The reported total assets for these ILCs ranged from \$1.0 million to \$411.9 million, with the average ILC reporting \$40.0 million in total assets and \$27.3 million in total deposits. Of the current portfolio of 61 ILCs, 14 were insured during 1987 or prior years.

As of year-end 1999, the FDIC insured 55 ILCs with aggregate total assets of \$43.6 billion and aggregate total deposits of \$22.5 billion. The reported total assets for these ILCs ranged from \$2.4 million to \$15.6 billion, with 10 institutions reporting total assets of more than \$1 billion. The four largest institutions reported total assets of \$15.6 billion, \$4.4 billion, \$3.8 billion, and \$3.0 billion. Six other institutions reported total assets of \$1.1 billion to \$2.5 billion. The remaining portfolio of ILCs, on average, reported total assets of \$152.5 million. Of the current portfolio of 61 ILCs, 37 were insured during 1999 or prior years.

Since January 1, 2000, 24 ILCs became insured.<sup>5</sup> As of March 31, 2006, the 61 insured ILCs reported aggregate total assets of \$155.1 billion; ILCs owned by four financial services firms, including Merrill Lynch & Co. Inc.; UBS AG, Lehman Brothers Holdings, Inc.; and Morgan Stanley, accounted for 63 percent of the growth in ILC assets since 1987. These four firms all operate under some form of consolidated supervision by the Federal Reserve Board (FRB), the Office of Thrift Supervision (OTS) or the Securities and Exchange Commission (SEC) account for 61.4% of the total ILC industry assets as of March 31, 2006. Reported total assets of all ILCs, as of March 31, 2006, ranged from \$2.7 million to \$62.0 billion. ILCs reporting total assets of \$10 billion or more include Merrill Lynch Bank USA (\$62.0 billion), UBS Bank USA (\$19.0 billion), American Express Centurion Bank (\$13.8 billion), Fremont Investment & Loan (\$12.9 billion), and Morgan

<sup>5</sup> During 2000, 4 new ILCs were insured; 2 during each of 2001 and 2002; 5 during 2003; 6 during 2004; 4 during 2005; and 1 thus far in 2006. The insurance date for each institution reflects the date the institution began operating.

Stanley Bank (\$10.9 billion); 9 other ILCs reported total assets of \$1 billion or more. The remaining 47 institutions, on average, reported total assets of \$223.6 million.

While many of the ILCs insured after CEBA are subject to some form of consolidated supervision, many of the recent applications are from companies that would have no consolidated Federal supervisor. Currently, nine applications for deposit insurance for ILCs are pending before the FDIC. The FDIC has also received five notices of change in bank control to acquire an ILC. None of the potential parent companies of the current ILC applicants or the potential acquirers of ILCs will be subject to Federal consolidated supervision.

## II. Recent Developments and Expressions of Concern

The ILC industry has grown and evolved since its inception in 1910, and that growth and evolution appears to be continuing in ways that may not have been anticipated at the time CEBA was enacted in 1987 and even at the time that the Gramm-Leach-Bliley Act (GLBA) was enacted in 1999, when Congress last addressed the issue of mixing banking and commerce. Over time the chartering states have gradually expanded the powers of their ILCs to the extent that ILCs now generally have the same powers as state commercial banks.<sup>6</sup> That fact, coupled with the ability of a company that controls an ILC to possibly engage in activities not permissible for a Federally-supervised holding company, has attracted the interest of a wide range of potential owners. For some of these companies, the ILC charter was the only way the company could own a bank. Some of these companies plan to use an ILC to support their non-financial activities; others plan to use an ILC to augment the services of their financial services units.

In 2005 the GAO issued a report that concluded that while "from an operations standpoint [ILCs] do not appear to have a greater risk of failure than other types of depository institutions,"<sup>7</sup> commercial firm ownership of ILCs constituted a mixing of banking and commerce and created an unlevel playing field when compared to the holding companies of banks and thrifts subject to consolidated supervision, and that the FDIC's

examination, regulation and supervision authorities may not adequately protect the bank and the insurance fund when an ILC is held by a commercial firm. Previously, the FDIC's OIG had issued a 2004 report expressing a concern that ILCs may present additional risks to the deposit insurance fund because the parent holding companies of ILCs are not always subject to consolidated supervision, consolidated capital requirements, or enforcement actions imposed on parent organizations subject to the BHCA.

