DAIMLERCHRYSLER

DaimlerChrysler
Financial Services
Paul E. Knauss
Chief Operating Officer

October 9, 2006

Robert Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Dear Mr. Feldman:

In response to the FDIC's Notice and Request for Comment related to industrial loan companies and industrial loan banks ("ILCs"), DaimlerChrysler Financial Services Americas LLC ("DCFSA")[1] adopts the comments set forth by the American Financial Services Association ("AFSA") in its October 5, 2006 letter, which is attached, to address the twelve specific questions posed by the FDIC. DCFSA also encourages special attention to the points raised by the comment letter of the Utah Association of Financial Services ("UAFS").

DCFSA particularly supports UAFS' discussion emphasizing the critical importance of a dual banking system to this country, as well as AFSA's discussion that while the FDIC certainly has substantial power, authority, and ability to judge the merits of each institution, it should not attempt to regulate competition or eliminate the possible competitive advantages among depository institutions.

Additionally, DCFSA respectfully reiterates the following key points.

ILCs Consistently Deliver Financial Services to the Public Safely and Soundly.

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[1] DaimlerChrysler Financial Services Americas LLC provides brand-specific financing for automotive dealers' inventories and their retail consumers, and conducts business as Chrysler Financial and Mercedes-Benz Financial. As DaimlerChrysler Truck Financial, it also finances commercial vehicles for affiliate products such as Freightliner, Sterling and Western Star. The company serves as the headquarters for operations in the United States, Canada, Mexico, Puerto Rico, Argentina, Brazil and Venezuela, and has approximately 5,600 employees who manage a portfolio of more than $107 billion with nearly five million contracts.

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The combination of ILCs' strong capital, experienced management, and fundamentally safe and sound business practices, along with the strong regulatory focus of the FDIC, ensures that ILCs are a very safe and valuable segment of our banking system.

ILCs are generally stronger, safer, and less likely to fail than traditional banks controlled by bank holding companies and provide no greater risk to the Deposit Insurance Fund than any other depository institution. Because of this strength, diversified holding companies, more than traditional holding companies, have proven much more of a benefit rather than a risk to industrial banks.

ILCs are owned by strong companies committed to assuring their safe and sound operation, maintaining capital levels that substantially exceed regulatory requirements. DCFSA, for example, is a leading captive financial services company. The global organization manages over $100 billion in assets and employs over 10,000 people worldwide. DCFSA has demonstrated consistent profitability through portfolio growth, sound underwriting, operating efficiency and strong asset liability management. (DCFSA's application for DC Bank is currently stalled due to the present FDIC moratorium.) DCFSA is an example of why it would be arbitrary to classify companies as simply "commercial" or "financial" and underscores the need to review each institution based upon its strengths and individual merits.

The Legal Framework Limiting the Powers and Activities of Other Banks also Limits ILCs.

The same framework of laws and regulations limiting the powers and activities of other banks limit the powers and activities of ILCs. Among other things, ILCs' transactions with affiliates must meet the requirements of Sections 23A and B of the Federal Reserve Act. ILCs' loans to officers, directors and their related interests must comply with Regulation O. The capital requirements of ILCs are assured by the Prompt Corrective Action safeguards.

ILCs are already subjected to the same supervision and enforcement applied to other banks, and the FDIC regularly and vigorously exercises its supervision, examination, and enforcement powers over ILCs and, where necessary, their affiliates. The FDIC's enforcement power includes the ability to issue cease and desist orders, commence civil money penalty actions and removal and prohibition actions, and require divestiture of an ILC or preclude an affiliate from having any participation in the affairs of an ILC. The FDIC's enforcement powers apply with full force to ILCs, as well as to any officer, director, controlling shareholder, or any person participating in the business of the ILC.

ILCs are Adequately Protected from Any Risk Posed by Commercial Affiliates.

