WALLACE M. JENSEN

October 10, 2006

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington D.C. 20429

ATTN: Comments

Re: Industrial Banks

Dear Mr. Feldman,

This letter is in response to the request for public comment on industrial loan corporations issued by the FDIC on August 29, 2006. I have worked in the banking industry for over 30 years. I have been employed by commercial, full service banks, national credit card banks and Utah Industrial Loan Banks. I am well aware of the political discussion taking place within the regulatory world as well as within congress. The outcome of this debate could have significant adverse impact on the general consumers of financial services nationally should this matter not be reviewed fully. I have responded to each of your questions. I believe that Industrial banks add significantly to the choice of the public at large. I believe the industrial banks are gaining notice in large because of their success in the marketplace. I am in hopes that the FDIC too, will conclude that industrial banks should continue to be authorized in all of their forms as long as they can meet the regulatory requirements for the operation of a safe and sound financial institution.

Relative to the current debate around "Wal-Mart" owning an industrial bank, I too would not like to have to compete toe-to-toe with them. This said, if they can provide a product to the public at a competitive price through innovation that reduces the cost of products or services to the public and can satisfy all of the requirements of a regulated financial institution, including CRA, they should be allowed to own and operate a regulated financial institution.

Please find below my answers to your questions:

1. *Have developments in the ILC industry in recent years altered the relative risk profile of ILCs compared to other 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?*

   Yes, I believe that developments in the ILC industry in recent years have altered the relative risk profile of ILCs compared to other insured depository institutions, but in a very

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positive way for the Insurance fund. This positive alteration in the risk profile is even more manifest in "Commercially" owned ILCs. Because of the existing regulations governing relationships between the parent company and the ILC subsidiary, including FEB 23A and 23B, Regulation W and anti tying, ILCs are utilized by the parent company to aid in providing the efficiency of a national financial services company while retaining the bulk of the overall all financial risk at the parent company level. These institutions are required to move "covered transaction" related assets out of the institution and hold them at the parent company level.

In short, the risk to the fund is reduced vs. a traditional financial institution as assets and funding often take place at the parent company level.

2. *Do the risks posed by ILCs to safety and soundness or to the Deposit Insurance Fund differ based on 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?*

I believe that there is no inherent difference between commercial and financial owners of an industrial bank with regard to the safety and soundness of the bank. All industrial banks are subject to the same standards, requirements and regulatory oversight as other banks. Both financial and commercial companies are major providers of financial services in the market and there is no evidence that either group presents more or less risk to the deposit insurance fund.

All industrial banks are subject to the same standards and requirements of every other bank regardless of how the parent is classified. The risk profiles of all of these banks are generally the same as traditional banks. The exception is banks engaged in originating covered transactions subject to Section 23A and they present no risk of loan loss and hence are significantly less risky than traditional banks.

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" regulation reduces bank failures or produces stronger banks. It is appropriate to regulate the relationships and transactions between banks and their affiliates and to insulate the banks from risks relating to the affiliates, but that is accomplished as well under the bank centric regulatory model as under any bifurcated model involving another regulator of the holding company and affiliates.

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?

Any factor potentially affecting the safety and soundness of the bank, the public needs, and the overall safety of the banking system generally should be relevant. It is appropriate for the FDIC to evaluate the reasons why a particular owner wants to organize or acquire a bank, the likelihood that the bank will operate safely, honestly and fairly, the owner's competence and reputation for honesty and integrity, and the credibility of the bank's business plan.

I think that it is appropriate to give preference to and financial institution that serves an unmet need or underserved segment of the population in a safe and sound manner. Often, these institutions are able to provide products at favorable prices as a result of their ability to find, develop, and meet the needs of a unique population or demographic segments. Generally, ILCs are able to develop these niches as a result of their parent company and better service the needs because of the limited market focus they target.

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 [the] FDIC may consider in making such evaluations? Should the consideration of these factors be affected based on the nature of the ILCs 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?*

I believe that it would be arbitrary and improper, for the FDIC to impose any general restrictions or conditions on industrial banks generally or on any particular group of banks solely because the parent company is a financial or commercial company or is not subject to consolidated regulation.

