October 10, 2006

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

RE: Industrial Loan Companies and Industrial Banks

Dear Mr. Feldman:

The Wisconsin Bankers Association (WBA) is the largest financial institution trade association in Wisconsin, representing 310 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to respond to questions raised by the Federal Deposit Insurance Corporation's (FDIC) Notice and Request For Comment on Industrial Loan Companies and Industrial Banks (collectively, "ILCs").

WBA strongly believes that ILCs raise significant risks, as well as safety and soundness concerns, such that dramatic changes need to occur in that industry at a national level for the protection of the Federal Deposit Insurance Fund and the stability of the banking system as a whole. While WBA commends the FDIC for taking time to carefully consider the public's comments regarding the ILC matter, the primary issue raised by the applications pending before the FDIC is whether the mixing of banking and commerce should be allowed to occur through the use of ILCs in the financial system. WBA strongly believes that this matter should be resolved by Congress and not the FDIC. Finally, WBA believes that the FDIC should continue its moratorium on all such applications until Congress finally resolves the matter.

To provide the FDIC with specific responses to the questions posed in its Notice and Request for Comment on ILCs, WBA offers the following comments.

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ILC Industry Developments and Risks [Questions 1-3]

It is very clear that the ILC industry has dramatically grown over the last 30 years such that their risk profile today is very different from that in the past. The applications pending today by Wal-Mart and Home Depot were likely never contemplated by Congress when it enacted the Competitive Equality Banking Act of 1987, which created an exception to the definition of "bank" under the Bank Holding Company Act for certain ILCs.

ILCs began in the early 1900s as small, state-chartered loan companies that primarily served the borrowing needs of industrial workers unable to obtain noncollateralized loans from banks.[1] The ILC industry has morphed over time to include some of the largest financial institutions with extensive access to the capital markets. Between 1987 and 2004, ILC assets grew over 3,500 percent from $3.8 billion to over $140 billion, while the number of ILCs declined about 46% from 106 to 57.[2]

In addition to the sheer size of ILCs, the FDIC lacks real supervisory authority over the consolidated entity. While WBA recognizes the FDIC has put into place a special "bank-centric" supervisory approach for examining such entities, it is not possible to fully understand or examine for the effect of the relationship between a commercial enterprise, like Wal-Mart, and its ILC. The FDIC does not have the resources, expertise or staffing levels to comprehensively examine such commercial enterprises.

The State of Utah is currently where the greatest amount of ILC interest and activity exists. However, when you look specifically at the Utah industrial bank charter, there is no "source of strength" doctrine. As a result, the parent company does not need to guarantee the losses of its industrial bank. This begs the question as to what happens to the customers of these institutions without any source of strength obligation if the parent company fails or decides not to further fund its investment in the ILC?

As former Federal Reserve Chairman Alan Greenspan wrote to Congressman Jim Leach (R-IA) shortly before he left office, ILCs are the new unitary thrifts. In his letter, Mr. Greenspan called on Congress to close the ILC loophole in order to protect the separation of banking and commerce, which is the same reason it closed the unitary thrift loophole. To further his point, Mr. Greenspan said that the authority of the nation's banking regulators does not extend to the parent companies of commercial entities. Yet the financial condition of those parent

[1] Report to the Honorable James A. Leach, House of Representatives, on Industrial Loan Corporations dated September 2005, GAO-05-621, page 5.
[2] *Id.*

companies, some of which are multi-nationals, could adversely impact their ILC subsidiaries. That, in turn, could place insured funds at risk and damage the nation's confidence in the banking system.

The risks imposed on the insurance fund from a commercial entity owning such a financial institution are, without a doubt, much greater than those where the owner is a financial entity.

Evaluation of and Conditions For ILC Applications [Questions 4-7]

The questions raised here relating to the FDIC's evaluation of and its ability to impose conditions on ILC applications are entirely appropriate to raise; however, again, WBA believes ultimately Congress is the more appropriate arbiter of the more fundamental issue. While WBA appreciates the FDIC's willingness to solve the current dilemma by reviewing factors beyond those set out in the Federal Deposit Insurance Act, WBA believes the FDIC is confined to reviewing only the factors that Congress has identified.

Nonetheless, the FDIC is always required to review all applications for deposit insurance in the context of the risk each application would have to the Bank Insurance Fund. WBA strongly believes it is this critical factor that provides the FDIC with sufficient latitude to deny the pending ILC applications or, at a minimum, extend its moratorium until the matter is resolved by Congress.

Approving pending ILC applications with conditions is a significant step down the path of approving the ILC to exercise the full range of activities permitted by its charter. Once an operational track record of an ILC is established, the FDIC will be in a difficult position to decline subsequent requests for modifications to, or termination of, the conditions.

Conflicts of Interest and Competitive Issues [Questions 8-10]

If commercial enterprises are permitted to engage in the business of banking through an ILC charter, there is no doubt that they will have a huge competitive advantage over banks. One of the activities outlined in the Wal-Mart Bank application is to be able to offer better than market rate CDs to 501(c)(3) organizations and institutional investors. If the Wal-Mart Bank application is approved, that money will quickly leave the local bank in favor of Wal-Mart Bank. The reinvestment opportunity in the local community is now lost. Is this the kind of competition that is good for communities or the financial institution industry? Is the public better off with a banking system ultimately comprised of only a handful of financial institutions operating around the country rather than the almost 9,000 that currently exist? WBA does not think so and strongly believes it is not

good public policy to have a very small number of behemoth financial institutions. Community banks serve an important purpose that should not be forgotten.

Moreover, again, this activity, if permitted, represents a slippery slope directly into retail banking. It is not an impossible leap to conclude that a product like a certificate of deposit offered to any 501(c)(3) organization could also be offered to the persons receiving benefit from that charity or educational institution. That would give ILCs a huge retail market consisting of people like students and the elderly – constituencies that are already well-served today by financial institutions.

In the end, WBA believes the risks outweigh any public benefits when a bank is so closely affiliated with a commercial enterprise. "Traditional" financial institutions are prohibited from mixing banking and commerce, and for good prudent reasons. The policy set forth by Congress decades ago separating banking and commerce activity was largely a reaction to the perception that banks, *especially* those in a larger conglomerate organization, had a disproportionate amount of economic power in the period leading up to the stock market crash of 1929. WBA strongly believes it is crucial to the overall economic health of this country to maintain the current strength and vitality of the banking system.

Conclusion

As the agency created in 1933 for the purpose of restoring public confidence in the nation's banking system, the FDIC must carefully weigh all applications in that light. The separation of banking and commerce exists for real and prudent reasons. Until this fundamental issue is resolved by Congress, the FDIC should continue its moratorium on all ILC applications.

Again, WBA commends the FDIC for raising these important issues and appreciates the opportunity to provide the FDIC with comments. Thank you.

Sincerely,

Kurt R. Bauer
President/CEO