GALLAGHER
EVELIUS & JONES LLP
ATTORNEYS AT LAW

STEPHEN A. GOLDBERG
sgoldberg@gejlaw.com
direct dial: 410 347 1343
fax: 410 468 2786

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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
Federal Register Notice Date: August 23, 2006

Ladies and Gentlemen:

We are submitting this letter in response to your request for comments on specific issues related to industrial loan companies and industrial banks. We represent parties with an interest in purchasing or obtaining a new industrial bank ("ILC") charter with FDIC insurance. The parties we represent are in the financial services business and, except as specifically noted, we express no opinion on the ownership of ILCs by non-financial commercial companies.

Overview

It is no secret that, while there has been some prior interagency posturing over whether the FDIC can adequately regulate institutions not under some form of consolidated federal supervision, it is Walmart's application for an ILC that has brought this matter to a head. And while, as noted, we take no position on whether commercial companies should be allowed to own ILCs, we do note that from a safety and soundness perspective, it seems likely that an ILC owned by Walmart, one of the largest companies in the world and having a substantial reputation to protect, ought to be at least as safe and sound as a community bank meeting only the minimum capital requirements and having several individual shareholders with no obligation to commit additional capital. It seems to us that the real issue is competition, not safety and soundness.

In any event, we certainly see no reason why companies in the financial services business ought not be able to own and operate ILCs on substantially the same terms as presently exist. Our specific responses to your questions, numbered to correspond to the questions, are as follows:

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1. We do not have sufficient information to comment on the first group of questions other than to note that outside of California there have been almost no ILC failures, which suggests that ILC risks relate more to the market practices, and state regulation, of ILCs in that jurisdiction than to any generalized ILC risk.

2. Whatever the risks are with respect to ownership by commercial entities, financial entities that have historically been in banking type businesses ought to continue to be permitted to own ILCs substantially under the same regulatory framework that has prevailed to date. It seems to us that an ILC having a significant financial services company as its parent is at least as likely to be safely and soundly operated as a community bank or other newly-chartered, stand-alone commercial insured bank. We suggest that whatever determination is made as to commercial firms, firms that have historically been in the commercial lending business and have a history of safe and sound operation ought to be permitted to own ILCs substantially in accordance with the current regulatory framework. Financial entities could be defined by reference to existing revenue sources. For example, a financial company might be defined as an entity which, together with its subsidiaries, derives at least seventy-five percent (75%) of its revenues from loan origination, servicing, interest income, trust and escrow fees and other activities typically conducted by banks and thrifts.

3. As indicated by the ILC safety record outside of California, we do not believe that ILCs pose a risk to safety and soundness or to the deposit insurance fund based on whether the owner is subject to some form of consolidated federal supervision. Certainly, in determining whether to approve an ILC for insurance, the FDIC could fairly consider the existence of consolidated federal supervision as a positive factor, but it should not be considered an essential factor. We believe the most important considerations are appropriate insulation of the ILC's financial soundness from that of the parent, appropriate application of Sections 23A and 23B of the Federal Reserve Act and sound, experienced management.

4. See previous comments.

5. We have no problem with the FDIC considering the nature, business, history and financial soundness of the ILC's proposed owner. This seems completely appropriate where the parent company has an operating history.

6. We think it would be unwise to routinely place restrictions on all or certain categories of ILCs that would not necessarily be imposed on other institutions. Each ILC application will present its own set of circumstances, and restrictions appropriate to those circumstances, if any, should be placed in the order approving deposit insurance.

7. See responses to questions 3 and 6 above.

8. There may well be somewhat greater likelihood of conflicts of interest between an ILC and its parent and affiliates without consolidated federal supervision. However, we strongly believe that the tools are already in place to prevent, detect and deal with such circumstances. Specifically, there are the rules of Sections 23A and 23B of the Federal Reserve Act, Federal Reserve Regulation O, and the powers of the FDIC and of state examiners to review the ILC's corporate structure and its interaction with its parent and affiliates and to require written agreements defining all arrangements between the ILC and its parent and affiliates. As noted, we do not see the risk as being any greater than in the case of a stand-alone thrift or commercial bank interacting with its individual shareholders and other companies owned and controlled by those shareholders. We believe the risks to the deposit insurance fund and the controls in place to mitigate those risks are the same in both sets of circumstances.

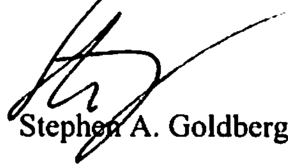
9. We have no opinion on the competitive advantage that might be enjoyed by commercial entities. We think that financial services companies have no particular competitive advantage over other insured depository institutions as it relates to the banking business. It does, however, seem to us that competitive advantages are more the province of Congress than the FDIC. The FDIC's focus should be on safety and soundness.

10. Again, we are not undertaking to comment on the benefits of an ILC being owned by a commercial entity.

11. We think that any change in the current policies regarding ownership of ILCs might well be premature at this time since there is no conclusive evidence that they pose any greater threat to the deposit insurance system than any other banking concerns. At the moment, it seems that prudent use by the FDIC and state examiners of the tools already available to them are the best approach. Certainly the FDIC could revisit the issue if genuine safety and soundness concerns begin to arise.

12. As both a matter of policy and law, the FDIC ought not be overriding what Congress has enacted and, indeed, the current moratorium appears inappropriate unless and until Congress mandates something different. We firmly believe that absent action by Congress the FDIC should continue to act on ILC applications and examine ILCs with appropriate care.

Respectfully submitted,



Stephen A. Goldberg

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