Every FDIC application should be evaluated on its own merits. The approval of the application should depend on whether the applicant is a legitimate and well run company with a sound business plan and a competent management team and the bank, if approved, will serve public needs and convenience in a safe and sound manner. Nothing inherent in being a commercial company, a financial company or a bank holding company limits the ability of an applicant to satisfy all of the foregoing considerations or any of the statutory factors. I believe that it would be arbitrary to impose limitations on a bank solely because its parent is not a bank holding company or a financial company.

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?*

I believe imposing requirements or restrictions on industrial banks or their parent company would be unauthorized, arbitrary and capricious if based solely on the nature of the bank's owner or the bank charter. No restriction or requirement would be valid without a specific finding based on the record in each individual application linked to one of the statutory factors. The key consideration should be the distinction between conditions based on safety and soundness and the other statutory factors in the FDI Act and conditions involving policies within the exclusive purview of Congress. When it enacted CEBA in 1987, Congress expressly exempted industrial bank owners from the activities restrictions in the Bank Holding Company Act and consolidated regulation by the Federal Reserve (but not the anti-tying provisions in the BHCA). It did not grant to the FDIC any authority to impose restrictions on industrial banks or the parents and affiliates similar to those imposed on bank holding companies if they are not linked to the statutory factors. The same limits on the FDIC's authority apply to requirements unrelated to the statutory factors that Congress has not adopted in law.

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 is no basis for any assertion that ILCs pose any unique or unusual safety and soundness risk to the Deposit Insurance Fund for any reason or that there is any unique or unusual safety and soundness risk if a bank is owned by a financial or commercial parent. The industrial bank industry has proven to be at least as safe and sound as any other group of banks and they have proven to be safer than traditional banks owned by bank holding companies. The controversy over industrial banks is political in nature and attacks on the industry's twenty year record of safe and sound operation have no basis in reality.

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 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?*

   Generally, as noted in question 1 above, most commercially owned industrial banks do not finance transactions with affiliates. They operate a core financial services business comparable to any other bank but just happen to have affiliates engaged in commercial activities that are otherwise unconnected to the bank, or they offer traditional bank products and services to customers of an affiliate. These banks do not engage in transactions with or that benefit their affiliates so there is no conflict of interest or inherent risk to address with any general restriction on ownership. Banks that do finance transactions with affiliates are highly restricted by Sections 23A, 23B, Regulation W, and the anti-tying laws. These Industrial Banks only originate loans that are fully collateralized by a cash deposit in the bank or U.S. Government securities, or sold without recourse. Their loans are all priced at market, and the bank offers no preferential terms or other incentives to engage in transactions with affiliates.

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?*

Commercially owned banks have no inherent competitive advantage over other banks. They compete with other banks on equal terms for business with unaffiliated parties and are required to comply with the same laws and regulations of other banking institutions. The advantages that some commercially owned banks have is the ability to leverage the resources of the parent company to provide capital resources, secure sources of business, savings on marketing costs and demographics and databases of potential banking customers.

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 extend can or should the FDIC consider these benefits if they exist?*

Public needs and convenience are two of the statutory factors the FDIC must consider when evaluating an insurance application or notice of change of control. I do not believe that there is any consideration that could be more relevant or pertinent to that assessment than the kinds of banking services provided by ILCs. As stated above, ILCs generally are not full service institutions. They provide financial services to unique populations or unique and/or very competitively priced product to the general public on a national basis. In short, ILCs add additional financial product choices, uniquely structured products designed for unique customer populations, or significant scale and focus with a narrow array of products and services allowing the deliver to be superior in nature or at a lower cost to the customer.

Limiting or constraining this option would reduce competition and product and service creativity and innovation.

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?*

My response can be best captured by referring to the comments provided to the FDIC by the Utah Association of Financial Services:

> ***The most useful insight in understanding industrial banks is to simply see the bigger picture encompassing the whole industry beyond the political controversy surrounding one or two individual applications by entities that are controversial for their own particular reasons. Industrial banks are an established thriving industry consisting of a diverse group of banks that are solid, honest, successful and supported by strong and growing market demand. The success of the industry is a classic example of the kind of experiment made possible by dual banking. It has been conducted on a manageable scale at the state level under careful regulatory oversight. We believe the unified regulatory model that has emerged from this experiment will safely accommodate all***

existing banks and the broad array of new banks that will develop naturally as the financial services markets evolve in the next century.

