Ford Motor Credit Company

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Transmitted via email

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

Re: Request for Comment
Industrial Loan Companies and Industrial Banks

Dear Mr. Feldman:

On behalf of Ford Motor Credit Company ("Ford Motor Credit"), I am pleased to respond to the Notice and Request for Comment on industrial loan companies and industrial banks. Ford Motor Credit, a subsidiary of Ford Motor Company, is one of the world's largest automotive finance companies. With about 14,000 employees, Ford Motor Credit operates in thirty-six countries and manages approximately $151 billion in receivables. It provides automotive financing for Ford, Lincoln, Mercury, Aston Martin, Jaguar, Land Rover, Mazda, and Volvo dealers and customers.

This letter will address each of the twelve questions raised in the Notice and Request for Comment. Before doing so, it is incumbent on us to address the overriding policy issue raised in the current debate on industrial loan companies and industrial banks (collectively "ILCs"); the so called mixing of banking and commerce. From a policy standpoint, there is nothing inherently bad about the mixing of banking and commerce. In November of 2005, in personal remarks given at the 16th Special Seminar on International Finance of the Japan Financial News Company, former Comptroller of the Currency John D. Hawke, Jr. stated:

> "Moreover, I do not share the view that there must be rigid walls between banking and 'commerce.' Not only is there a virtually total lack of evidence in the U.S. that affiliations between banks and non-bank firms present serious threats to the banking system, but those who argue against such affiliations are very frequently motivated less by philosophy than by desire to segment markets in order to diminish competition."

While Mr. Hawke may have been arguing for banks to enter into commercial activities, his analysis is equally applicable to the reverse situation. We support the proposition that ILCs serve to stimulate competition.

Those that raise the "mixing of banking and commerce" issue argue that the lack of supervision of the parent companies of ILCs by federal banking regulatory agencies creates a risk to the federal deposit insurance fund. Historical evidence shows otherwise. In the failures of multi-bank holding companies such as Bank of New England Corp. and MCorp. in the 1980s and 1990s the federal banking regulatory agencies had powers similar to those they have today. The federal supervision of the holding company in these and similar situations did not prevent the loss of billions of dollars.

This should be contrasted with the actions of the FDIC in the bankruptcy of Conseco, Inc., the non-banking parent of an ILC. Here there was no loss to the deposit insurance fund or the taxpayers. This is a clear example of how the FDIC's traditional bank and transaction centric approach is effective regulation.

Those that oppose the ILC charter further characterize it as a loophole inadvertently created. To the contrary, ILCs are doing exactly what Congress intended, creating more competition in the financial services industry. Congress extensively debated the provisions in the Competitive Equality Banking Act and the Gramm-Leach-Bliley Act that permit ILCs to obtain federal deposit insurance. Clearly, the viability of the ILC charter is not a loophole.

As to the twelve questions on which the FDIC requested comment, our responses are as follows:

1. *Have developments in the ILC industry in recent years altered the relative risk profile of ILCs compared to other insured depository institutions? What specific effects have there been on the ILC industry, safety and soundness, risks to the Deposit Insurance Fund, and other insured depository institutions? What modifications, if any, to its supervisory programs or regulations should the FDIC consider in light of the evolution of the ILC industry?*

There have been no developments in the ILC industry in recent years that have altered the relative risk profile of ILCs compared to other types of depository institutions. In fact, there is no evidence that ILCs present any greater risk to the deposit insurance fund than any other depository institution. The lack of failures of ILCs compared to other types of depository institutions demonstrates the FDIC's current supervisory approach does not need modification. By assuring ILCs are appropriately capitalized and well managed, and through enforcement of the requirements of existing law, the FDIC has shown its approach to supervision of ILCs works well.

2. *Do the risks posed by ILCs to safety and soundness or to the Deposit Insurance Fund differ based upon whether the owner is a financial entity or a commercial entity? If so, how and why? Should the FDIC apply its supervisory or regulatory authority differently based upon whether the owner is a financial entity or a commercial entity? If so, how should the FDIC determine when an entity is ``financial'' and in what way should it apply its authority differently?*

There are no different risks presented to the deposit insurance fund based on whether the owner of an ILC is a financial entity or a commercial entity. Further, it is not practical to draw such a distinction. How would one define a "financial entity?" We assume securities firms and insurance companies would be classified as financial entities. We submit companies such as Ford Motor Credit should be considered financial entities since the vast majority of its income derives from financial services and products.

Even if the FDIC could set out a viable definition of a financial entity to permit it to draw a distinction between ILCs owned by commercial entities and those owned by financial entities, there is no need to create such a divide. There is no evidence that the nature of the owner of an ILC presents any greater risk to the deposit insurance fund. The best way for the FDIC to prevent losses to the deposit insurance fund is by ensuring that in each ILC there is acceptable management, capital, and adherence to existing laws and regulations.

