WORLD FINANCIAL
CAPITAL BANK℠

October 10, 2006

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

Attention: Comments

Dear Mr. Feldman:

This comment letter is submitted by World Financial Capital Bank ("WFCB") in response to the Notice and Request for Comment ("Notice") issued by the Federal Deposit Insurance Corporation ("FDIC") in the *Federal Register* on August 23, 2006. WFCB is an FDIC-insured Utah industrial bank. WFCB offers national private label credit card programs for consumer and business use and is part of Alliance Data, a leading provider of credit services in North America.

General Summary

WFCB appreciates the opportunity to provide comments on the Notice. We believe that industrial loan companies ("ILCs") do not pose a disproportionate risk to the Deposit Insurance Fund. We also believe that the FDIC has used its ample regulatory authority well with respect to the regulation of ILCs and their relationships with affiliates. In fact, the FDIC has decades of experience regulating banks not owned by bank holding companies, and we are unaware of any problems that have arisen under the FDIC's stewardship. We urge the FDIC to lift its moratorium with respect to ILCs and to regulate ILCs as provided under the laws Congress has enacted.

Responses to 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?**

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Generally, there are two recent developments with respect to ILCs: (i) more ILCs have had their applications for deposit insurance accepted; and (ii) some ILCs have grown in size to the point they can be considered large institutions. With respect to the former situation, each application has been reviewed by the FDIC for purposes of the ILC's business plan, future earnings prospects, general character and fitness of its management, and the risk presented by the ILC to the Deposit Insurance Fund, among other things (*see* 12 U.S.C. § 1816). Given that the FDIC has given careful and deliberate consideration with respect to each ILC application, and approved only those that do not pose a disproportionate risk to the Deposit Insurance Fund, we do not believe that the mere number of ILCs presents any increased risk to the Deposit Insurance Fund. In fact, given the diverse business plans of these new ILCs it may well be that the risk to the Deposit Insurance Fund has decreased. With respect to the latter development, the growth of assets within certain ILCs also does not present additional risk. These larger ILCs are generally subsidiaries of large, sophisticated companies with proven management teams. Like other banks (including ILCs), these larger ILCs are also subject to ongoing supervision by the FDIC. The FDIC's level of supervision is competent, comprehensive and complete, including not only examination for safety and soundness purposes, but also for compliance, Community Reinvestment Act, information systems, etc. Given this, the FDIC has ample tools to assess an ILC's (or any other bank's) overall risks. (This is in addition to the supervision provided by the appropriate state regulator.) If a particular ILC were to present a disproportionate risk to the Deposit Insurance Fund, we are confident the FDIC would take appropriate action.

ILCs also do not pose a threat to the integrity of other insured depository institutions or the financial services system in general. To the contrary, the presence of ILCs fosters competition among financial services companies, generating more efficiencies, a stronger financial service sector, and increased and improved consumer financial products.

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?

The risk profile of a depository institution is generally not altered by the nature of its corporate parent. In fact, existing statutes and regulations (such as Sections 23A and B of the Federal Reserve Act and the Federal Reserve Board's Regulation O enforced by the FDIC) are designed to ensure that a parent has, at worst, a neutral impact on its depository institution subsidiary and, at best, a positive impact. The stringent process through which the FDIC considers applications for deposit insurance, and its ongoing review mechanism, should serve as further protection against a parent corporation becoming a problem for its bank subsidiary.

To the extent that a bank's affiliates have direct interactions with the bank as services providers to the bank, the FDIC has the authority to examine the performance of the affiliates under the Bank Service Company Act. This gives the FDIC additional ability to evaluate the impact of a bank's affiliates (including an ILC's affiliates) on the institution.

It is important to note that the FDIC's regulations, and the statutory regime governing the safety and soundness of banks, have generally not varied depending on the nature of an insured depository institution's parent or affiliate. To our knowledge, this has not resulted in disproportionate safety and soundness issues despite a long history with banks being owned by commercial parents. (Despite false allegations to the contrary by some, commercial entities have never been prohibited from owning a bank of some type in the United States.)

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?**

To quote former FDIC chairman Donald E. Powell in a letter dated August 29, 2005 to the Government Accountability Office: "The FDIC believes that bank-centric supervision as applied by the . . . FDI Act, and enhanced by Sections 23A and 23B of the Federal Reserve Act and the Prompt Corrective Action provisions of the FDIC Improvement Act, is a proven model for protecting the deposit insurance funds, and no additional layer of consolidated federal supervision of ILC parents is necessary . . . . In terms of the relevant goal of safeguarding the federal banking safety net, any conclusion that the FDIC's affiliate examination authority is less effective in practice than that of consolidated supervisors is not supported by the historical record."