This is an almost unique feature of the U.S. economy. Most other countries are dominated by a small number of large banks or a small number of large corporate groups that include captive banks. Banks in those countries are often more a utility for the nation's economy or a large corporate conglomerate. In contrast, the U.S. financial services markets have expanded throughout the economy and developed the broadest array of financial products and services ever seen. The biggest difference is innovation. The U.S. is leading the world in developing new financial products and services. Devising the bank centric regulatory model to work within this diversified market is a major accomplishment that will help preserve our position as the leader in the world's financial markets in the future.

By any fair measure, the current industrial banks should be facilitated and encouraged. They are generally stronger, better capitalized and better supported than traditional banks. Their boards and management meet the highest standards in the industry. When the success of any bank is dependent on its ability to develop a long term source of good profitable loans, many industrial banks have no marketing cost or challenge. They take over established financial services businesses or are provided with a steady source of business through their affiliates and are profitable and highly developed from inception. In contrast, most traditional banks must develop and sustain sources of business independently without any support from affiliates.

It simply defies reason to consider imposing unique and very damaging restrictions and prohibitions on the industry, or any particular group of banks in the industry, when there is no identifiable problem or risk that warrants any such action. Those restrictions would be gratuitous and therefore arbitrary. The efficiency and development potential of the financial services markets generally would be impacted. It would truly turn the regulatory system on its head.

We also want to stress once again the importance of ensuring that the regulatory system is compatible with the financial services markets. The role of a regulator cannot be fulfilled if requirements and prohibitions are imposed that conflict with the demands of consumers of financial services and the opportunities driving the markets.

That is the primary problem with the Bank Holding Company Act. It is outdated and incompatible with the financial services market that has developed over the past thirty years. Businesses of every kind now offer financial services. The financial services market has played a major role in the development of the U.S. economy over the past several years. Supporting these developments serves public needs and convenience in the most basic way and that is what the FDIC must do to fulfill its legal and regulatory responsibilities.

The growth of the industrial banks is a direct result of developments in the financial services markets. A large and growing number of businesses offering financial services realize they can do that most efficiently and cost effectively through a bank. Those companies need access to a depository charter for that reason. These are legitimate and highly competent businesses. Many invented the financial services they provide and there is no credible reason for denying them access to a depository charter

solely because they have other subsidiaries or divisions that engage in completely legitimate and safe and sound commercial activities. The only real issue in this whole debate is whether these businesses will be able to operate in the most efficient and cost effective manner possible.

The FDIC should be commended for identifying these market trends early on and leading the way to develop a regulatory model that safely and effectively serves the needs of the modern financial services market. The worst possible thing the FDIC could do at this point is to reverse this course by imposing arbitrary, counterproductive and anti competitive restrictions on banks that have become the strongest and safest ever insured by the FDIC. The current laws and regulations have worked. The unified regulatory model has worked. The industrial banks are working very well. The system is not broken and doesn't need to be fixed.

The controversy over industrial banks is political. Industrial banks were attacked first because they prove that there is no need or justification for the restrictions on affiliate activities in the Bank Holding Company Act. The issue has become inflamed by one particular application that has become a rallying point for the many critics of that parent organization and as an opportunity for other institutions to pursue anti competitive agendas. The issue has developed a perfect storm of the kind that often happens inside the Beltway but bears no connection to reality. We believe these political factors should have no bearing on the FDIC's policies governing industrial banks.

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?*

I believe that the FDIC could not impose restrictions on the owners of industrial banks that are not authorized by law, especially if they would effectively repeal the exemption for industrial bank owners in the Bank Holding Company Act.

The FDIC can place restrictions on owners and affiliates of industrial banks that will help ensure the safety and soundness of the bank. That is done today through the use of conditions on approval of an application and by examination recommendations enforceable through a variety of prompt corrective actions.

Very respectfully yours,

Wallace M. Jensen