EnerBankUSA

October 10, 2006

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

COMMENTS
Re: Industrial Loan Corporations ("ILC's")

Dear Mr. Feldman,

This letter is in response to the FDIC's request for public comment on ILC's. I have served as President, CEO and a member of the Board of Directors of EnerBank USA since the bank's inception in June 2002. EnerBank is a Utah chartered industrial bank specializing in providing unsecured home improvement loans through strategic partnerships with home improvement contractors throughout the US. The bank is owned by CMS Energy Corporation (NYSE), a diversified energy company headquartered in Jackson, Michigan. EnerBank's business plan and customer base are not related to its owner's core business. The bank traces its roots to two regional commercial banks based on the east coast. Neither bank found EnerBank's business plan attractive as a means to earn an adequate return on the required investment. However, in the more efficient ILC business model, the plan thrives as a niche business, serving the huge US home improvement market and benefiting thousands of small businesses and homeowners alike. I have spent a career in the banking industry, first in the community banking sector, next in the regional banking sector and finally in the ILC sector. I respect the unique strengths and opportunities inherent in each.

Here are my responses to the questions posed by the FDIC.

1. Developments in the ILC industry in recent years have had a positive impact on the relative risk profile of ILC's compared to other insured depository institutions. The most dramatic development in the ILC industry in recent years has been growth. Most of that growth has been fueled by entry into or increased investment in the industry by some of the best capitalized and well managed corporations in America. These capital rich parent companies provide a significantly greater source of financial strength than the oft times shell holding companies of commercial or community banks.

   The willingness to invest in the ILC industry is market driven. ILC's provide financial services that are not available through commercial or community banks to consumers and businesses or that are not available at an acceptable price, through a convenient delivery channel, or within an acceptable timeframe. If consumers and businesses did not value the financial services provided by the ILC's, the industry simply would not exist. ILC's have traditionally adopted very limited business plans, frequently offering only one financial services product. This unique mono-product line approach to banking has allowed ILC's to develop enormous expertise in their chosen niches and to focus on product development and delivery and on managing cost and risk in a manner that frequently results in a value-enhanced product at a lower cost to the consumer and business customers of the ILC as well as reduced risk to the Deposit Insurance Fund.

Modifications to the FDIC's supervisory programs or regulations for ILC's are unnecessary. ILC's are subject to the same degree of regulation as any other institutions insured by the FDIC, and then some. Those regulations include strict provisions severely limiting the mixing of banking and commercial activities between the bank and its parent institution. Additional restrictions on ILC's include a prohibition against offering DDA's (demand deposit accounts) once an ILC's assets have exceeded $500 million.

2. As to individual institutions, it does not appear that the risks posed to safety and soundness or to the Deposit Insurance Fund differ based on whether the owner is a financial or commercial entity. At the industry level, commercial ownership of ILC's provides access to significant capital resources for the development of innovative and competitive financial services that would not otherwise be available. Any strengthening of the banking industry should be viewed as an enhancement to safety and soundness and reduction in risk to the Deposit Insurance Fund.

   The FDIC should continue to apply its supervisory and regulatory authority as it does today. This practice has proven successful with both financial and commercial entities.

3. The provisions of Federal Reserve Act Sections 23 A and B and the regulatory scrutiny of ILC's regarding affiliate transactions mitigate the potential for increased risk in the case of ILC's owned by companies that are not subject to consolidated Federal supervision.

4. When evaluating an ILC's application for deposit insurance, the FDIC should continue to consider, the same myriad features and aspects of the parent company, the ILC's management team, board of directors and proposed business plan that it considers today. Important features and aspects of the parent company include, a history of sound financial performance and dependable corporate citizenship and governance.

5. History suggests that the FDIC routinely considers more than the statutory factors cited when evaluating an application for deposit insurance. This is entirely appropriate as the statutes do not impose any limitation on matters to be considered. The nature of an ILC's proposed owner should generally not be so much a factor as the history of that proposed owner's financial performance and corporate citizenship and governance. Nor should the absence of consolidated Federal supervision.

6. The FDIC should place no restrictions or requirements on ILC's or certain types of ILC's that would serve to undermine innovation, increased competition, and significant additional investment in the banking industry. Such actions would constitute a disservice to American consumers and businesses and ultimately weaken a critical industry and the national economy.

7. The existing conditions and regulations imposed by the FDIC are adequate to protect an ILC from risks to safety and soundness or to the Deposit Insurance Fund irrespective of ownership by a financial or commercial company. Given that the FDIC currently imposes the same safety and soundness standards on ILC's owned by commercial companies as on those owned by financial companies, the degree of risk inherent in a particular ILC's business case should not vary according to the nature of its parent. Further, the current safety and soundness standards apply equally to ILC's as to other types of insured institutions, even though ILC's are not permitted to engage in the scope of banking activities as are other insured entities. In the interest of safety and soundness, the FDIC should not limit ownership of ILC's to financial companies. Instead, it should do exactly what it is doing today: objectively considering applications for deposit insurance and changes in control and examining ILC's based on the existing set of well crafted regulations and standards, key provisions of which appropriately limit the activities of ILC's for the purpose of permitting an acceptable and desirable mix of commerce and banking.

8. Arguably the opportunity for conflict arises regardless of the nature of the parent company's business or whether or not it is subjected to some form of consolidated Federal supervision. Mitigating this very issue is the reason for which Sections 23 A and B of the Federal Reserve Act exist. Regulatory enforcement of existing provisions is sufficient to reduce or eliminate such risks. Further, based on my experience with the FDIC in applying for deposit insurance in conjunction with an application for a de novo ILC charter, the FDIC has the authority and aggressively invokes the authority to address the risk of conflict of interest or tying between an ILC and its parent.

9. ILC's do not have a competitive advantage over other insured institutions. If this were the case. other insured institutions would seek to obtain ILC charters. They do not. In fact, ILC's are disadvantaged due to the limitations on banking products and services they can offer. These limitations are the reason that other insured institutions have no interest in conducting business under the more restrictive ILC charter.

10. There are tremendous public benefits when a bank is affiliated with a commercial concern. ILC's would simply not exist if the services they provide were readily available at comparable pricing and through similar delivery channels from community and commercial banks. In many instances, ILC's are able to provide such value-enhanced services by virtue of the fact that they are so highly specialized. They utilize very efficient delivery platforms that could not support the more traditional (and equally as valuable) customer-centric banking relationships provided through the branch networks of our country's community and commercial

banks. Innovative and competitive products for consumers and businesses alike are the result.

11. The majority of the outcry against the ILC industry seems to come from community bankers believing that the industry enjoys a competitive advantage, is not well regulated and is positioning itself to compete with the community banks. These beliefs are not well founded. They serve to conceal the very positive impact of a developing segment of the regulated banking industry. The small number of ILC's (61) relative to the large number of other insured entities (more than 8,000) is likely the primary factor in fostering the misunderstandings surrounding the industry. ILC's do not have a competitive advantage over other insured institutions, they are regulated the same as other insured institutions and their business plans involve services and distribution channels that are highly unlikely to exist within the community banking industry. It would be accurate to describe the ILC industry as avoiding the branch banking model in favor of highly specialized financial services demanded by unique sets of consumers and businesses.

12. Unable to comment.

Respectfully submitted,

Louise P. Kelly
President & CEO