



Ford Motor Credit Company

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May 7, 2007

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

*Transmitted via email*

Re: Notice of Proposed Rulemaking  
Industrial Bank Subsidiaries of Financial Companies  
RIN 3064-AD15

Dear Mr. Feldman:

On behalf of Ford Motor Credit Company ("Ford Motor Credit"), I am pleased to respond to the Notice of proposed rulemaking on Industrial Bank Subsidiaries of Financial Companies. Ford Motor Credit, a subsidiary of Ford Motor Company, is one of the world's largest automotive finance companies. With about 14,000 employees, Ford Motor Credit operates in thirty-six countries and manages approximately \$151 billion in receivables. It provides automotive financing for Ford, Lincoln, Mercury, Aston Martin, Jaguar, Land Rover, Mazda, and Volvo dealers and customers.

Before addressing the specifics of the Notice, one must examine the seminal questions of; i) is there a need for this regulation and ii) does the proposed rulemaking address that need. In the supplementary information accompanying the Notice, the FDIC clearly states that its "experience suggests no risk or other possible harm that is unique to the industrial bank charter." In spite of this statement of fact, in attempting to establish a rationale for the proposed rulemaking, the supplementary information is replete with phrases such as "concerns that have been raised" and "it has been argued." The FDIC then

articulates many of the arguments used recently by opponents of the industrial bank charter. Although these arguments may have surface appeal, it is important to note that in recent hearings before the FDIC and Congress those raising these arguments have not established any facts to support their contentions. In addition to the fact there is no unique risk presented by the industrial bank charter, there is no evidence that the nature of the entity owning an industrial bank presents any unique risk to the deposit insurance fund.

The FDIC sites the growth in the industrial bank industry as one of the recent developments justifying the need for the proposed rulemaking. As noted in the supplementary information to the Notice, as of the end of 2006 six industrial banks controlled 85% of the assets of the industry. None of these six industrial banks would be covered by the proposed rulemaking even though none of the owners of these industrial banks are currently the subject of consolidated federal supervision by the banking agencies.

If the proposed rulemaking is designed to promote the safety and soundness of the deposit insurance fund, one must ask why are not all industrial banks and state non-member banks that are not part of a holding company structure covered by the proposed rules. Not only does the proposed rulemaking differentiate among industrial banks based on the type of entity owning the bank without a proven, substantive basis for that differentiation, it creates different regulatory structures based on when the banks received deposit insurance. This creates a patchwork of regulation without any rational basis. There is no justification for subjecting industrial banks and their owners to different regulations based on when federal deposit insurance is granted or the nature of the bank's owner.

One must also ask why the proposed rulemaking does not cover individuals that own industrial banks or state non-member banks that are not part of a bank or financial services holding company. The FDIC does state that banks owned by one or more individuals do not present the "same potential problems as banks owned by companies." This statement cannot withstand careful scrutiny. It is not logical to assume an individual who is a controlling shareholder of a bank and who is also in the real estate development business or hardware business cannot assert the same influences on the bank as a company, in the same businesses, that owns an industrial bank.

Comment has been requested on whether there should be further definition of the phrase "services essential to the operations of the industrial bank." We urge that any such phrases give complete definitions. This is essential to give entities covered by the regulation guidance as to whether a transaction or activity comes within the meaning of the phrase. Providing only a limited number of examples does not give a bank any certainty of their application to unique situations. There have been occasions where examples listed in regulations come to be interpreted by staff

members as an exclusive list. The FDIC should provide a clear and complete definition in addition to a listing of examples.

The FDIC does a disservice to entities regulated by any rule by leaving requirements open ended and uncertain. Examples of this in the proposed rulemaking are shown in 354.4(d) ["... and such other reports as may be requested by the FDIC to keep the FDIC informed as to financial condition, systems for monitoring and controlling financial and operating risks, ..."] and in 354.4(h) ["... and/or taking such other actions as the FDIC deems appropriate to provide the industrial bank with a resource for additional capital and liquidity ..."]. By proposing to put such open ended commitments into regulation, the FDIC is asking industrial banks and their owners to be subject to requirements that are subject to change without notice or agreement.

The FDIC has also asked for comment on how the FDIC should address pending and future applications from commercial companies, assuming Congress has not passed legislation impacting the commercial ownership of industrial banks by the time the current moratorium ends. We submit the FDIC has no choice but to process such applications. In the absence of Congressional action, the FDIC does not have the authority to treat such applications differently than other applications for deposit insurance. In the Competitive Equality Banking Act of 1987, Congress extended federal deposit insurance to industrial banks. In the Gramm-Leach-Bliley Act of 1999, Congress debated and decided to retain the exception to the Bank Holding Company Act permitting non-bank holding companies to own industrial banks. Based upon these actions, without a legislative change, it is the clear intent of Congress that applications from commercially owned industrial banks be judged on the same basis as applications from other types of depository institutions.

Section 354.4(g) of the proposed rule limits so-called "insider" directors to 25% of the membership of an industrial bank's board of directors. No rationale is stated to support this requirement. Nor is there any articulation as to why the current practice of the FDIC and state regulators in requiring a majority of the board to be "outside" directors is not adequate. There is no evidence that bank independence is compromised by having a simple majority of outside directors. Limiting direct shareholder representation on the board of directors to 25% of the board will detract from the owner's ability to provide managerial strength to an industrial bank. It should be noted that proposed legislation introduced in the House of Representatives call upon industrial bank holding companies to do just that.

Section 354.5 sets out a list of actions by an industrial bank that would require prior written approval from the FDIC. There is no statement in the proposed rule that gives any guidance as to what standards will be used by the FDIC in order to obtain approval. Without such guidance articulated in the regulation, industrial

banks will be at the whim of the particular staff member with whom the bank is dealing at any time. This will lead to inconsistent decisions.

Further, Section 345.5 does not provide for exigent circumstances. For example, under 354.5(c) if an industrial bank wanted to replace a "senior executive officer" (however that term is defined) for fraud or defalcation it could take no action until FDIC approval is obtained, allowing such officer to cause more harm to the bank.

We thank you for the opportunity to comment upon these important issues. Any questions you may have should be addressed to the undersigned.

Very truly yours,

Carl S. Good