



OFFICE OF  
THE SECRETARY

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

May 8, 2007

Mr. Robert E. Feldman, Executive Secretary  
Attention: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, D.C. 20429  
RIN 3064-AD15

Re: Notice of Proposed Rulemaking – Industrial Bank Subsidiaries of Financial Companies

Dear Mr. Feldman:

I am writing on behalf of the Securities and Exchange Commission to comment on the proposed rules that would impose certain conditions and requirements on Industrial Bank Subsidiaries of Financial Companies. This proposal is directed to industrial loan companies (“ILCs”) that are subsidiaries of companies that are engaged solely in financial activities and not subject to consolidated bank supervision by the Federal Reserve Board or the Office of Thrift Supervision.

In particular, the Commission’s comments will address questions six through nine of the specific requests for comments as they pertain to the supervised Consolidated Supervised Entities (“CSEs”), which are the investment bank holding companies subject to the Commission’s consolidated oversight. In general, while fully supportive of the FDIC’s oversight of ILCs, the Commission is concerned that, in certain respects, the proposed rule could subject CSEs to duplicative, burdensome and unnecessary requirements that would not be likely to result in more effective oversight.

The CSE program provides consolidated supervision to investment bank holding companies that is designed to be broadly consistent with Federal Reserve Board’s oversight of bank holding companies. Key components of the regime include, *inter alia*, a requirement to compute holding company capital adequacy measures according to standards promulgated by the Basel Committee on Banking Supervision, inspection of the holding company and its affiliates not otherwise subject to supervision by a Federal Financial Regulator, and monitoring of the consolidated risk profile, liquidity position and financial performance of these firms. If potential weaknesses are identified, the Commission has broad discretion to respond. For example, the Commission may mandate changes to a firm’s risk management policies and procedures or effectively require an increase in the amount of regulatory capital or liquid assets maintained by the holding company.

The CSE prudential regime allows the Commission to monitor for, and act quickly in response to, financial or operational weakness in a CSE holding company or its unregulated affiliates that might place regulated entities, including U.S. and foreign-registered banks and broker-dealers, or the broader financial system at risk. The Commission's CSE program has been recognized as "equivalent" to that of other internationally recognized supervisors, including the U. S. Federal Reserve, for purposes of the European Union's Financial Conglomerates Directive.

The Commission currently supervises five firms – Bear Stearns, Goldman Sachs, Lehman Brothers, Merrill Lynch and Morgan Stanley – as CSEs. Four of the firms, Goldman Sachs, Lehman Brothers, Merrill Lynch and Morgan Stanley have ILC affiliates, and thus potentially could be impacted by the proposed rules.

#### FDIC Imposition of Reporting and Recordkeeping Requirements

Question 6 requests comment on whether it is appropriate for the FDIC to impose reporting and recordkeeping requirements on a parent company of an industrial bank.

The Commission believes that such requirements are unnecessary in the case of the CSEs, as the Commission already imposes such requirements in a manner that is consistent with the unique characteristics of investment bank holding companies, and shares relevant information concerning these holding companies with other regulators including the FDIC. Commission staff has offered to expand existing information-sharing discussions with FDIC staff. For example, at the FDIC's request, Commission staff could provide more information or meet more often. Imposing a second set of formal recordkeeping requirements on the CSE firms would be unnecessary, and would subject the firms to duplicative and burdensome requirements that would not result in more effective oversight.

#### Functionally Regulated Affiliates of Insured Depository Institutions

Question 7 requests comment on whether, in view of the provision of Gramm-Leach-Bliley which imposes certain restrictions on the regulation by Federal banking agencies of functionally regulated affiliates of insured depository institutions, the proposed rules should be modified with respect to insurance and securities firms that control an industrial bank.

The Commission believes that in overseeing ILC holding companies, the FDIC should have the same authority as the Federal Reserve has over bank holding companies. The Commission also believes the FDIC should adhere to the same standards and requirements as the Federal Reserve with respect to functionally regulated securities and insurance firms. The Commission believes that the GLBA framework is working well for the Federal Reserve, and should work equally well for the FDIC. The established law struck a careful balance. If the balance were changed for ILC holding companies to

allow greater oversight by the FDIC of affiliated broker-dealers, it would create costly duplicative oversight and could create uncertainty for large financial services firms.

#### Exemption for CSEs from the Proposed Rule

Question 8 notes that the proposed rules do not apply to financial companies that are supervised by the Federal Reserve Board or the Office of Thrift Supervision, and asks for comment on whether similar recognition should be accorded to financial companies subject to consolidated Federal supervision by the U.S. Securities and Exchange Commission as a CSE.

The Commission believes that the FDIC should recognize the Commission's oversight of CSEs in the same way and to the same extent as it would recognize holding companies supervised by the Federal Reserve Board and Office of Thrift Supervision in the proposed rule. As noted above, the CSE regime is designed to be broadly consistent with the oversight of bank holding companies by the Federal Reserve. In particular, the Commission has a program in place to monitor the financial and operational condition of the CSE holding companies, and broad authority to act in response to any weakness that might put regulated entities, including affiliated ILCs, or the broader financial system at risk. In light of this broad equivalency, the CSE program is recognized internationally as providing consolidated supervisory oversight that is equivalent to that provided by well-recognized Federal banking regulators. For these reasons, the FDIC should also recognize the Commission's CSE program and avoid subjecting CSE holding companies to a duplicative, burdensome and unnecessary set of additional requirements.

#### Consolidated Capital Ratio

Question 9 asks for comment on whether the FDIC should require that financial companies owning ILCs commit to maintaining a consolidated capital ratio, of regulatory capital to risk-weighted assets, at a specified level.


The Commission believes that such a requirement would be duplicative and is unnecessary in the case of CSEs. As noted above, CSEs are already required by the Commission to compute a consolidated capital adequacy measure using standards promulgated by the Basel Committee on Banking Supervision. Further, each CSE has undertaken to maintain a ratio of regulatory capital to risk-weighted assets of at least 10 percent, the Federal Reserve's standard for a well-capitalized institution. The Commission staff is prepared to share the actual ratios maintained by each firm with the FDIC on a regular or on an as needed basis.

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Conclusion

The Commission very much appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking, and its staff would welcome the opportunity to answer any questions you may have regarding the comments. Please contact Michael A. Macchiaroli, Associate Director, at 202-551-5525 or Matthew J. Eichner, Assistant Director at 202-551-5531, with any questions regarding the above comments.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Nancy L. Morris", with a long horizontal flourish extending to the right.

Nancy L. Morris  
Secretary