Alternative Thrift Charters

A Report to the 79th Legislature
From the
Texas Department of
Savings and Mortgage Lending

December 2006

Submitted to the Governor, the Lieutenant Governor, Speaker of the House of Representatives, and the Members of the 79th Texas Legislature

Table of Contents

Executive Summary 1

Purpose of the Study 2

Scope of the Study 3

History of Regulatory Supervision of Industrial Loan Companies 3

ILC Failures 5

ILCs Today 8

Exhibit I – Financial Institutions Charter Comparison 13

The Bank Holding Company Act and Alternate Charters 16

Conclusions and Recommendations 17

Addendum 18

Executive Summary

Texas is blessed to have one of the best business climates in the country in addition to some the most flexible financial statutes under which our financial institutions operate. Due to a myriad of financial mergers and acquisitions initiated by out of state acquirers over the past ten to fifteen years, Texas has lost many home-based banking and thrift institutions. This study is designed to consider alternative thrift charters not presently offered in Texas to determine the feasibility and possibility of offering such charters to assist in attracting de novo Texas-based financial institutions, as well as inviting existing out of state financial institutions to base their operations in our great state.

With the “Industrial Loan Company” thrift charter (ILC) being the only existing U.S. financial institution charter type not offered in Texas presently, this study focuses on its history, charter components, regulatory experiences in those states in which it exists, and comparative analyses with existing charters now available.

Considering the very high profile that the ILC charter has recently received with the Wal-Mart ILC application in Utah and the massive public and industry opposition causing Congressional attention, special attention was given to the impact of offering such a charter in Texas. In other states that offer the ILC charter, a “non-bank” control ownership is permissible (Wal-Mart, Target, etc., as an example). This is met with significant objection from the traditional financial institution community as well as the U.S. Congress in that it allows the mixing of commerce with the banking business. If ever offered in Texas, the ILC ownership most likely would need to be restricted to a “bank” control structure, as defined by the Federal Reserve, to address this concern.

After carefully comparing the various existing charters to the ILC type, it has been determined that the presently offered Texas State Savings Bank thrift charter (SSB) is as viable and flexible as any ILC charter with only one exception. That exception would be the 50-65% Qualified Thrift Lender’s Test (QTL) requiring SSBs to maintain a significant percentage of the bank’s assets in residential real estate loans to further the thrift charter purpose of promoting homeownership. If the thrift has an Office of Thrift Supervision Holding Company, the required percentage is 65%. If no holding company exists or the holding company was regulated by the Federal Reserve Bank, the Texas Savings Bank charter requires at least a 50% QTL. The SSB charter essentially allows the same, and possibly more services than an ILC charter would.

In summary, it is the recommendation of this study that Texas does not have the need for an additional type of financial institution charter. Even if it were possible to restrict the ownership to banks only, the future opportunity would exist for non-bank interests to create an unfavorable “hybrid” thrift charter to the detriment of our existing financial institutions. In addition, the SSB charter now available is considered to be equally attractive, if not more so, than an ILC. It is recommended that Texas continue to heavily market our existing financial institution charters, modernizing them legislatively when needed.

Purpose of the Study

In the recent past, Texas was home base to many state and federally chartered banks, savings institutions and other financial providers. It was considered a financial center for national and international financial matters. Since the 1980s, there have been an unprecedented number of mergers and acquisitions in the financial sector resulting in Texas losing its "home base" status. Many of the homegrown financial institutions who had either formed their institutions locally or had chosen to base their operations in Texas have merged or sold to other institutions not based in Texas. Concerns continue over why this has occurred, and moreover, what can be done about this migration of home-based Texas financial institutions. Exportation of statewide deposits and importation of out of state rates/pricing by institutions based out of Texas but operating in Texas are additional concerns raising awareness of the need to make Texas attractive to those who have interest in forming a financial institution or re-locating to Texas as a home base from other states. One obvious reason Texas has lost home-based financial institutions by acquisition of larger out of state institutions is the fact that it has been, and continues to be a very attractive consumer and commercial marketplace with substantial business opportunities. Those Texas based institutions that have sold typically receive extremely attractive offers to sell their franchises, and those lucrative solicitations are normally justified by those future opportunities found in the Texas marketplace.

