Community Bankers Association of Illinois®

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October 8, 2024

Mr. James P. Sheesley
Assistant Executive Secretary
Attention Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Regarding: Notice of Proposed Rulemaking: Parent Companies of Industrial Banks and Industrial Loan Companies; RIN 3064-AF88

Dear Mr. Sheesley:

The Community Bankers Association of Illinois ("CBAI"), which proudly represents nearly 260 Illinois community banks, appreciates the opportunity to comment on the Federal Deposit Insurance Corporation ("FDIC" or "Agency") proposed rulemaking regarding Parent Companies of Industrial Banks and Industrial Loan Companies (collectively "ILCs") ("Proposed Rule" or "Proposal") which proposes, "amendments which would revise the definition of "Covered Companies" to include conversions involving an proposed industrial bank or industrial loan company under section 5 of the Home Owners' Loan Act, or other transactions as determined by the FDIC; ensure the parent company of an industrial bank subject to a change of control, or a parent company of an industrial bank subject to a merger in which it is the resultant entity, would be subject to the FDIC's regulations; and provide the FDIC the regulatory authority to apply the regulation to other situations where an industrial bank would become the subsidiary of a company that is not subject to Federal consolidated supervision. Additionally, the proposed amendments would clarify the relationship between written commitments and the FDIC's evaluation of the relevant statutory factors. The proposed amendments would also set forth additional criteria that the FDIC would consider when assessing the risks presented to an industrial bank or industrial loan company by its parent company and any affiliates and evaluating the institution's ability to function independently of the parent company and any affiliates."

Background

CBAI strongly opposes the mixing of banking and commerce, which ILCs represent, because of the risks they pose to the financial system, our economy and American taxpayers. Congress, however, has authorized deposit insurance for ILCs and provided a framework for the FDIC to approve, regulate and supervise such institutions.

Even in light of that authority, much of the Congressional action regarding the separation of banking and commerce, and the risks posed by ILCs, has been to restrict their activity based on evolving factors and circumstances and refine their supervision and regulation. These restrictions include: prohibiting firms from owning more than one kind of bank (1950s), restricting commercial companies to only own one thrift (1960s), prohibiting ownership of a single thrift unless it was one that was already owned (1990s), requiring FDIC insurance for ILCs and subjecting them to state and federal [FDIC] supervision (1982), requiring the parent company of any such institution (having FDIC insurance) to be a bank holding company (1987), exempting ILCs from the definition of a bank if they met certain criteria (1987), prohibiting the acquisition of FDIC-insures thrifts by commercial firms (1999), imposing an FDIC moratorium on new ILC applications (2006-2008 and again from 2010-2013), and later adopting requirements requiring certain conditions and written commitments in situations that would result in ILCs becoming a subsidiary of a company that is not subject to consolidated supervision. The next logical step in properly regulating ILCs is to finally and completely close the loophole which exempts the parent companies from consolidated supervision by the Federal Reserve Board ("Federal Reserve" or "Fed"). This supervision by the Federal Reserve in close coordination with the FDIC is important to mitigate the risks posed by ILCs in times of economic stress.

Addressing this issue now is particularly important as a variety of commercial firms including large technology companies are eying ILC charters as a way to enter the banking industry and enjoy its many benefits, particularly low-cost FDIC insured deposits to help fund the operations without their holding companies being subject to consolidated supervision by the Federal Reserve. New big data, social media, e-commerce conglomerates, artificial intelligence, and financial technology companies (i.e., Rakutan which is known as the *Amazon of Japan*) extend an ominous reach into our economic lives, with privacy and conflict of interest concerns. They are among the latest to attempt (some of which in recent years have unfortunately been successful) to use this back door to enter the banking industry. They must all fail in their attempts to obtain ILC charters, as did Walmart and Home Depot long before them.

