FLORIDA BANKERS ASSOCIATION

October 5, 2006

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

Re: Industrial Loan Companies and Industrial Banks

Dear Mr. Feldman,

The Florida Bankers Association (FBA) appreciates the opportunity to comment on the FDIC's Notice and Request for Comment (Notice) regarding industrial loan companies (ILC) and industrial banks. The FBA represents a majority of Florida's banking institutions.

While the notice sets forth specific questions, the content of our letter focuses on FBA's concern with commercial company ownership of ILCs. Our primary concerns relate to the safety and soundness risk as well as the public policy issues that arise from commercially owned ILCs.

Danger to the Insured Deposit System

At the present time, deposits insured by the FDIC are held by companies whose principal focus is financial. The controlling entity of a company that owns a bank is a regulated bank holding company. In the case of an ILC the controlling entity may be a company engaged in any line of business. Having insured deposits being controlled by institutions whose primary focus is non-financial is not a good model. If the primary interest of the controlling entity is casino gambling, or toothpaste or manufacturing of automobiles then that is where it will put its greatest concentration of resources fiscal and management. Should any of the principal operations come under pressure then either or both of two results are likely. One is that management resources will be diverted to the trouble spot. Second is that there will be pressure to use the insured deposit entity to bolster the other parts of the company.

The danger of the ILC model is with the incentives. To create a structure in which the primary incentives are not from operating a financial company but from some other line of business means that when choices have to be made the principal incentive will not be to protect the insured deposits. Regulation of the subsidiary deposit taking institution will not solve this problem.

1001 THOMASVILLE ROAD • SUITE 201 • P.O. BOX 1360 • TALLAHASSEE, FL 32302-1360
TELEPHONE 850-224-2265 • FAX 850-224-2423

There has been suggestion that the commercial company owning the ILC be regulated as a bank holding company. That is not a satisfactory answer. Regulation of current financially focused holding companies is difficult enough. It is simply not realistic to believe that the federal financial regulatory system, or any regulatory system, can encompass the complexities of understanding and regulating any business regardless of the type.

If owning an ILC is competitively useful then the incentive will be for businesses to own them. If some are successful more and more will follow. The result will be a migration of insured deposits to the ILC format. A natural, indeed inevitable result will be a two-tiered system in which some insured deposits will be in financially centered organizations and more and more will be in the control of varied commercial interests. This is a clear danger to the insured deposit system. It will have less and less control over more and more deposits, which it insures. It is difficult to see any other result.

The Need for Immediate Action

It is a well known phenomena in regulation, legislation and wine consumption that once a product has been poured you cannot put it back into the bottle. If ILC ownership of entities that can hold insured deposits is allowed to continue and to grow then there will be little chance of limiting it in the future. Those already having the authority will cry "grandfather". Those who want the authority will lobby strongly to stop any limitations. Inertia is perhaps the strongest force in the legislative process. Reigning in ILC insured deposits will as a practical matter be impossible, at least until there is a crisis.

Historical Perspective of ILCs

At the time of their creation in the early 1900's, ILCs were charted to provide uncollateralized consumer loans to low-and moderate-income workers who were unable to obtain these types of loan from existing commercial banks[1]. But over the past 20 years, the shape of the ILC industry has changed dramatically. Growing in both asset size and scope of banking activities, ILCs are beginning to look more like retail financial institutions without the same regulatory or supervisory scheme as banks.

Congressional Intent to Maintain a Separation between Banking and Commerce

Historically, banking laws have maintained a separation between banking and commerce in order to protect and preserve the safety and soundness of our financial institutions, the federal deposit fund and the banking industry as a whole.

---

[1] GAO-05-621 *Industrial Loan Companies,* September 15, 2005

The intent of Congress to limit or prevent the mixing of banking and commerce is evident in the various pieces of legislation passed over the last 50 years. The Bank Holding Company Act of 1956 prohibited companies that owned two or more banks from engaging in non-financial commercial activities; and in 1970 this prohibition was extended to companies that owned even a single bank. When Congress passed the Competitive Equality Banking Act (CEBA) of 1987, one of the primary purposes of the legislation was to close the "non-bank-bank loophole". But the CEBA legislation also included an exception to the definition of "bank" under the Bank Holding Company Act for certain ILCs, though a pattern of past acts coupled with the intent of the legislation, one can argue that Congress did not contemplate this ILC exception would lead to large commercial companies entering into banking arena. Even as recently as 1999, Congress expressed the intent to keep banking and commerce separate with the passage of the Gramm-Leach-Bliley Act in which a prohibition against the mixing of banking and commerce was set forth.

Changing the Shape of the Banking Industry as We Know It Today

To allow large commercial companies such as Wal-Mart or Home Depot to be granted an ILC charter, creates a large hole in the efforts of Congress to keep banking and commerce separate. Historically, the reasons for maintaining the separation between banking and commerce rested on a fear that the allocation of credits would be consolidated and controlled by large commercial business. While this remains a point of concern, today much of the fear centers around the threat commercially owned ILCs pose to FDIC insured deposits and the detrimental effects granting an ILC charter to these large commercial companies could have on the structure and shape of the banking industry.

The damage that could result should the ILC loophole continue to exist and commercial companies are allowed to enter into the banking arena without the same regulatory and supervisory requirements of banks will most likely lead to a number of detrimental changes to the banking industry. The maintenance of the ILC loophole and the inevitability of it expanding as more commercial firms try to jump into the banking world will lead to less regulated institutions functioning more like banks. The ILC loophole allows for the control of FDIC insured deposits by commercial companies that are not subject to the same regulatory or supervisory requirements as banks and their holding companies which inturn poses a lot of risk to federally insured deposits and serious risks to the financial system. The congressional intent behind consolidated supervision of bank holding companies is based on the fundamental goal of protecting the financial sector. Consolidated supervision is required so the financial well being of the company and the banks they control can be carefully monitored and in the event there is a financial weakness in the organization, necessary steps can be taken to address this weakness and protect the financial sector before tremendous damage is done.

Commercial companies granted an ILC charter would further pose problems to the banking industry in that they will have a competitive advantage over existing financial institutions. This large competitive advantage could lead to the bleeding of deposits from existing financial institutions and a change in the structure of the banking industry. It is quite possible that should commercial companies such as Wal-Mart and Home Depot be allowed to acquire ILC charters, there would be a large shift in retail deposits from existing financial intuitions. This movement of deposits would in effect create a two tiered system comprised of the heavily regulated financial industry and the much less regulated ILC industry. This shift in deposits, as well as decreased regulation and an apparent commercial advantage, could further transform the banking industry, as existing financial institutions would feel the pressure to conduct business more along the lines of an ILC. If an ILC charter is more flexible, has less regulatory burden and cost associated with it and the ILC is still able to offer the same products and services as a full service retail bank, what would prevent banks from converting to an ILC charter?

Conclusion

The ILC loophole, through which large commercial companies can enter into the banking world, must be closed. This is a situation that must be dealt with now and not down the road where the FDIC would be faced with the unenviable task of regulating from behind to correct the damage that will be done to the financial sector should the ILC loophole continue to exist. The risks posed to the safety and soundness of federally insured deposits as well as to the entire banking industry by large companies granted ILC charters are too great to ignore.

Sincerely,

Alejandro "Alex" Sanchez
President and CEO
Florida Bankers Association
1001 Thomasville Rd
Tallahassee, FL 32302