The FDIC also received more than 13,000 comment letters and heard substantial testimony in three days of hearings on the proposed Wal-Mart Bank's deposit insurance application. Most of the comments and testimony expressed opposition to the granting of deposit insurance to this particular applicant. As of June 30, 2006 over 640 of those comments specifically raised concerns over the risk to the deposit insurance fund posed by an ILC that has a parent without a consolidated Federal supervisor or in which an ILC is owned or affiliated with a commercial concern.

Recently, numerous members of Congress have expressed their concerns about ILCs in comments on applications and notices pending before the FDIC, in recent Congressional hearings on ILCs, and by introducing a number of bills affecting ILCs.

## III. Need for a Moratorium

From a safety and soundness standpoint, ILCs have not presented the FDIC thus far with any greater risk of failure than other types of insured depository institutions and the FDIC's current statutory authority has proved adequate to supervise ILCs. However, as a result of the continued evolution of the ILC industry and the various issues and concerns expressed regarding the ILC industry mentioned above, it is appropriate for the FDIC to further evaluate (i) industry developments, (ii) the various issues, facts, and arguments raised with respect to the ILC industry, (iii) whether there are emerging safety and soundness issues or policy issues involving ILCs or other risks to the insurance fund, and (iv) whether statutory, regulatory, or policy changes should be made in the FDIC's oversight of ILCs in order to protect the deposit insurance fund or important Congressional objectives.

## IV. The Moratorium

The FDIC has imposed a six-month moratorium on FDIC action to (i) accept, approve, or deny any application for deposit insurance submitted to the FDIC by, or on behalf of, any proposed or

existing ILC, or (ii) accept, disapprove, or issue a letter of intent not to disapprove, any change in bank control notice submitted to the FDIC with respect to any ILC. The FDIC Board of Directors may exclude from the moratorium any particular application or notice if it determines that (i) the moratorium would present a significant safety and soundness risk to any FDIC-insured institution or a significant risk to the deposit insurance fund, or (ii) failure to act would otherwise impair the mission of the FDIC.

During the moratorium, the FDIC will not "accept" applications for deposit insurance for any ILC or notices of change in control with respect to any ILC, regardless of whether the application or notice is substantially complete. The moratorium includes all pending ILC applications for deposit insurance and notices of change in control with respect to an ILC in order to maintain the status quo. In that way the FDIC would be able to focus carefully and comprehensively on further evaluating the developments, facts, issues, and arguments mentioned above, and to ensure that no new ILCs will be insured and no new changes in control will be permitted that would be inconsistent with the FDIC's findings and conclusions.

During the moratorium, all ILC applications and notices other than those subject to the moratorium will be acted upon only by the FDIC's Board of Directors.

Finally, it is expected that during the moratorium the FDIC will seek public input on the issues and concerns raised with regard to the ILC industry.

Imposition of a limited-duration moratorium at this time is necessary to insure that the FDIC achieves and preserves the broad statutory objectives of the FDI Act which include maintenance of public confidence in the banking system by insuring deposits and maintaining the safety and soundness of insured depository institutions. The FDIC recognizes that the moratorium may appear inconsistent with specific timetables for agency action on certain applications or notices. However, adherence to a strict statutory timeline without an opportunity to re-evaluate the FDIC's standards for determining the public interest may frustrate the substantive policies the agency is charged with promoting.

The moratorium will not implement any new standards for any regulatory approvals, but rather will seek to maintain the status quo while the FDIC evaluates its standards in light of its

<sup>6</sup> See n.1 *supra*.

<sup>7</sup> U.S. Government Accountability Office, GAO-05-621, Industrial Loan Corporations: Recent Asset Growth And Commercial Interest Highlight Differences In Regulatory Authority (2005), available at <http://www.gao.gov/highlights/d05621high.pdf> (hereinafter GAO-05-621).

statutory objectives and congressional policies.

By Order of the Board of Directors.