Like other banks, stringent laws and regulations, including the restrictions of Sections 23A and 23B of the Federal Reserve Act and the anti-tying provisions of the Bank Holding Company Act, insulate ILCs from improper behavior by affiliates. This framework of laws and regulations ensures, among other things, that transactions with

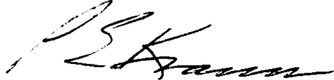
affiliates are on terms equal to transactions with third parties or are fair to the ILC if third-party comparisons are unavailable, and prohibits an ILC from offering incentives to engage in transactions with affiliates.

Conclusion.

In conclusion, we respectfully ask that the FDIC fully and carefully consider the responses of both AFSA and the UAFS. The information provided by AFSA and UAFS stand in sharp contrast to the highly emotional and politically-charged assertions that have been prevalent in our national legislature and media over the past year. Both of their responses present clear, factual information regarding ILCs and the very safe and sound regulation afforded these institutions by the FDIC.

Thank you for the opportunity to provide our comments to you today. One of the great strengths of our financial system is the sheer number of sources where financial products and services can be obtained. DCFSA believes ILCs, under the FDIC's supervision and the current legal framework, are sufficiently insulated from their affiliates; they deliver financial services and products to the public in a safe, sound and appropriate manner; and they increase competition and consumer choice in the financial services industry.

Sincerely,



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October 5, 2006

Robert Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Transmitted via email to comments@fdic.gov

Dear Mr. Feldman:

The FDIC announced that it was seeking comment on specific issues related to industrial loan companies and industrial loan banks (collectively, "Industrial Banks"). To facilitate its analysis of these issues, the FDIC posed a series of questions regarding Industrial Banks. The American Financial Services Association ("AFSA"), the national trade association for the consumer credit and finance industry,* is pleased to respond to the FDIC's request, and hopes that its comments will prove useful in evaluating the FDIC's powers and responsibilities in dealing with these important institutions.

As a prelude to our comments, it is important to note several important factors:

First, an Industrial Bank has no power, and can engage in no activity, not permitted a commercial bank. They are regulated and supervised just like commercial banks. Thus, to say that an Industrial Bank somehow poses a greater risk to the insurance fund than other depository institutions is absurd. Industrial Banks have proven to be a safe and sound method of delivering financial services to the public.

Second, the existing framework of laws and regulations protects Industrial Banks against improper behavior that might disadvantage the Industrial Bank in favor of affiliates, just as those laws and regulations protect "ordinary" commercial banks and thrifts against behavior that might disadvantage the institution to the advantage of affiliates.

Third, the FDIC has been given ample power to supervise and examine Industrial Banks and, where appropriate, their affiliates and to exercise the full panoply of enforcement powers against Industrial Banks and, where necessary, their affiliates. These powers include the normal array of cease and desist orders, civil money penalties and removal and prohibition powers. Importantly, they include the power to require divestiture of the Industrial Bank or to preclude an affiliate from having any participation in the affairs of the Industrial Bank.

Finally, there is no evidence that the FDIC's "bank-centric" regulatory approach to Industrial Banks and their affiliates represents any greater threat or danger to the deposit insurance fund than the "consolidated

* AFSA represents the nations' market rate lenders providing access to credit for millions of Americans. AFSA's 300 member companies include consumer and commercial finance companies, "captive" auto finance companies, credit card issuers, mortgage lenders, Industrial Banks, and other financial service firms that lend to consumers and small businesses.

supervisory" approach embodied in the Bank Holding Company Act as carried out by the Federal Reserve Board. In that light:

- No federally insured Industrial Bank has ever failed due to improper relationships with its parent or affiliates, and none were part of "commercial" organizations.**

- The experience of the FDIC in dealing with Industrial Banks affiliated with such companies as Tyco and Conseco demonstrates that the FDIC's bank-centric approach is effective in protecting the insured institution and deposit insurance fund, regardless of the financial stresses suffered by affiliates.