In the 79th Regular Session of the Texas Legislature, House Bill 955 was introduced by Chairman Burt Solomons of the House Financial Institutions Committee. This bill, signed by Governor Rick Perry, went into effect on September 1, 2005. For reasons and concerns previously stated, this bill was a "modernization" of the Texas *Finance Code*. In Article 3, Department of Savings and Mortgage Lending, Section 3.05 of the *Finance Code*, an amendment was passed stating that the Texas Savings and Mortgage Lending Commissioner shall study the desirability and feasibility of developing alternative thrift charters, including special purpose charters, and shall issue a report, including findings and legislative recommendations, to the legislature not later than December 31, 2006.

Texas industry stakeholders (financial institution trade groups) were asked to assist in this report by conveying their constituents'/members' desires, concerns and opinions. Where applicable, their official positions are stated within the report on certain issues outlined.

The report will focus on a particular type of thrift charter never before offered in Texas and presently existing in a few other states (Industrial Loan Charter, or "ILC"). There are some restrictions on a federal level with the National Bank Holding Company Act and how it applies to Texas, and there is adverse consensus from the "banking" community for Texas offering such a thrift charter. There continues to be some limited interest from a few financial groups with either experience in this type charter in other states, or curiosity in a "special" business plan that may be well-suited for this type of limiting charter. Those who have voiced concerns adverse to Texas offering this particular type of thrift charter have had their concerns addressed in this report with specific "minimum" requirements for this type charter eligibility. The basic opposition includes but is not limited to the invitation to the "big box" banks (Wal-Mart, Target, etc.), and the eligibility of non-banks to receive such a charter. To address this basic concern, one recommendation outlined in the report is to only allow eligibility of ownership to those who

presently have, and for some minimum period of time have had, a federally insured financial institution or bona fide financial holding company based in Texas.

All concerns received, pro and con, are outlined in this report.

Scope of the Study

House Bill 955 became effective September 1, 2005 with the following requirement:

> SECTION 3.03. The commissioner shall study the desirability and feasibility of developing alternative thrift charters, including special purpose charters, and shall issue a report, including findings and legislative recommendations, to the legislature no later than **December 31, 2006**.

The only other thrift charter available in the United States that is not presently offered by the State of Texas is commonly referred to as an Industrial Loan Corporation (ILC). The scope of this study focuses on that specific charter.

History of Regulatory Supervision of Industrial Loan Companies

(The following section draws heavily on information gathered by the FDIC[1])

Industrial loan companies have been in existence since 1910 when Arthur J. Morris established Fidelity Savings and Trust Company in Norfolk, Virginia. This was the first of many Morris Plan Companies which became known as industrials, industrial banks, or thrift and loan companies (ILCs). The original purpose of formation was to benefit the industrial workers as prospective borrowers. In the beginning these institutions were not supervised by federal regulators, but were chartered and supervised by the states. These early institutions operated somewhat like small finance companies offering loans to wage earners who could not otherwise obtain credit. In most cases the interest rates were higher than "market" rates due to a higher credit risk profile. The loans typically were not collateralized but were endorsed or "guaranteed" by two or more creditworthy individuals who knew and vouched for the borrower.

State laws prohibited some of the early Morris Plan institutions to receive deposits. Instead they issued certificates of investment or indebtedness and avoided the term, "deposit". Because of deposit prohibition, the Federal Deposit Insurance Corporation (FDIC) initially determined that they were not eligible for federal deposit insurance. That subsequently changed when state law started permitting these institutions to include the word "bank" in their name. Even those which did not use the word "bank" in their name could then apply for and receive federal deposit insurance given the fact the same charter was used.

Thrift certificates were exempt from Regulation Q rate restrictions leading the ILCs to typically offer higher interest rates than insured banks on their deposits. After 1932, even with this

[1] FDIC, "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective," *Supervisory Insights*, June 25, 2004, http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum04/industrial_loans.html (June 1, 2006)

attractive competitive edge, there was some reluctance from some prospective customers to do business with those ILCs that did not have FDIC coverage. In 1975, Utah formed the Industrial Loan Guaranty Corporation, a state deposit fund to afford those ILCs without federal insurance coverage a competitive "equalizer" of deposit insurance. Shortly afterwards, California commenced a similar state insurance fund for its ILCs. Assessments to the ILCs funded these insurance funds. Utah's fund was depleted after two ILC failures (1978-1980) as was California's after a large ILC failed there. ILCs' problems compounded when Regulation Q was repealed thereby allowing banks to pay higher interest rates. This forced the ILCs to operate with much more narrow margins to remain competitive.

