



June 30, 2020

Mr. Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20129

Via email to: comments@fdic.gov

Attention: Comments

Re: **RIN 3064-AF31**

Dear Mr. Feldman:

Introduction

Comenity Capital Bank (“CCB”) thanks you for the opportunity to submit comments related to the Notice of Proposed Rulemaking (“NPR”) announcing a proposed rule to regulate parents and affiliates of industrial banks (occasionally referred to as an “IB” or “IBs”) announced by the FDIC on March 17, 2020 and published in the Federal Register on March 31, 2020.

Background on CCB

CCB is a Utah industrial bank headquartered in Draper, UT. Its ultimate parent is Alliance Data Systems Corporation, a publically traded company headquartered in Columbus, Ohio, employing more than 6,000 employees enterprise wide. Its two (2) banks combined provide credit to over 40 million consumers. CCB is a monoline credit card institution whose primary business is offering private label and cobrand credit cards to consumers. CCB does not have any branches, ATMs or physical deposit taking facilities. CCB takes consumer deposits on a nationwide basis via internet.

We are proud to note that CCB received an “Outstanding” rating after its most recent CRA examination for its lending, investment and grant activities in the community in which it operates. CCB is pleased to have received an “Outstanding” CRA rating, and is affirmatively proud of its work and investments in its community. CCB is committed to an active and engaged partnership in CRA activities with its community.

Industrial Banks Have a Strong History

States have been chartering industrial banks for more than 100 years. As documented by FDIC call reports, industrial banks are the strongest and safest banks in the nation. It is worth noting that over the last 10 years more than 530 community and regional banks failed in the U.S. Conversely, over the last 40 years only four (4) industrial banks failed.

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We appreciate that the FDIC has recognized the value of industrial banks. At a hearing of the House Financial Services Committee on December 4, 2019, the committee members exchanged comments with FDIC Chairwoman Jelena McWilliams regarding industrial banks. Congressman Huizenga (R-MI) noted that in 2017, former FCIC Chairwoman Sheila Blair testified that industrial banks “proved to be strong responsible parts of the nation’s banking system and offered innovative approaches to banking.” Chairwoman McWilliams responded “I would agree with that”. In a similar exchange with Rep. McAdams (D-UT), Ms. McWilliams stated that “It is our experience that they are generally well managed.”

Correcting Misperceptions About Industrial Banks

Industrial Banks are heavily regulated. Inexplicably, industrial bank opponents and even some fair minded members of the industry are under the misimpression that industrial banks are not adequately regulated. The fact is that industrial banks are subject to all of the laws, regulations and supervisory oversight applicable to other banks, along with additional requirements. Industrial banks are examined by chartering-state regulatory authorities and the FDIC, and are subject to regulation by the CFPB. Also, just like most other banks, an industrial bank with assets over \$20BB is further subject to compliance audits by the CFPB. CCB and its sister bank are both under the CFPB’s supervision.

Industrial Bank parent companies and affiliates are also heavily regulated. Some opponents of industrial banks want people to believe that industrial banks are riskier than other banks because their owners are not governed by the Federal Reserve under the Bank Holding Act. Once again, the facts tell a different story. As you know, the parents of industrial banks are governed by the FDIC. Also, Sections 23A and 23B of the Federal Reserve Act limit what transactions industrial banks can have with their parent companies and other affiliates. More specifically, Federal Reserve regulations prohibit industrial banks from extending loans of any significance to their parent company or an affiliate, or from offering loans on preferential or non-market terms.

Comment on RIN 3064-AF31

We recognize the amount of time and effort you and your department must expend reviewing and analyzing all the responses you are getting on this important topic. Accordingly, for the most part we just want to support the points articulated by the National Association of Industrial Bankers (NAIB) in its letter to you dated June __, 2020, copy attached for your convenience. However, we would like to re-state a few of the key points the NAIB made which we think merit emphasis. We also support the following changes to the proposed final rule:

Section 354.4(a)(1) regarding lists of affiliates—instead of a complete list, we recommend requiring a list of all affiliates in the chain of control and ownership over the subject industrial bank (IB), all other banks that are part of the affiliate group, all U.S. based affiliated, and all affiliated entities with which the bank will engage in transactions subject to Sections 23A and 23B and Regulation W. Require the bank to update the list whenever necessary to remain

current. This would capture all information relevant to the bank without requiring additional reporting that would not be relevant and in some cases would be burdensome and require preparing lengthy reports consisting of information of no real relevance to the bank.