This experience must be contrasted with the FDIC's experience with commercial banks. There have been over 700 commercial bank failures since 1980. Virtually all were in holding company structures where there was consolidated supervision by the Federal Reserve Board. While intuitively it might seem that the consolidated supervision of the holding company might prevent or reduce the risk of bank failures, there is no particular evidence to this effect. Indeed, banks in holding companies fail for the same reason that the Industrial Banks failed – improper lending, poor risk controls and inadequate capital. Finally, the experience of the 1980s and 1990s with diversified owners of thrift institutions demonstrates the benefits of diverse sources of capital and belies any inherent threat that non-financial owners pose to their institutions.

We amplify these points below in responding to the FDIC's questions.

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?

The most significant development in the Industrial Bank industry has been the relatively rapid growth of the industry since 1998. However, notwithstanding this growth, there is no evidence that the "risk profile" of these institutions, measured by capital adequacy, earnings or supervisory status, is in any way less favorable than that presented by other insured depository institutions. Indeed, if anything, these institutions present a lower risk to the deposit insurance fund than many other insured depository institutions.

There are five fundamental reasons why Industrial Banks present no greater risk to the Deposit Insurance Fund than other institutions. First, they can engage in no activity, and exercise no power, not afforded other financial institutions. Second, they are subject to the same comprehensive framework of laws and regulations, and subject to the same comprehensive supervision and enforcement, applicable to other financial institutions. Third, the FDIC has vigilantly exercised, and continually refines, its bank-centric regulatory model. Fourth, these institutions maintain capital levels that substantially exceed regulatory requirements. Finally, by and large the Industrial Banks are owned by strong companies that are committed to assuring their safe and sound operation.

** Significantly, given the amount of attention devoted to the subject during the last several months, no Utah-chartered federally insured Industrial Bank has ever failed.

Certainly the bank-centric regulatory model adopted and implemented by the FDIC has proven to be safe and effective as applied to Industrial Banks. A strong supervisory focus on the institution, on its owner and on affiliates that engage in any transactions with or relating to the institution has proven to be perfectly adequate to protect the institution and the Deposit Insurance Fund. That being said, if the FDIC determines it necessary to obtain additional information on the business or activities of affiliates on the basis that the activities of such affiliates could adversely affect the insured depository institution, we believe that the FDIC has adequate power and authority to do so. If it believed that additional examination or evaluation of affiliates, additional capital at the parent level or more comprehensive reporting would be appropriate in order to carry out the purposes of the Federal Deposit Insurance Act, it has full and ample authority to do so.

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?

A risk to the Deposit Insurance Fund arises in the event that an institution operates in an unsafe or unsound manner or is in an unsafe or unsound condition. As noted above, the nature of the ownership of an entity does not, in and of itself, necessarily increase or decrease those risks. People have argued that somehow affiliation with a commercial entity increases those risks. Such arguments ignore the clear, stringent legal and regulatory framework that insulates depository institutions from risks posed by affiliates. From the stringent restrictions of Sections 23A and 23B of the Federal Reserve Act, to the anti-tying provisions, all of which are applicable to Industrial Banks and their affiliates, there is simply no basis for an assertion that risks are somehow increased.

Were there in fact increased risks arising from the differences in ownership as between commercial and financial firms, this difference would manifested by an increased failure rate. There is no historical evidence that the nature of the ownership of the institution makes a substantial difference in the risk of failure. Examining the experience with diversified owners of savings and loan associations and of industrial banks, there is a strong argument that a diversified source of income may actually provide additional capital and financial resources for the institution when or if it becomes financially distressed. Indeed, since 1980 there have been over 1500 failures of banks and thrifts. The causes of failures have typically been poor lending, improper concentration of risk and inadequate capital, not some fact, circumstance or factor tied to the ownership of the institution or the nature of the owner's activities.

