Virginia Bankers Association

September 8, 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 (Collectively "ILCs")

Dear Mr. Feldman:

I am writing on behalf of the Virginia Bankers Association ("VBA") in response to the FDIC's Notice and Request for Comment ("Notice") regarding ILCs. The VBA represents the interests of nearly all of the commercial banks and thrifts doing business in the Commonwealth of Virginia.

While the Notice seeks comments on a number of questions relating to ILCs, the focus of this letter will be on the concerns we have with commercial company ownership of ILCs. Indeed, the VBA believes that the prospect of some of the largest commercial companies in the world getting into banking through the ILC charter raises serious public policy and safety and soundness issues. We address these issues below. As recommended by the Notice, we have indicated the question numbers to which our comments relate.

ILC Industry Developments and Emerging Risks

[Response to Questions 1 and 2]

The recent applications by large commercial firms to enter banking through the ILC charter most certainly was never contemplated by Congress when the Competitive Equality Banking Act ("CEBA") of 1987 was enacted which created an exception to the definition of "bank" under the Bank Holding Company Act for certain ILCs. Indeed, at the time CEBA was enacted, most ILCs were small, locally-owned institutions that had only limited deposit-taking and lending powers under state law. Most ILCs at that time had assets of less than $50 million. These institutions represented relatively small risks to the deposit insurance fund. Likewise, Congress did not contemplate the ILC charter being used as a circumvention tool around the prohibition of the mixing of banking and commerce it set forth in the Gramm-Leach-Bliley Act ("GLBA").

A Wal-Mart Bank or a Home Depot Bank would represent a significant new risk, one, again, never contemplated by Congress. If their applications are approved, Wal-Mart and Home Depot, two of the largest companies in the world, would be allowed into banking outside of the framework of federal supervision of parent holding companies. We believe that the risks associated with this are too great to be addressed by regulatory tinkering. Because of such risks, described more fully below, we believe such applications should not be approved and that the Congress should be given the opportunity to thoroughly review and address these important matters that were not a part of their thought process when it passed CEBA and GLBA.

Lack of Consolidated Supervision

[Response to Questions 3 and 4]

Commercial companies that own ILCs will not be subject to the supervisory framework to which parent companies of banks are subject. Not only is it unfair for one group of parent banking firms to be exempt from supervisory requirements that other parent banking firms must comply with, it also poses serious risks to the financial system.

Financial trouble in one part of a business organization can spread to other parts of the organization. For that reason, Congress has required for many years consolidated Federal Reserve supervision of companies that control banks. Such supervision allows a federal supervisor to understand the financial and managerial strength and risks within the consolidated organization as a whole and gives the federal supervisor the ability to address deficiencies within the overall organization before they pose a danger to the organization's subsidiary bank and the federal safety net. Since ILCs are insured banks, there is no basis for treating their parent companies any differently than the parent companies of other banks.

But under the law, the FDIC simply does not have the kind of authority to examine and impose reporting and capital requirements on parent companies of ILCs that the Federal Reserve has over bank holding companies. Moreover, we do not believe that supervisory authority granted to a state bank regulator should be accepted as a substitute for the comprehensive federal framework established by the Congress. There simply should be one consolidated supervisory framework that applies to all companies that control an insured depository institution. The absence of consolidated federal supervision for commercial companies that own ILCs poses an unacceptable risk to Bank Insurance Fund, particularly in light of the size of the companies poised to own ILCs, and is unfair from a competitive standpoint.

Conditions for ILC Applications of Commercial Companies

[Response to Questions 6 and 7]

The Notice seeks comment on whether there are unique conditions or requirements that the FDIC may impose on deposit insurance applications of ILCs.

Again, we believe that the policy issues surrounding commercial ownership of ILCs are so significant that Congress, acting in the public interest, needs to address them. For that reason, the FDIC's current moratorium on taking any action on ILC applications by commercial firms should be maintained.

Conflicts of Interest

[Response to Question 8]

We believe there would be significant conflicts of interest for commercial firm ownership of ILCs. A Wal-Mart bank, for example, likely would not want to lend to a competing business in the community, nor would it want to provide financing to a start-up business that would compete against Wal-Mart. And any such competing businesses would be loathe to share their business plans with a Wal-Mart bank in connection with an application for credit. Because of its commercial business activities (which other banks do not and cannot engage in), Wal-Mart would not be able to make impartial credit decisions based on the creditworthiness of borrowers, but rather would be influenced by business considerations relating to its retail stores. We contend that this kind of conflict is precisely why the Congress set forth a general prohibition on the mixing of banking and commerce. The dangers of allowing Wal-Mart and other commercial companies to subvert this prohibition are particularly acute given their tremendous size, and if such a prohibition is to be modified, that modification should only be provided for by the same Congress that established the prohibition in the first instance.

Competitive Unfairness

[Response to Question 9]

If commercial firms are granted an industrial bank charter, they will have a huge competitive advantage over other banks. This is the case because banks cannot generally engage in commercial activities. They cannot acquire a department store or other non-financial retail outlet. GLBA precludes it.

Why should Wal-Mart, the largest and most powerful company in the world, be granted the privilege of doing what local banks cannot? Why should Wal-Mart have the ability to put bank offices in its retail stores throughout the country while local banks that must compete with a Wal-Mart bank have no ability to combine banking with a non-financial retail business? We simply believe it would be fundamentally unfair to allow Wal-Mart to establish a nationwide bank when banks have no authority to get into Wal-Mart's business. There should be no one-way streets with respect to the mixing of banking and commerce.

In addition, commercial firms owning ILCs will have a competitive advantage over bank holding companies since they will not be subject to the same burdens and costs

under the federal supervisory framework. The FDIC should take action to avoid such inequities, not further them.

* * *

Based on the foregoing, we believe the FDIC should maintain its current moratorium until such time as Congress addresses this matter. We thank you for considering our views.

Sincerely,

Walter C. Ayers
President and CEO
Virginia Bankers Association
4490 Cox Road
Glen Allen, VA 23060