This ILC environment posed serious challenges for the onset of federal supervision in the early 1980s. The Garn-St.Germain Depository Institutions Act authorized federal insurance for investment certificates in 1982. This legislation also required that ILCs were to be similarly regulated as commercial banks in order to apply for deposit insurance. Some states followed suit and changed their laws to require FDIC insurance for the ILCs as a charter condition. There were many ILCs that could not qualify for or meet the standards for deposit insurance coverage, and as a result had to be sold or were liquidated. Those same standards exist today - the financial history and condition of the applicant, the adequacy of the applicant's capital structure, future earnings potential, character of management, convenience and needs of the communities served, whether the corporate powers were consistent with the Federal Deposit Insurance Act, among other requirements.

In the mid 1980s, commercial companies became interested in "non-bank" charters because they were neither subject to the requirements of the Bank Holding Company Act (BHCA), nor holding company supervision and oversight. The BCHA defined a bank as an entity that both made commercial loans and accepted demand deposits. If an institution did not perform both of these functions, it was a "non-bank" under the BHCA, but was a "bank" for other purposes such as being eligible for federal deposit insurance. While a flurry of non-bank applications were expected, the passage of Competitive Equality Banking Act (CEBA) in 1987 dampened the expected application activity. CEBA generally made all banks that were FDIC insured, "banks" under the BHCA. CEBA also grandfathered the exclusion from the BHCA of the parent companies of existing non-bank banks, provided certain conditions were met. Nevertheless, there remained interest in the ILC charter. In 1988 the first commercially owned ILC applied for and received FDIC deposit insurance. Once this precedent was set, more applications followed.

Much like the FDIC assuming the role of the discontinued Federal Savings and Loan Insurance Corporation (FSLIC) in the aftermath of the savings and loan industry failures, they encountered an industry that was unaccustomed to federal banking mentality and oversight. The ILCs tended to operate as an extension of their commercial parent and not as an autonomous banking entity. Therefore, a rather vertical "banking" learning curve existed for the ILC management teams and boards. To insure that the ILCs operated safely and soundly and in compliance with all state and federal regulations as well as have proper insulations from the parent, the state and federal regulatory authorities asserted a strong emphasis on certain "non-standard" requirements to obtain the ILC charter such as:

- The organizers will appoint a board of directors, the majority of whom will be independent of the bank's parent company and its affiliates.[2]

- The bank will appoint and retain knowledgeable, experienced and independent executive officers.[3]

- The bank will develop and maintain a current business plan, adopted by the board of directors, that is appropriate to the nature and complexity of the activities conducted by the bank and separate from the business plan of the affiliated companies;[4]

- To the extent management, staff, or other personnel or resources are employed by both the bank and the bank' parent company or any affiliated entities, the bank's board of directors will ensure that such arrangements are governed by written contracts giving the bank authority and control necessary to direct and administer the bank's affairs.[5]

In addition to these standard requirements and as in any bank level review of an institution with affiliates, an examination would include an assessment of the bank's corporate structure, how the bank interacts with its affiliates and a thorough review of the financial risks inherent with the affiliated relationship. If shared management is involved, a set procedure and policy is required to address clear lines of delineation of duties, defined compensation arrangements, avoidance of conflicts of interest, reporting lines, authorities granted, etc. Written agreements are required of any affiliated service provided requiring the same terms and conditions as would be applied to non-affiliates as well as a contingency plan for any "critical" services performed by an affiliate. The FDIC and many state regulators also have the ability to examine transactions with the affiliate to ensure the relationship effect is acceptable.

ILC Failures

It is apparent that the ILCs entered the federal regulatory oversight world in the midst of financial difficulty. The vast number of ILCs entering this environment was basically entities that operated similar to small finance companies paying high rates if interest and making risky loans. The history of ILC failures is made up of these smaller ILCs.

From 1985 through 2003 21 ILCs failed (SEE TABLE ONE, page 7). Nineteen of those were operated as finance companies with average assets of $23 million. The banking crisis of the 1980s and early 1990s took its toll on these small ILCs. Most of them were California charters. Eight of these failures occurred within five years of receiving FDIC insurance with the others occurring within six to eight years of receiving FDIC coverage.

---

[2] Ibid

[3] Ibid

[4] Ibid

[5] Ibid

The two largest failures are the most recent. Pacific Thrift and Loan and Southern Pacific Bank were holding company banks. The latter was initially chartered in 1982 as Southern Thrift and Loan and was uninsured until 1987 with a name change to Southern Pacific Bank. It should be noted that both failures were due to ineffective risk management and poor credit quality.