The FDIC should use and apply its supervisory authority when it perceives that there is evidence that there is a violation of law, rule, or regulation, where there is an actual or threatened unsafe or unsound practice or where there is an actual or threatened unsafe or unsound condition that affects the insured depository institution. Unfortunately, these risks do arise from time to time, but are unrelated to the nature of the ownership of the institution. A financial institution owned by a bank holding company is neither more or less "risky" than one owned by a an insurance company, a securities firm, a commercial company or a group of individuals, and attempting to determine levels of risk based on ownership is simply a misguided effort. In that light, we also suggest that the distinction between "financial" and "commercial" owners is not meaningful or particularly relevant. The FDIC has ample experience identifying risk in institutions, and ample tools to address those risks.

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?

There is no evidence that consolidated Federal supervision represents a meaningful difference in the risks posed to the Deposit Insurance Fund. Again, if one were to examine the 1,500 bank and thrift failures since 1980, there is no meaningful difference in the failure rates of bank in bank holding company structures, where there is consolidated federal supervision by the Federal Reserve Board, and those banks that are not in bank holding company structures, or of thrifts in holding company structures where there is some form of consolidated supervision by the Office of Thrift Supervision and those that are not in a holding company structure. The FDIC's experience with Industrial Banks since 1998 is illustrative. Its bank-centric supervisory model, which focuses on the safety and soundness of the institution and attempts to (i) assure that affiliates do not engage in activities or transactions that could endanger the institution and (ii) insulate the institution from the adverse effects that might result if an affiliate is in financial distress, has resulted in an exemplary supervisory record. There have been no failures of any Industrial Bank during this period, and it is our understanding that each is "well-capitalized" and "well-managed" under applicable supervisory standards. As a whole, they represent less of a threat to the Deposit Insurance Fund than the institutions where the owners are subject to consolidated supervision.

Even though there appears to be no basis for the proposition that consolidated supervision of a parent owner represents less of a threat to the deposit insurance fund than an owner without consolidated supervision, we recognize that when an institution is subject to consolidated supervision, the FDIC may have access to more information concerning activities of the parent or affiliates of the institution than might be available in situations were there is no such consolidated supervision. Public filings with the Securities and Exchange Commission, or reports of examination by the Federal Reserve or the SEC *might* provide information as to facts, circumstances or activities that could conceivably affect the depository institution. We are frankly uncertain that this information is necessarily meaningful or helpful. However, if the FDIC determines that such information would be helpful to it in carrying out the purposes of the Federal Deposit Insurance Act, we believe it has ample power to obtain that information under existing authorities granted to it under current law.

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?

As discussed in the response to question 5 below, the FDIC is given the statutory authority to consider a variety of factors in connection with applications or notices regarding Industrial Banks. These include such factors as financial history, capital adequacy, earnings prospects, character and fitness of management, risks to the insurance fund and consistency of corporate powers. These factors are broad, and intentionally so, and allow the FDIC to inquire into any aspect of the institution or its ownership that might threaten the institution or pose a risk to the Deposit Insurance Fund. A parent organization that has exhibited an inability or unwillingness to comply with applicable legal requirements, or engages in activities that could threaten the institution should not be permitted to acquire a depository institution. We note that the FDIC (and the other

bank regulators) routinely examines these factors in connection with any application to charter, acquire or obtain control of a depository institution, whether the applicant be an individual, a company or an existing bank or thrift holding company. There is no reason that a corporate acquirer of an Industrial Bank should be treated any differently.

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 seven listed factors for approvals of deposit insurance applications contained in 12 U.S.C. 1816 (financial history and condition of the depository institution, capital adequacy, earnings prospects, character and fitness of managements, risks to the insurance fund, convenience and needs and consistency of corporate powers), and the six factors permitting denials of change in control applications listed in 12 U.S.C. 1817(j)(7) (two factors dealing with competition, the financial condition of the acquiring person, the competence, experience and integrity of the acquiring person or management, failure to provide any required information and the effect on the Deposit Insurance Fund) are broad and adequate to accommodate any concerns the FDIC might have regarding the institution, its ownership, its planned activities or any other aspect of the institution that might be relevant for consideration. Indeed, it is hard to think of any relevant matter that the FDIC might wish to consider that would not be covered by one of the listed factors. As noted above in the response to question 4, *any person* seeking to charter, acquire or obtain control of a depository institution should be thoroughly examined and evaluated, and the regulators should be satisfied that the owners or controlling persons of an insured depository pose no threat to the institution and its safety and soundness or to the Deposit Insurance Fund.