ILCs are promoted as being high performers and posing no risk to the financial system. ILCs are not risk free financial institutions and there have been failures and losses to the deposit insurance fund ("DIF"). This mistakenly rosy characterization about the industry suffers from "survivorship bias." More than a decade ago, almost half of the industry assets could be traced through ILCs to their Wall Street banks and financial firms holding companies (e.g., Lehman Brothers Holdings, Merrill Lynch, Goldman Sachs, Morgan Stanley, General Electric Company and Ally Financial [formerly General Motors Acceptance Corp. (GMAC)]. During the financial crisis, these giant institutions were either greatly assisted or saved from certain failure by taxpayer-funded bailouts and their ILCs ceased to exist. Today, there are 23 ILCs, but they collectively hold $232 billion in assets. If these ILCs were a single financial institution, it would be the eighteenth largest bank in the country, so they are not of an insignificant size. This troubled history, their asset size, and they risk they pose, highlight the need for consolidated supervision by the Federal Reserve in coordination with the FDIC, to prevent or minimize the impact of the demise of ILCs on the DIF particularly during times of economic stress.

Any lack of confidence in the Federal Reserve's competency to supervise the parent companies of ILCs is unjustified. The Federal Reserve's purpose and function includes to promote "the safety and soundness of individual financial institutions and monitoring their impact on the financial system as a whole; and [to] promote the stability of the financial system and … minimize and contain systemic risks through active monitoring and engagement in the U.S. and abroad." The Federal Reserve is also responsible for "promoting the effective operation of the U.S. economy and, more generally, the public [not private commercial] interest."

CBAI has every confidence that the Fed is able to supervise ILC holding companies and, in coordination with the FDIC, firmly believes the Federal Reserve's added involvement would make for a sounder and more robust regulatory regime to mitigate the risks posed by companies that have or seek ILC charters. The additional cost of developing and maintaining the required specialized expertise must, of course, be borne by the ILCs and their parent companies, not the banking industry, because of their unique nature and the limited focus of the expertise required to supervise that segment of the banking industry.

To characterize support for the proper regulation of ILCs and their parent companies as protectionism, that the banking industry is anti-competitive, or that the recommendation for consolidated Federal Reserve supervision is an attempt to put ILCs out of business, is simply not true. Community banks now compete vigorously among themselves, with the largest banks, credit unions, commercial and consumer finance companies, check cashing services, and others (including ILCs). As long as all competitors are consistently and appropriately regulated, and the playing field is otherwise level, community bankers do not object to competition. However, if some financial service providers are subject to a lesser regulatory regime, they will have a competitive advantage which discriminates against community banks, in addition to the harmful impact on the financial system, our economy and American taxpayers in the event of their failure.

CBAI Position on ILCs and Recommendations

CBAI is fundamentally opposed to ILCs because they violate the long-standing principal of the separation of banking and commerce. We believe there is ample justification for the FDIC to deny applications by ILCs for deposit insurance because it is not in the public interest to do so for the many reasons stated in this letter.

However, given their permitted existence by Congress, the existing regulatory loophole must be completely closed with consolidated Federal Reserve supervision of ILC parent companies, and their close supervision must be in cooperation with the FDIC. Unfortunately, completely closing the loophole requires Congressional action, so it is not within the purview of the FDIC nor or is it the subject of this Proposal. As an alternative, CBAI supports a multi-year moratorium on ILC applications for deposit insurance until Congress has the opportunity to address this issue and close the loophole.

In the event the FDIC does not categorically deny ILC applications/approvals, or a multi-year moratorium is not instituted pending future Congressional action (both of which are our preferred courses of action), and believing that this Proposal would somewhat enhance the

Agency's ability to more effectively supervise and regulate ILCs and their holding companies, then CBAI supports this Proposal.

Thank you for the opportunity to respond to this Proposal. If you have any questions or need additional information, please do not hesitate to contact me at (847) 909-8341 or davids@cbai.com.

Sincerely,

/s/

David G. Schroeder
Senior Vice President
Federal Governmental Relations