We concur with Chairman Powell. We believe that the FDIC has sufficient authority under existing law to regulate ILCs and protect against any risk they may present to the Deposit Insurance Fund. Moreover, there is no historical data to suggest that any risk exists under the current regulatory scheme. The lack of data is not due to a lack of history of commercial firms owning ILCs or other banks. Therefore, it would appear unnecessary to assess potential risks associated with ILCs owned by companies that are not subject to consolidated supervision differently than those associated with ILCs owned by companies subject to consolidated supervision.

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?**

It is appropriate for the FDIC to review features or aspects of a parent of an ILC in connection with the standards outlined in 12 U.S.C. § 1816. Specifically, under this section the FDIC must consider as part of an application for deposit insurance: (i) the *financial history and condition of the depository institution*; (ii) the adequacy of the depository institution's capital structure; (iii) the future earnings prospects of the depository institution; (iv) the general character and fitness of the management of the depository institution; (v) the risk presented by such depository institution to the Deposit Insurance Funds; (vi) the convenience and needs of the community to be served by such depository institution; and (vii) whether the depository institution's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act. While the statutory criteria generally applies to the depository institution, it may be appropriate to evaluate the institution's parent if, for example, the institution will rely on the parent for management expertise or capital. This would be true regardless of whether the bank were an ILC or another type of depository institution.

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?**

As we noted in the answer to question 4 above, it may be appropriate to consider certain aspects of a depository institution's ownership, although the appropriateness is not related to whether the institution is an ILC or not. We also do not believe that the consideration should vary based on whether an institution's parent is subject to consolidated supervision. Please see our answer to question number 3 above.

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 FDIC has the ability to evaluate and impose various restrictions on its application approvals based on the parameters considered by the FDIC. For example, an institution's business plan, management expertise, or capital position may support certain restrictions imposed by the FDIC. Such restrictions should not be "routinely" imposed on an institution simply because of the nature of its charter.

   The FDIC and other bank regulatory agencies have long had to consider the business risks posed by applicants for bank charters and/or deposit insurance. This is not a new responsibility for the FDIC or its regulatory colleagues. The FDIC regulates banks of all types—large and small banks, banks that are members of larger, diversified holding companies and banks that are not, etc. To our knowledge, the FDIC has never conditioned a bank's application on certain restrictions based solely on the nature of the bank's charter or its parent or affiliates. Generally, the statutes and regulations implemented by the FDIC do not distinguish between banks of different sizes or whether the banks are part of holding company structures or not. The existing statutes and regulations are based upon a bank's particular activities and whether additional restrictions, if any, should be imposed. It is also unclear whether arbitrary activities restrictions would serve to mitigate risks to the Deposit Insurance Fund or enhance such risks by artificially limiting an ILC's ability to compete in the marketplace.

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?**

   See our answers to questions 4, 5, and 6 above.

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?**

Any time an institution has affiliates, there is a potential for conflicts of interest or for tying. We do not believe that the likelihood for a conflict of interest increases or decreases as a result of the nature of the ILC's parent. The conflicts of interest that are present when an ILC has affiliates are controlled in the same manner as those that are present for any other institution with affiliates, such as through Sections 23A and 23B of the Federal Reserve Act. Section 106 of the Bank Holding Company Act Amendments of 1970 also includes strong anti-tying provisions. (*See* 12 U.S.C. § 1971.) In fact, these provisions *are more strict* with respect to ILC affiliates than they are with respect to the affiliates of other types of depository institutions since this section affects the affiliates of the ILC as if it were a bank itself.

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?**

An ILC owned by a commercial entity does not have competitive advantages over other insured depository institutions solely by virtue of the fact that its parent company is commercial. Neither the FDIC nor the law provide any competitive benefits for ILCs. The provisions of the Federal Deposit Insurance Act apply to an ILC in the same manner as they apply to a bank, irrespective of the parent.

We also note that ILCs actually operate at a competitive disadvantage relative to many other insured depository institutions as a result of the federal statutory activities restrictions on ILCs that are not owned by bank holding companies.

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?

There is no doubt that ILCs increase the number of financial services providers in the marketplace, thereby increasing banking service competition to the benefit of 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?

Congress created, and remains aware of, the statutory regime governing ILCs and their parents/affiliates. Absent congressional action, the FDIC should proceed with its consideration of issues relating to ILCs according to its past practices and consistent with the applicable statutes.

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 by Chairman Powell, the current manner in which ILCs are regulated gives ample authority to the FDIC to monitor risk at the institution level. We do not believe that additional limitations are required.

Once again, WFCB appreciates the opportunity to comment on the Notice. Please do not hesitate to contact me if we can be of further assistance.

Sincerely,

Marvin H. Corne
President