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?

While we certainly agree that the FDIC has the power to, and should under the proper circumstances, impose conditions or restrictions on applications or institutions, such conditions are appropriate in the context of a particular application or institution, not in the context of a particular charter type. As noted, Industrial Banks can engage in no activity, and exercise no power, not otherwise permitted other insured depository institutions. Limiting growth, restricting branching, or imposing capital maintenance obligations should be imposed only where growth, branching or adequacy of capital presents a specific, recognizable threat to the institution or the insurance fund.

We note that the FDIC has substantial experience in tailoring conditions and restrictions based upon the financial resources, activities or particular risks posed by a particular application or institution. For example, Internet-only banks have typically been required to maintain higher

capital. Other institutions have been limited to following a specific business plan. There is no inherent reason that an Industrial Bank should be treated any differently than any other institution: where specific conditions or restrictions are needed to protect the Deposit Insurance Fund, the FDIC has the power and the ability to do so.

Because a regulation necessarily applies universally to every situation or institution, we believe that a regulation would unduly limit or restrict the inherent flexibility the FDIC possesses to address specific needs or issues as the particular case presents itself.

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?

The question presupposes that there are inherent risks resulting from ownership of an Industrial Bank, and that somehow those risks are different if the owner is a financial company or a commercial company. As discussed repeatedly above, there is simply no evidence that such risks exist. If there are risks associated with ownership of a financial institution by any owner, be it a commercial or a financial company, the FDIC has the power to impose such conditions as it deems necessary to protect the Deposit Insurance Fund.

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?

Our existing framework of laws and regulations provides adequate protection against conflicts of interest and tying. The anti-tying provisions of the Bank Holding Company Act (12 U.S.C. § 1871) and the provisions of Sections 23A and 23B of the Federal Reserve Act specifically apply to Industrial Banks and their affiliates. See 12 U.S.C. § 1843(h)(i) (applying the anti-tying provisions to Industrial Banks and their parents and affiliates) and 12 U.S.C. § 1828(j)(1)(A) (applying Sections 23A and 23B to "every nonmember insured bank" – a term that includes Industrial Banks.

We note that there are conflicts of interest inherent in every relationship between a bank and another company, be it the securities affiliate of a bank or the automobile dealership controlled by a major shareholder or director of a bank. We have no "special" laws designed to deal with conflicts of interest in those situations; indeed, Congress has made the appropriate judgment that our existing framework is adequate to prevent abuses.

People have argued that an Industrial Bank affiliated with a commercial enterprise will favor customers of its affiliates, grant preferential credit to customers of affiliates or discriminate against businesses or individuals that are not customers. First, we find no basis that an Industrial Bank would have any "different" temptation in that regard than any other institution with any type of relationship with a non-bank entity. Second, Congress has passed laws, and the regulatory agencies have implemented regulations, designed to preclude any institution from

yielding to such temptations in a way that damages the institution or otherwise creates adverse effects.

We see no basis for the proposition that the system of bank-centric regulation adopted by the FDIC does not provide ample protection against possible problems associated with conflicts of interest or potentially abusive practices.

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?

As we have pointed out above, Industrial Banks can engage in no activity, and may exercise no power, not afforded other financial institutions. Accordingly, there can be no *inherent* competitive advantage for an Industrial Bank owned by a commercial firm.