3. *Do the risks posed by ILCs to safety and soundness or to the Deposit Insurance Fund differ based on whether the owner is subject to some form of consolidated Federal supervision? If so, how and why? Should the FDIC assess differently the potential risks associated with ILCs owned by companies that (i) are subject to some form of consolidated Federal supervision, (ii) are financial in nature but not currently subject to some form of consolidated Federal supervision, or (iii) cannot qualify for some form of consolidated Federal supervision? How and why should the consideration of these factors be affected?*

Any risks presented to the deposit insurance fund by ILCs do not vary based on whether the parent company is subject to consolidated federal supervision. It has been demonstrated that the nature of a financial institution's parent has no bearing on whether that financial institution will fail. In its paper "The

FDIC's Supervision of Industrial Loan Companies: A Historical Perspective" the FDIC shows that some 21 ILCs have failed since 1985. Most of those were small finance companies operating in California. This is contrasted with the failure of over 800 banks that were part of holding company structures subject to consolidated federal supervision during that same period. In this paper the FDIC discusses the two largest ILC failures, Pacific Thrift and Loan and Southern Pacific Bank. Both of these entities were part of a holding company structure. The FDIC's conclusion was that the reasons for these failures were "ineffective risk management and poor credit quality." The nature of the holding company is not cited has having a bearing on the failure of these institutions. Clearly, the presence or lack of federal supervision of the parent company has no effect on the level of risk to the deposit insurance fund.

Further, it is not logical to assume a commercial entity owning an ILC is less interested in the success of the ILC than a financial entity owning an ILC. Any owner of an ILC, regardless of its other business activities, will have a considerable investment in the ILC. Activities that would put the deposit insurance fund at risk also put that entity's investment in the ILC at risk.

4. *What features or aspects of a parent of an ILC (not already discussed in Questions 2 and 3) should affect the FDIC's evaluation of applications for deposit insurance or other notices or applications? What would be the basis for the FDIC to consider those features or aspects?*

There are no features or aspects of the parent of an ILC that should affect the FDIC's evaluation of applications. The factors listed in 12 USC 1816 and 12 USC 1817(j)(7) relate solely to the depository institution making the application. As explained in our comment to question 5, below, these are the only factors which the FDIC may consider. In the Competitive Equality Banking Act of 1987, Congress extended federal deposit insurance to ILCs. In the Gramm-Leach-Bliley Act of 1999 Congress retained the exception to the Bank Holding Company Act that permitted non-bank holding companies to own ILCs. Based on these actions and the clear wording of 12 USC 1815(4), it is clear Congress intended applications from ILCs to be judged on the same basis as applications from other types of depository institutions.

5. *The FDIC must consider certain statutory factors when evaluating an application for deposit insurance (see 12 U.S.C. 1816), and certain largely similar statutory factors when evaluating a change in control notice (see 12 U.S.C. 1817(j)(7)). Are these the only factors FDIC may consider in making such evaluations? Should the consideration of these factors be affected based on the nature of the ILC's proposed owner? Where an ILC is to be owned by a company that is not subject to some form of consolidated Federal supervision, how would the consideration of these factors be affected?*

The FDIC may only consider the factors set out in 12 USC 1816 and 12 USC 1817(j)(7) in considering applications for deposit insurance or change of control notices. The consideration of those factors should not be affected by the owner of the ILC. One must view the factors listed in 12 USC 1816 in light of 12 USC 1815(4). That section says "in reviewing any application under this subsection the Board of Directors shall consider the factors described in Section 1816 of this title in determining whether to approve the application for insurance." The clear wording of the statute is the FDIC must apply the factors to any application for insurance, regardless of the nature of the parent company of the applicant. Further, the statute does not give the FDIC latitude in considering factors other than those listed in 12 USC 1816.

6. *Should the FDIC routinely place certain restrictions or requirements on all or certain categories of ILCs that would not necessarily be imposed on other institutions (for example, on the institution's growth, ability to establish branches and other offices, ability to implement changes in the business plan, or capital maintenance obligations)? If so, which restrictions or requirements should be imposed and why? Should the FDIC routinely place different restrictions or requirements on ILCs based on whether they are owned by commercial companies or companies not subject to some form of consolidated Federal supervision? If such conditions are believed appropriate, should the FDIC seek to establish the underlying requirements and restrictions through a regulation rather than relying upon conditions imposed in the order approving deposit insurance?*

The existing statutory framework which limits ILCs from offering demand deposits is more than adequate protection for any perceived differences in the risk profile of an ILC. We would argue that even that restriction is unnecessary given the lack of difference in actual risks posed by ILCs. The FDIC should not routinely place additional restrictions on ILCs or certain categories of ILCs. As cited above, Congress has mandated that the FDIC is to consider only those factors set out in statute. In applying those factors to an application, the FDIC must consider each application on its own merits. Simply because an applicant is an ILC or because the parent company of an applicant is in a particular type of business does not change the risk presented to the deposit insurance fund by that applicant. Any restrictions placed upon any applicant must be done on a case by case basis arising from the soundness of that particular application. For the FDIC to pronounce, for example, that all ILCs may not establish branches violates the direction given it in 12 USC 1815(4) that it must apply the statutory factors to "any application."

