May 4, 2007

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN Number 3064-AD15

Dear Mr. Feldman:

The Conference of State Bank Supervisors (CSBS) appreciates the opportunity to comment on the Notice of Proposed Rulemaking regarding Industrial Bank Subsidiaries of Financial Companies.

CSBS recognizes that the proposal is an attempt to formalize practices utilized by the Federal Deposit Insurance Corporation (FDIC) with regards to the supervision of an industrial loan company or industrial bank (ILC) holding company. Unfortunately, however, the proposed rule ignores that the affected ILC holding companies may report to the Securities and Exchange Commission (SEC). In order to create an efficient and reasonable supervisory framework, the FDIC should recognize the SEC's role and, when appropriate, defer to the SEC as the functional regulator.

In addition, CSBS is also concerned with the commitments required for an industrial bank to become a subsidiary of a financial company that is not subject to consolidated bank supervision by the Federal Reserve Board or the Office of Thrift Supervision (Federal Consolidated Bank Supervision, or FCBS). The proposed rule would prohibit an industrial bank from becoming a subsidiary of a Non-FCBS Financial Company unless the company enters into an agreement with the FDIC and the industrial bank.

We believe the commitments of this written agreement go beyond the requirements of other holding company regulators, which creates a supervisory imbalance. More stringent requirements for Non-FCBS Financial Companies effectively disadvantage the state charter and provide an advantage to the OTS. The supervisory authority granted to the FDIC by this agreement is appropriate, but should be equal to other regulators so as not to disadvantage one charter option over the other.

The proposed rule does not address existing companies and what expectations these companies should have regarding their future treatment by the FDIC. CSBS suggests the FDIC clearly detail how they currently address concerns regarding non-FCBS Financial Companies and their subsidiaries and if this treatment will continue in the future.

Finally, CSBS would like to comment on the questions posed by the FDIC in the Notice of Proposed Rulemaking (CSBS responses below each question).

1) The requirements described in this notice would apply to industrial banks that become subsidiaries of companies that are engaged solely in financial activities, but that are not subject to Federal Consolidated Bank Supervision, and to those financial companies ("Non-FCBS Financial Companies"). Some of the provisions include continuing requirements, e.g., to maintain capital or to engage only in financial activities. Should the regulations include a cure period in the event that the industrial bank or its parent company initially comply with these requirements, but later fall out of compliance? If so, should such a cure period be provided for all requirements or just some of them? For example, section 4(m) of the BHCA, 12 U.S.C. 1846(m), generally provides a 180-day cure period for a financial holding company if any of its subsidiary depository institutions fails to be well-capitalized and/or well-managed.

CSBS believes that a parent company which falls out of compliance should be addressed on a case-by-case basis, but any such cure period should not last longer than 180 days.

2) With regard to such continuing requirements, whether or not there is a cure period, should the rules provide for remedies beyond cease and desist orders and civil money penalties, e.g., should violations of some of these requirements require divestiture of the industrial bank similar to the divestiture provisions in section 4(m)(4) of the BHCA, 12 U.S.C. 1843 (m)(4)? If so, for which requirements? Should the written agreement with the parent company and the industrial bank include a provision requiring the parent company to divest the industrial bank if the parent company begins to engage, directly or indirectly, in non-financial activities? Alternatively, should the FDIC simply rely on section 8(b)(7) of the FDI Act, 12 U.S.C. 1818 (b)(7), to order divestiture?

The FDIC has appropriate authority under existing regulations to address any such violations or engagement in non-financial activities.

3) Under the Bank Holding Act, a commercial company that becomes a bank holding company has a period of time after becoming a bank holding company subject to the supervision of the FRB in which to divest itself of its nonconforming commercial activities or, alternatively, of its bank(s). Should a commercial company seeking to acquire an industrial bank and to divest itself of its commercial activities so that it would become a Non-FCBS Financial Company similarly be given a period of time by the FDIC within which it would be subject to the FDIC's supervisory oversight, but would be allowed to divest itself of its commercial activities or its industrial bank(s)? If so, for what period of time?