Dated at Washington, DC, this 28th day of July, 2006.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

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**BILLING CODE 6714-01-P**

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section

7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
<b>TRANSACTIONS GRANTED EARLY TERMINATION—07/03/2006</b>			
20051218 .....	Kaba Holding AG .....	Masco Corporation .....	Computerized Security Systems Inc. Saflok EMEA NV.
<b>TRANSACTIONS GRANTED EARLY TERMINATION—07/05/2006</b>			
20061096 .....	Quantum Corporation .....	Advanced Digital Information Corporation.	Advanced Digital Information Corporation.
20061149 .....	Lindsay Goldberg & Bessemer L.P .....	John Rincon .....	Intermex Wire Transfer, LLC.
20061264 .....	Allianz Aktiengesellschaft .....	MAN Aktiengesellschaft .....	MAN Roland Druckmaschinen Aktiengesellschaft.
20061270 .....	ADC Telecommunications, Inc .....	Andrew Corporation .....	Andrew Corporation.
20061274 .....	Ascendia Brands, Inc .....	Donata Holding GmbH & Co. KG .....	Coty Inc.
20061276 .....	ValueAct Capital Master Fund, L.P .....	Valeant Pharmaceuticals International .....	Valeant Pharmaceuticals International.
20061281 .....	Fremont Partners III, L.P .....	Nautic Partners V, LP .....	IPS Intermediate Holdings Corporation.
20061289 .....	ACO Holding LP .....	Acosta, Inc .....	Acosta, Inc.
20061301 .....	ArcLight Energy Partners Fund III, L.P ..	Ralph R. Bell .....	Cincoi Pipe and Supply, Ltd.
20061302 .....	ArcLight Energy Partners Fund III, L.P ..	John H. Causey .....	Cincoi Pipe and Supply, Ltd.
20061303 .....	Hospital Partners of America, Inc .....	CHRISTUS Health .....	CHRISTUS Health Gulf Coast.
20061305 .....	Platinum Equity Capital Partners, L.P ....	Textron Inc .....	Avdel Cherry LLC.
			Burkland Textron Inc.
			Camcar LLC.
			Cherry Aerospace LLC.
			Elco Fastening Systems LLC.
			Flexalloy Inc.
			Ring Screw LLC.
			TFS Fastening Systems LLC.
			Wolverine Metal Specialties, Inc.
20061312 .....	Atlantic Equity Partners IV, L.P .....	BHM Technologies, LLC .....	BHM Technologies, LLC.
20061320 .....	Level 3 Communications, Inc .....	Looking Glass Networks Holding Co., Inc.	Looking Glass Networks Holding Co., Inc.
20061322 .....	Apollo Investment Fund VI, L.P .....	International Paper Company .....	Bucksport Leasing Company.
20061324 .....	Macquarie Utilities Inc .....	Kelda plc .....	Nextier Solutions Corporation.
20061326 .....	Crestview Capital Partners, L.P .....	Friedman, Billings, Ramsey Group, Inc ..	Aquarion Company.
20061329 .....	Harbinger Capital Partners Offshore Fund I, Ltd.	Crescent Jewelers .....	FBR Capital Markets Corporation.
20061333 .....	Sandler Capital Partners V, L.P .....	Premedia Inc .....	Crescent Jewelers.
20061337 .....	UBS AG .....	ABN AMRO Holding N.V .....	Premedia Special Interest Publications, Inc.
			ABN AMRO Clearing and Management Services, Inc.
			ABN AMRO Commodity Finance, Inc.
			ABN AMRO Incorporated.
			ABN AMRO Sage Corporation.
<b>TRANSACTIONS GRANTED EARLY TERMINATION—07/06/2006</b>			
20061335 .....	TPG Partners V. L.P .....	Field Holdings, Inc .....	Field Container Company, L.P.
<b>TRANSACTIONS GRANTED EARLY TERMINATION—07/07/2006</b>			
20060987 .....	Hologic, Inc .....	Suros Surgical Systems, Inc .....	suros Surgical Systems, Inc.
20061241 .....	National Grid plc .....	KeySpan Corporation .....	KeySpan Corporation.
20061297 .....	Schneider Electric SA .....	Invensys plc .....	Barber-Colman Holdings Corp.