7. *Can there be conditions or regulations imposed on deposit insurance applications or changes of control of ILCs that are adequate to protect an ILC from any risks to safety and soundness or to the Deposit Insurance Fund that exist if an ILC is owned by a financial company or a commercial company? In the interest of safety and soundness, should the FDIC consider limiting ownership of ILCs to financial companies?*

There are, of course, no regulations or conditions that can be imposed on applications for any type of financial institution that will protect the deposit insurance fund against all risks. Each application should be judged on its own merits. The FDIC, working with the applicant, needs to determine the soundness of the business plan and the capitalization of the applicant. The bank centric approach traditionally used by the FDIC, looking at each depository institution based on its own merits, not some pre-determined assumptions, is the best approach to protect the deposit insurance fund and far superior to any approach based on arbitrary and flawed assumptions.

The FDIC does not have the statutory authority to limit ownership of ILCs to financial companies. Nor would any such limitation be good public policy. As discussed above, there is no evidence that ILCs, regardless of whether owned by financial companies or not, impose any greater risk on the deposit insurance fund than any other depository institution. To attempt to limit the ownership of ILCs by regulation not only subverts the will of Congress as expressed in the Gramm-Leach-Bliley Act but also establishes a system of discrimination to solve a problem that does not exist.

8. *Is there a greater likelihood that conflicts of interest or tying between an ILC, its parent, and affiliates will occur if the ILC parent is a commercial company or a company not subject to some form of consolidated Federal supervision? If so, please describe those conflicts of interest or tying and indicate whether or to what extent such conflicts of interest or tying are controllable under current laws and regulations. What regulatory or supervisory steps can reduce or eliminate such risks? Does the FDIC have authority to address such risks in acting on applications and notices? What additional regulatory or supervisory authority would help reduce or eliminate such risks?*

There is no greater likelihood of a conflict of interest or tying between an ILC and its parent based on whether that parent is a commercial concern or a financial company subject to federal supervision. The federal banking regulators have steadily expanded the powers of banks so that bank holding companies and banks may now engage in activities such as the real estate business, the insurance business, the securities business, and the data processing business. It is illogical to assume there is a greater chance of a conflict of interest or tying when a real estate company owns a bank than when a bank owns a real estate company. The same laws that prevent conflicts of interest and tying apply to both situations. The key to preventing these problems is adherence to existing laws, not establishing a new regulatory structure.

9. *Do ILCs owned by commercial entities have a competitive advantage over other insured depository institutions? If so, what factors account for that advantage? To what extent can or should the FDIC consider this competitive environment in acting on applications and notices? Can those elements be addressed through supervisory processes or regulatory authority? If so, how?*

10. *Are there potential public benefits when a bank is affiliated with a commercial concern? Could those benefits include, for example, providing greater access to banking services for consumers? To what extent can or should the FDIC consider those benefits if they exist?*

The answer to questions 9 and 10 are essentially the same. There is one potential competitive advantage that ILCs arguably may have over other insured depository institutions. That advantage is the generally narrow and specialized focus of ILCs that directly benefits their customers. Despite all the speculation in the press over the supposed intentions of recent applicants, most ILCs serve niche markets and engage in limited activities that complement the businesses of their parents. As such, these ILCs are better able to understand and address the financial needs of their customers than are banking institutions attempting to service a wide spectrum of customers.

11. *In addition to the information requested by the above questions, are there other issues or facts that the FDIC should consider that might assist the FDIC in determining whether statutory, regulatory, or policy changes should be made in the FDIC's oversight of ILCs?*

Please see our introductory comments concerning the mixing of banking and commerce and the so-called ILC "loophole."

12. *Given that Congress has expressly accepted owners of ILCs from consolidated bank holding company regulation under the Bank Holding Company Act, what are the limits on the FDIC's authority to impose such regulation absent further Congressional action?*

We submit that the limits on the FDIC's authority to impose different regulatory requirements on ILCs owned by commercial entities are absolute without further Congressional action. FDIC does not have the authority to treat applications from ILCs differently than any other application for deposit insurance by regulation, policy, or practice without a statutory change. In the Competitive Equality Banking Act of 1987, Congress extended federal deposit insurance to ILCs. In the Gramm-Leach-Bliley Act of 1999 Congress debated and decided to retain the exception to the Bank Holding Company Act permitting non-bank holding companies to own ILCs. Based on these actions and the clear wording of 12 USC 1815(4), it is clear Congress intended applications from ILCs to be judged on the same basis as applications from other types of depository institutions.

We thank you for the opportunity to comment upon these important issues. Any questions you may have should be addressed to the undersigned.

Very truly yours,

David L. Korman
Executive Vice President – General Counsel
Ford Motor Credit Company