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DEPARTMENT OF FINANCIAL INSTITUTIONS

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Chief Examiner
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Deputy Commissioner

May 7, 2007

VIA ELECTRONIC DELIVERY

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

Re: 12 CFR Part 354, Industrial Bank Subsidiaries of Financial Companies

Dear Mr. Feldman:

The Utah Department of Financial Institutions ("UDFI") appreciates the opportunity to express several observations and comment on the Notice of Proposed Rulemaking regarding Industrial Bank Subsidiaries of Financial Companies.

UDFI believes that the proposal is not necessary due to the fact that the Federal Deposit Insurance Corporation ("FDIC") already has the authority to regulate industrial bank ("IB") holding companies. However, UDFI understands that the proposal is an attempt to formalize practices utilized by the FDIC with regards to the supervision of an industrial loan company or IB holding company. Unfortunately, the proposed rule ignores the fact that some of the affected IB holding companies have elected to be supervised on a consolidated basis by the Securities and Exchange Commission ("SEC"). In order to create an efficient and reasonable supervisory framework, the FDIC should recognize the SEC's role as a functional holding company regulator. UDFI believes both FDIC and UDFI should defer to the SEC when appropriate and collaborate when necessary. That said, UDFI believes the SEC should produce and share with other holding company regulators written reports that detail the findings and conclusions that arise from their supervision efforts at consolidated supervised entities ("CSE"s) that also own industrial banks. To minimize regulatory burden, UDFI believes increased collaboration should be fostered between all holding company supervisors, as recommended in the March 2007 GAO report on consolidated supervision.

UDFI is concerned that the proposed rule will prohibit a IB holding company from engaging directly or indirectly in any non financial activity. As a result, the rule as proposed

functionally repeals the current exemption for IB holding companies in the Bank Holding Company Act. In fact, the proposed rule is more restrictive than H.R. 698, The Industrial Bank Holding Company Act of 2007. As currently written, in H.R. 698 an IB holding company would be characterized as financial as long as it meets the "85 -15 test."

In addition, UDFI 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 these written agreements 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 Office of Thrift Supervision ("OTS"). The supervisory authority granted to the FDIC by these agreements is appropriate, but should be equal to other regulators so as not to disadvantage one charter option over the other.

Moreover, UDFI is concerned about the condition in the written agreements that would limit IB holding company representation on the industrial bank's board to 25% of the bank's directors. For twenty years, UDFI's prudential standard has been a majority of outside directors on the industrial bank's board. Other holding company supervisors have no similar limitations.

Finally, UDFI would like to comment on the questions posed by the FDIC in the Notice of Proposed Rulemaking (UDFI 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.

UDFI believes that a parent company which falls out of compliance should be cited for a violation of rules and regulations, with remedial efforts scheduled and addressed on a case-by-

case basis.

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 ample 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?

UDFI believes that the FDIC already has adequate supervisory oversight under its current rules to deal with the possible need for divestiture by a IB holding company of its commercial activities should it become necessary.

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?

UDFI 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?

UDFI believes that the FDIC already has the authority, under Section 10(b)(4) of the Federal Deposit Insurance Act ("FDI Act"), to examine the holding companies and affiliates of IBs and that the perceived need to reiterate that authority in the proposed rule undermines that authority as expressed in the FDI Act. Nonetheless, if adopted as proposed, UDFI believes the examination of IB holding companies not subject to consolidated supervision should be conducted on a risk-basis as opposed to a prescribed requirement for regular examinations on any fixed schedule. UDFI also believes that affiliated subsidiaries of IB holding companies should only be examined when their activities have been determined to pose a safety and soundness risk to the bank or could impair the holding company's ability to serve as a source of strength to the IB.

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 199 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, UDFI 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 has elected to be supervised as a CSE by the SEC should not preclude either FDIC or UDFI from exercising their respective holding company examination authorities, but these agencies should strive to reduce regulatory burden by deferring to a functional regulator like the SEC when appropriate, and collaborating when necessary.

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?

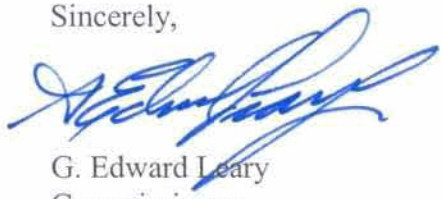
Capital standards for financial institutions are not applicable to other types of firms. Due to the fact that the OTS does not impose capital standards on thrift holding companies, UDFI believes that imposing capital requirements on industrial bank holding companies will create a disadvantage to this type of state charter and create a supervisory imbalance.

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?

The FDIC should move forward per the existing statutory factors for approving deposit insurance.

Thank you for the opportunity to comment. Hopefully the recommendations will prove helpful.

Sincerely,



G. Edward Leary
Commissioner