Every financial institution hopes to obtain competitive advantages over other institutions. Competition exists over products, price, service, convenience, location, hours, and a myriad of other factors. Whether an Industrial Bank that is affiliated with a commercial entity has an advantage over one affiliated with a financial company is frankly a question that is impossible to answer. Some consumers might prefer to deal with a depository institution located in a retail location because of convenience; others might prefer to deal with a depository institution that specializes in credit cards because of the array of products it offers, the sophistication of its systems or the pricing it affords. These advantages, however, do not arise because of the affiliation with a commercial firm. They arise because the depository institution has elected to deliver its products and services in a way that (i) is perfectly permissible and (ii) it believes will appeal to its target market.

It would be a strange role for the FDIC to take were it to attempt to eliminate all possible competitive advantages among depository institutions. Would it somehow impose restrictions on a bank affiliated with a securities firm because it may have a potentially broader product offering for its customers than a bank that is affiliated with an insurance firm? Or would it impose restrictions on Bank of America as it has a higher lending limit and a greater array of deposit and loan products than a small community bank? We respectfully suggest that it is not the business of the FDIC to attempt to identify and attempt to regulate (or potentially eliminate) possible competitive advantages between or among insured depository institutions.

We note that arguments have been made that holding companies for Industrial Banks may have a competitive advantage since they are not required to maintain the same minimum capital levels as are required of bank holding companies. As with other arguments related to holding company regulation, there is simply no factual basis for the assertion.

First, the FDIC imposes the appropriate capital levels at the institution. The Industrial Bank, just as any other bank, must have sufficient capital to support its operations. Focusing on holding company capital is of marginal relevance.

Second, for virtually every company that owns or controls an Industrial Bank, the SEC, the OTS or the financial markets will impose a capital level on the parent. Those capital levels may be (and often are) substantially higher than those required of banking companies. To take one example, Target's capital ratio of 40% dwarfs the capital ratios of virtually every bank holding

company. In that light, any "one size fits all" regulatory capital requirement for holding companies is meaningless, and thus the FDIC's approach to evaluating capital and resources at the bank level is for a multitude of reasons the proper approach.

Third, the diversified owners of Industrial Banks have access to diverse sources of funds. This breadth of access is significant and important, for when compared to "traditional" bank holding companies where the bank is the holding companies primary (and often sole) asset, there is little capital available other than that already invested in the bank and where the sole source of income relates to the bank itself, the diversified owners much are better positioned to address the needs of their subsidiaries than are the traditional bank holding company. We must admit that if the ability to assure that a depository institution subsidiary maintains adequate capital during times of stress constitutes a "competitive advantage" for owners of Industrial Banks, we find it hard to believe this is an advantage that the FDIC might wish to eliminate.

Finally, the relevant question for the FDIC ought not to be whether there is some mandated capital level at the parent that arises through consolidated supervision, but whether the institution itself can operate safely and soundly regardless of the financial stress on the parent. The FDIC has proven itself to be perfectly capable to make such judgments, and its bank-centric regulatory approach has proven to be perfectly effective.

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?

Allowing banks to be affiliated with commercial firms provides a more diversified source of capital, adding strength to our financial system and creating substantial public benefits. The experience of the 1980's and early 1990's demonstrates two important points: the diversified owners brought much-needed capital to the savings and loan industry at a time when traditional "financial" capital was virtually impossible to obtain, and those diversified owners posed no risk to the deposit insurance funds. Certainly this has not been an issue for the last ten years, as banks on the whole have operated safely, soundly and both with substantial capital and reasonable access to the capital markets. There is, of course, no guarantee that this situation will continue indefinitely.

We note that every financial institution (including Industrial Banks) has the obligation to assess and meet the needs of the communities where they are located. The FDIC is mandated to consider "convenience and needs" in ruling on applications for deposit insurance. Every institution attempts to satisfy these obligations and none is exempt. We see no inherent advantage that a bank affiliated with a commercial concern might have in providing banking services to customers. To take a specific example, if an Industrial Bank affiliated with a commercial company noticed that a substantial portion of the affiliate's customer base lacks access to banking services, it might elect to establish branches in the locations of its affiliate. That might prove to be convenient and useful for the affiliate's customers. However, it will compete against every other financial institution that has actual or potential contact with those customers – those that provide banking services at locations convenient to their homes or work; those with ATMs in grocery stores or other locations where they shop; those that operate over the Internet or rely on the mails or courier services; those that offer payroll cards through their employers.

