



May 7, 2007

Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20429  
Attention: Comments/Legal ESS

Re: Proposed Rule Part 354 – Industrial Bank Subsidiaries of Financial Companies,  
RIN 3064-AD15

Dear Mr. Feldman:

We are writing in response to the proposed rule “Part 354 – Industrial Bank Subsidiaries of Financial Companies” published for comment by the Federal Deposit Insurance Corporation (the “FDIC”) on January 31, 2006. The proposed rule would create a framework for FDIC oversight of parent companies of industrial loan companies or industrial banks (“ILCs”) in cases where these parent companies engage solely in financial activities but are not subject to supervision by federal bank regulators – the Federal Reserve Board (“FRB”) and the Office of Thrift Supervision (“OTS”). We appreciate the opportunity to provide our comments and would be pleased to discuss them with you.

Our response focuses on Question 8 in the Request for Comments section of the FDIC’s notice of proposed rulemaking: “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 U.S. Securities and Exchange Commission as a “consolidated supervised entity” ...?” We strongly believe that the Securities and Exchange Commission (“SEC”) should be recognized by the FDIC as a consolidated federal regulator, along with the FRB and OTS, thereby exempting companies subject to SEC supervision as consolidated supervised entities (“CSE”) from the scope of the rule. As discussed in more detail below, the CSE supervision and capital requirements are comparable to those applicable to bank holding companies under the Bank Holding Company Act of 1956. Therefore, not only is it unnecessary to include companies subject to SEC supervision within the scope of the proposed rule but doing so would impose an additional and duplicative layer of regulation on these securities firms that, while not subject to FRB or OTS supervision, are subject to extensive SEC oversight. In addition, the CSE regime has been recognized as an effective consolidated supervision framework both domestically and by EU regulators for purposes the EU “Financial Conglomerates Directive”.

Under the CSE framework, the SEC supervises certain broker-dealer holding companies on a consolidated basis: where a broker-dealer holding company has elected to become a CSE, the SEC's supervisory authority extends not only to the registered broker-dealer itself, but also to its affiliates and to its ultimate parent company. The SEC focuses on the financial and operational condition of the entire group, and requires the holding company to compute capital adequacy measures on a consolidated basis in a manner consistent with the international standards adopted by the Basel Committee on Banking Supervision ("Basel Standards"). In addition, a CSE is required to have systems and procedures in place to identify and control a variety of risks, make and retain a variety of books and records and provide substantial and on-going information to the SEC, including monthly, quarterly and annual reports.

Several of the specific requirements of consolidated supervision by the SEC are set forth below:

- The SEC requires a comprehensive risk management control system to manage affiliate group-wide risk, including market, credit, liquidity and funding, legal and compliance, and operational risks. This system includes stress testing of funding and liquidity. The entity is also required to make and retain records of such testing, the basis for the determination of credit risk weights for counterparties, the basis for the determination of internal credit ratings for counterparties and records of the calculations of capital ratios.
- The CSE regime provides for the examination by the SEC of the books and records of the ultimate holding company and any of its affiliates, if the affiliate does not have its own principal regulator. The SEC also requires that the supervised entity provide periodic reports, including consolidated financial and risk information, the capital adequacy measurement (statements of allowable capital and allowances for market, credit and operational risk computed in a manner consistent with the Basel Standards), the results of a review by internal audit of risk management and control systems and other reports to management.
- The SEC has access to information about the ultimate holding company or any of its material affiliates that the SEC finds is necessary to evaluate their financial and operational risks.

We believe that the SEC's consolidated supervision program for CSEs focuses on all of the same areas of enterprise-wide risk as those of the Federal Reserve System and the Office of Thrift Supervision.

Like those agencies, the SEC focuses on the maintenance of a strong capital position based on the risk presented by the institution and on the implementation by the institution of robust risk management procedures. Like the bank regulators, its supervision focuses on the firm's ongoing risk management, rather than its position at any one moment in time. Consolidated supervision is designed to provide enterprise-wide oversight, relying on functional regulators to supervise individual regulated entities. In addition, the SEC's capital requirement

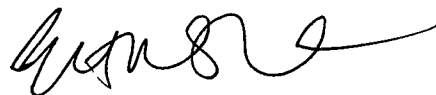
is applied enterprise-wide and is based on the same Basel Standards as are applied by banking regulators.

The House Financial Services Committee has recently acknowledged that the SEC exercises consolidated supervisory powers equivalent to those of the FRB and OTS. Earlier this month the committee unanimously approved the "Industrial Bank Holding Company Act of 2007" legislation that specifically recognizes the SEC as a consolidated supervisor on par with the FRB and OTS. In addition, the CSE rules were promulgated by the SEC in part as a response to the EU "Financial Conglomerates Directive" and EU regulators have recognized the CSE regime as a world-wide consolidated supervision framework equivalent to that applicable to EU financial companies. Finally, the SEC is the federal regulator that understands best the business and activities of US securities firms and is therefore best suited to regulate them on a consolidated basis.

Based on the foregoing, we strongly believe that additional supervision by the FDIC of broker-dealer holding companies subject to CSE supervision will not only be unnecessary but also duplicative, a position we already expressed in our prior comment letter, dated October 10, 2006, relating to the FDIC request for comment on specific issues relating to ILCs.

Once again, thank you for giving us the opportunity to provide our comments. If you have any questions on this letter, please contact Thomas Halverson at (212) 357-8226.

Very truly yours,



Elizabeth E. Beshel  
Treasurer  
The Goldman Sachs Group, Inc.



Thomas E. Halverson  
Chairman  
Goldman Sachs Bank USA