Statement by Vice Chairman Travis Hill on the Notice of Proposed Rulemaking on Industrial Loan Companies

July 30, 2024

Industrial loan companies and industrial banks (collectively, "ILCs") first arose in the early 20th century. In the early years, ILCs were small, focused on serving industrial workers, and not insured by the FDIC. Although the FDIC approved deposit insurance for a few ILCs beginning in 1958, FDIC insurance became much more common for ILCs following changes to federal and state law in 1982.[1] In 1987, Congress expressly exempted FDIC-insured ILCs from the Bank Holding Company Act's (BHCA) definition of "bank," which meant commercial companies could establish or acquire ILCs without being subject to the BHCA's restrictions on commercial activities.[2]

The ILC exemption has raised several challenging policy questions, the most notable of which exploded into view when Wal-Mart Stores, Inc. applied for an ILC charter in 2005. The FDIC ultimately never made a decision on Wal-Mart's application, and instead imposed two moratoria on ILCs more broadly, before Wal-Mart eventually withdrew its application.[3]

In my opinion, the question of how the FDIC would approach an application for FDIC insurance from a very large commercial company, such as a retailer or technology company with customers in virtually every county in the country, is the elephant in the ILC room. Given the gravity of the policy issues at play, I think it would make sense for the FDIC to engage in a thoughtful, deliberative policymaking process to provide transparency around how we might approach this and other ILC-related questions.

The proposal today addresses a different question, that of how the FDIC should approach applications from ILCs that are entirely dependent on their parents, which the proposal refers to

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[1] Federal Deposit Insurance Corporation, The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective, *Supervisory Insights* (Summer 2004), p. 8 ("Because some state laws did not permit these entities to accept deposits, the FDIC determined that they were not eligible for federal deposit insurance. This policy eventually changed, and at least six banks received federal deposit insurance from 1958 through 1979. … The FDIC's involvement with industrial loan companies began in earnest in 1982, when the Garn-St Germain Depository Institutions Act authorized federal deposit insurance for thrift certificates, a funding source used by industrial loan companies. Provisions of this legislation allowed ILCs that were regulated in a manner similar to commercial banks to apply for federal deposit insurance. Reinforcing this development, some states changed their laws to require their ILCs to obtain FDIC insurance as a condition of keeping their charters.").

[2] *See* Competitive Equality Banking Act of 1987, Public Law 100–86, 101 Stat. 552 (Aug. 10, 1987). Prior to 1987, some commercial companies owned banks and were not subject to the BHCA because of the so-called "nonbank bank" exception, which exempted from the definition of "bank" under the BHCA a bank that either (1) did not make commercial loans (which were separate from consumer loans) or (2) did not accept demand deposits. *See generally* Saule T. Omarova, Margaret E. Tahyar, That Which We Call a Bank: Revisiting the History of Bank Holding Company Regulations in the United States, *Cornell Law Faculty Publications* (2012).

[3] However, the then-FDIC Chairman referred to the withdrawal as a "wise choice." *See* Wal-Mart Will Pull Bank Application, FDIC Says, *CNBC* (March 16, 2007).

as "captives" or "shells."[4] While this is a reasonable question to ask, it is an odd place to start – other than the fact that we have had several such applications recently, including one that withdrew last month after a three-and-a-half year wait.

I describe this as odd because it suggests that a commercial company that seeks to establish or acquire an ILC might get approved if it wants a full-service bank, but there is a presumption of disapproval if it only serves the parent (or affiliates), or customers of the parent (or affiliates). Said differently, there would be a presumption of disapproval if a large retailer sought an ILC charter to serve only existing customers of the parent, but no such presumption if it expanded the proposed charter to serve existing customers *and more*.[5] Furthermore, if one of the recent applicants proposing a "captive" model had tried to *cure* the concern around "captives" by expanding its business model to serve a broader customer base, would the FDIC have approved it? I am skeptical.

I appreciate the spirit behind the proposal, and the desire to provide more clarity around the FDIC's approach to ILCs. However, I think we should have taken a step back, and started with a broader request for information or an advance notice of proposed rulemaking. I would have asked a broader set of questions, addressed a broader set of issues, and approached it all with a more open mind. While these issues are not new, and the FDIC has been grappling with ILC issues for multiple decades, I think there still would be benefit in starting with a clean sheet of paper and soliciting feedback in a more open-ended way.

I think our ultimate objective should be a policy statement, or similar document, that provides more clarity to the public on how we interpret the statutory factors in the ILC-specific context, and how that might apply with respect to certain types of applications – rather than a rule focusing narrowly on one specific model. Regardless, arriving at conclusions on some of the big policy issues and communicating those conclusions to the public is generally a much better approach than waiting until applications come in and sitting on those applications for years.

I appreciate the concerns prompting the proposal today, and the concerns with the ILC charter more broadly. Nonetheless, I will vote no, as I would have preferred to address the ILC issue in a more holistic manner.

Finally, I also want to thank staff for their work on the proposal.

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[4] Federal Deposit Insurance Corporation, Proposed Rule: Parent Companies of Industrial Banks and Industrial Loan Companies, Section IV.*C. Shell and Captive Industrial Bank Models* ("[A]n industrial bank will be presumed to be a shell or captive institution if it: (a) could not function independently of the parent company, or (b) would be significantly or materially reliant on the parent company or its affiliates, or (c) would serve only as a funding channel for an existing parent company or affiliate business line.").

[5] Note that when Walmart applied, it *narrowed* the scope of its proposed activities in the hopes of getting approved. This did little to reassure critics, because of doubts the scope would remain narrow. *See, e.g.*, JOHN BOVENZI, INSIDE THE FDIC: THIRTY YEARS OF BANK FAILURES, BAILOUTS, AND REGULATORY BATTLES (2015), p. 160 ("As one community banker put it, 'All they want is a charter and their camel will have its nose under the tent's edge.").