Section 354.4(a)(2) regarding consent to examinations—we recommend deleting or providing further specification about the meaning of “all relevant laws and regulations.” The remainder of the paragraph captures all information about the parent and affiliates relevant to the bank so that phrase appears redundant.

Section 354.4(a)(3) regarding annual reports—we recommend clarifying that a parent company’s annual report to shareholders will suffice. Some parent groups are many times larger than the industrial bank and the possibility of requiring a separate comprehensive audit of the whole corporate group will be a concern in terms of cost, inconvenience and ultimate purpose. For example, it is certainly appropriate for the bank’s regulators to examine how the bank underwrites credits and manages risks and whether an affiliate providing origination and other services for the bank is adhering to those standards. But it would serve no purpose to require an affiliate that operates separately from the bank to provide reports or be examined with regard to how that affiliate underwrites financing for its products and services. The scope of that authority is often a concern for bank affiliates even though the regulators have not imposed unreasonable burdens on parents and affiliates in the past.

Section 354.4(a)(6) relating to board composition—we urge the FDIC to delete this section limiting inside directors to 25% of the total board. We would not object to replacing it with a requirement to have a majority of outside directors. It would also help to add a provision stating that the requirement for a majority of outside directors applies to the authorized number of directors and temporary vacancies would not cause the bank to be out of compliance if it is diligently recruiting and interviewing a new director.

Section 354.4(c) requiring additional commitments from a parent or controlling shareholder—this represents an open ended authority to change the obligations of a parent and controlling shareholder at any time and for any reason. That is unreasonable and will likely cause parent companies and shareholders to avoid investing in a bank. It would also be unlawful and unenforceable to the extent it would prevent a parent or shareholder from disputing a new requirement that is arbitrary and capricious in violation of federal law. The FDIC can and should negotiate an agreement at the outset that ensures the parent will support the bank with capital and liquidity whenever needed. That represents a level of support that no BHC is obligated to provide. The regulators will always have authority to identify potential problems after the bank begins operating that can be addressed in a number of ways including negotiating a consent order or unilaterally imposing a cease and desist order. Deleting this section will not limit the regulators’ ability to exercise their authorities over parents, affiliates and other “institution affiliated parties,” making this section unnecessary.

Section 354.5(a) requiring certain advance approvals—except for subsection (4) covering employment of a senior executive officer who is also currently associated with an affiliate of the bank, we recommend limiting these requirements to the de novo period unless special circumstances require extending the period in which they apply.

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We believe it would be reasonable to permanently require advance approval before appointing an executive officer that might have divided loyalties and conflicts of interest due to a role the person plays at an affiliate.

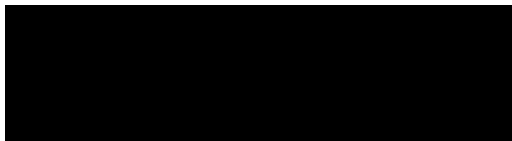
Section 354.5(b) regarding imposing additional restrictions at any time and for any reason—we strongly object to this section as written. It would waive a bank's and affiliate's rights to dispute actions by the FDIC that are arbitrary and capricious and otherwise unlawful under federal administrative law. That makes this section unlawful and unenforceable on its face. This section is not needed in order for the FDIC to impose restrictions on a bank or affiliate that are reasonable and not arbitrary and capricious using its authority to address unsafe and unsound conditions.

Conclusion

We recognize and sincerely appreciate the FDIC's past comments about the value and strength of industrial banks. We believe the FDIC is headed in the right direction with regard to the proposed rulemaking. We further believe that with the few revisions that we and the NAIB propose, the final rule will be stronger and prove more beneficial for consumers, the banks, and the regulatory bodies protecting both their interests. Thank you for your time and consideration.

COMENITY CAPITAL BANK

Sincerely yours,



Ron Ostler
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