This same analysis applies, of course, to the bank affiliated with a securities firm or an insurance company. The institution may decide it would be advantageous to establish branches in offices of the securities firm or use insurance agents to distribute bank products and services. That also might prove convenient for the affiliate's customers. Again, however, the institution will be competing against every other financial institution that has actual or potential contact with those customers.

One of the benefits of our financial system is that we have thousands of outlets for the distribution of financial services and products. However, we also have a substantial portion of our population that is either "un-banked" or "under-banked." Any financial institution that can enhance delivery of financial products and services to this portion of our population should be commended and encouraged. We do not believe, however, that simply because a financial institution is (or, for that matter, is not) affiliated with a commercial concern gives it any inherent advantage in meeting the needs of un-banked or under-banked consumers.

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?

We believe that the FDIC has been given substantial power and authority over Industrial Banks, sufficient to address any conceivable abuses that might arise and to protect the Deposit Insurance Fund. As we have repeatedly stated, Industrial Banks are subject to the full panoply of laws and regulations applicable to insured depository institutions. They may exercise no power, and engage in no activity, not otherwise permitted depository institutions generally. The FDIC may exercise the full range of enforcement powers, including cease and desist orders, civil money penalty actions, and removal and prohibition actions. It may require the divestiture of the depository institution if necessary, and can preclude any affiliate from participating in its affairs.

A critically important, but often overlooked, power is embodied in Section 9 of the Federal Deposit Insurance Act. 12 U.S.C. § 1819(a) Seventh provides that the FDIC shall have the power:

> To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this chapter, and such incidental powers as shall be necessary to carry out the powers so granted.

The FDIC has been given the power to supervise and regulate the Industrial Banks. It has a mandate to protect the Deposit Insurance Fund. If it determines that there are powers that are required to supervise and regulate Industrial Banks, to gain access to information necessary to carry out its mission and to protect against actual or potential abuses that might arise in connection with their affiliation with other entities, Congress has given the FDIC the authority, through its Board of Directors, to exercise such powers without the need for further statutory action.

12. Given that Congress has expressly excepted 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?

As noted in our response to question 11, the incidental powers provision of Section 9 of the Federal Deposit Insurance Act grants the FDIC the power and the authority to take such steps as

are necessary to supervise and regulate Industrial Banks and to preserve and protect the Deposit Insurance Fund. If there is a basis for imposing more intrusive regulation of affiliates of Industrial Banks in order to accomplish these objectives, we believe that the FDIC has the inherent authority to do so.

Notwithstanding, at the moment we see no factual basis for adopting some form of consolidated regulation over the owners of Industrial Banks. As we have outlined above, if anything they present less risk to the Deposit Insurance Fund than other institutions and the bank-centric regulatory model adopted by the FDIC has proven to be safe and effective. That it is different than the regulatory model adopted by the Federal Reserve and applicable to bank holding companies is certainly true; however, there is no evidence that the FDIC's approach is less effective.

We are pleased to have had the opportunity to respond to the FDIC's questions. The FDIC plays a critical role in assuring a safe, sound and viable banking system. Industrial Banks play a small, but important role in that system by delivering deposit and credit products to consumers and businesses throughout the country. Their combination of strong capital, experienced management and fundamentally safe and sound business practices, combined with the FDIC's bank centric regulatory focus, has allowed the development of an extremely valuable, and extremely safe, segment of our banking system.

Sincerely,

Robert E. McKew
Senior Vice President & General Counsel
American Financial Services Association

John L. Douglas Partner,
Alston & Bird LLP, Former General Counsel, FDIC