A commercial company seeking to acquire an industrial bank should reasonably expect that they will be required to divest itself of its nonconforming commercial activities. CSBS believes such a company should initiate this process before their application is

accepted. However, to remain consistent with the Bank Holding Act, a commercial company seeking to acquire a non-FCBS financial company should have a period of time, subject to FDIC supervisory oversight, to divest itself of its commercial activities or industrial bank(s).

4) Should the FDIC further define "services essential to the operations of the industrial bank" as that phrase is used in the proposed section 354.5(e)? Should the restriction in that section be clarified to include core banking services or risk management functions?

CSBS does not think the phrase requires further definition.

5) For purposes of transparency and identifying any potential risks to the industrial bank, we have included commitments requiring examination and reporting. Is this approach the best way to gain that transparency, or is there a better way? To what extent, if any, is the FDIC's supervision enhanced by requiring a parent company of an industrial bank to consent to examination of the company and each of its subsidiaries as proposed in part 354? Is there another way to identify any potential risks?

CSBS believes it is appropriate for the FDIC to have the authority to conduct examinations. These examinations should be conducted on an appropriate and risk-focused basis and scheduling should be based on the size and complexity of the institution, and the risk of the activities performed. The FDIC should also strive to ensure these examinations do not impose unnecessary burden.

6) Is it appropriate for the FDIC to impose reporting and recordkeeping requirements on a parent company of an industrial bank and/or the parent company's subsidiaries?

It is appropriate for the FDIC to impose reporting and recordkeeping requirements only to the extent that the company does not already report to another federal regulator, such as the SEC. The FDIC should utilize information already in the public domain.

7) The Gramm-Leach Bliley Act of 1999 imposed certain restrictions on the extent to which a Federal banking agency may regulate and supervise a functionally regulated affiliate of an insured depository institution. For example, such restrictions limit the FDIC's authority to require reports from, examine, and impose capital requirements on such a functionally regulated affiliate. In view of these restrictions, should the conditions and requirements contained in the proposed rules be modified to the extent that they might apply to insurance companies and securities companies that may wish to control an industrial bank?

As referenced above, CSBS believes the FDIC should defer to the functional regulator.

8) The proposed regulation does not apply to a financial company that is supervised by the FRB or the OTS. Should this treatment be extended to a financial company that is subject to consolidated Federal supervision by the SEC as a "consolidated supervised

entity" pursuant to 17 CFR 240.15c3-1(a)(7), 240.15c3-1e, 240.15c3-1g, 240.17a-4(b)(12), 240.17a-5(a)(5) and (k), 240.17a-11(b)(2) and (h), 240.17h-1t(d)(4), and 240.17h-2t(b)(4)?

Again, the fact that a company reports to the SEC should not prevent the FDIC from having examination authority, but the FDIC should defer to the functional regulator.

9) In order to ensure that each parent financial company can serve as a source of strength to its industrial bank subsidiary and fulfill its obligation under a capital maintenance agreement, should the FDIC include a commitment that the parent company will maintain its own capital at such a level that the Tier 1 capital ratio for the company, on a consolidated basis, is at least 4% or some other level in some or all circumstances?

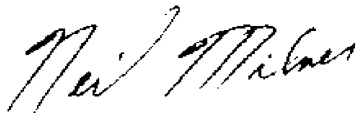
Capital standards for financial institutions are not applicable to other types of firms. Holding company capital requirements should be "as deemed necessary" and allow for supervisory judgment.

10) If, at the conclusion of the moratorium, Congress has not acted on legislation, how should the FDIC address the pending and any future applications by commercial companies?

CSBS has no objection to using the existing statutory factors to approve or deny an application.

Again, thank you for the opportunity to comment.

Best regards,



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