It is difficult to make a historical failure “reasoning” statement when comparing the ILC failures with other financial institution charter failures simply because all things were not equal. Most of the failures have been relatively small institutions and were relative newcomers to federal supervision. Also, severely deteriorating economic conditions with real estate downturns were occurring when most entered the federal supervision arena that undoubtedly contributed to a high incidence of failure.

Of all chartered ILCs in Utah, eight of the original charters were subsequently insured by the FDIC. Recently, as in other states, a new ILC industry has been born in Utah with commercial companies either buying charters or organizing de novos. The supervisory strategies and standards the FDIC and the state of Utah applied to these new operations have been tailored to fit each individual institution. This has, without doubt, contributed to the newer ILCs’ success and provides much better assurance of them operating in a safe, sound and compliant manner than history would indicate.

Table One[6]

Table 1. Most Failing ILCs Operated as Small Finance Companies: ILC Failures 1985–2003						
Institution	**Location**	**Year of Failure**	**Resolution Assets ($000)**	**Loss to the Bank**	**Loss Ratio % Insurance Fund ($000)**	**Comments**
Orange Coast Thrift & Loan	Los Alamitos, CA	1986	13,966	5,352	38.3	Insured 1985
Whittier Thrift & Loan	Whittier, CA	1987	15,206	3,263	21.5	Insured 1985
Colonial Thrift & Loan	Culver City, CA	1988	26,761	4,600	17.2	Insured 1986
First Industrial Bank	Rocky Ford, CO	1988	12,489	6,696	53.6	Insured 1987
Metropolitan Industrial Bank	Denver, CO	1988	12,434	4,729	38.0	Denied 1972 & 1982; insured 1984
Westlake Thrift & Loan	Westlake Village, CA	1988	55,152	7,745	14.0	Insured 1985
Lewis County Savings & Loan	Weston, WV	1989	3,986	405	10.2	Insured 1986
Federal Finance & Mortgage	Honolulu, HI	1991	7,732	878	11.4	Insured 1985
Landmark Thrift & Loan	San Diego, CA	1991	16,638	2,208	13.3	Insured 1984
Assured Thrift & Loan	San Juan Capistrano, CA	1992	48,226	21,028	43.6	Insured 1985
Huntington Pacific Thrift & Loan	Huntington Beach, CA	1992	40,476	17,368	42.9	Insured 1985
North American Thrift & Loan	Corona Del Mar, CA	1992	21,276	0	0	Insured 1989
Statewide Thrift & Loan	Redwood City, CA	1992	9,636	2,341	24.3	Insured 1986
Brentwood Thrift & Loan	Los Angeles, CA	1993	12,920	3,323	25.7	Insured 1987
Century Thrift & Loan	Los Angeles, CA	1993	31,876	9,553	30.0	Insured 1985
City Thrift & Loan	Los Angeles, CA	1993	39,383	17,697	44.9	Insured 1986
Regent Thrift & Loan	San Francisco, CA	1993	35,751	1,450	4.1	Insured 1987
Los Angeles Thrift & Loan	Los Angeles, CA	1995	23,388	6,067	25.9	Insured 1990
Commonwealth Thrift & Loan	Torrance, CA	1996	11,547	5,640	48.8	Insured 1987
Pacific Thrift & Loan	Woodland Hills, CA	1999	127,342	42,049	33.0	Insured 1988
Southern Pacific Bank	Torrance, CA	2003	904,294	90,000	10.0	Estimated figures. Denied 1985; insured 1987
Total ILC Failures 21; by state: CA 17; CO 2; HI 1; WV 1			$1.5 billion	$252 million	17%*	
*Weighted average						

[6] (FDIC, "The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective," *Supervisory Insights*, June 25, 2004, http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum04/industrial_loans.html (June 1, 2006)

ILCs Today

There are seven states, as of June 30, 2005, with actively chartered ILCs as detailed in the following chart by state and total assets[7]:

State	Number of Charters	Total Assets (in thousands) by State as of June 30, 2005
Utah	31	$114,231,696
California	15	$ 14,860,972
Nevada	5	$ 10,460,049
Colorado	4	$ 495,323
Minnesota	2	$ 52,229
Hawaii	1	$ 621,977
Indiana	1	$ 61,693
Total	**59**	**$140,783,939**

Although grandfathered states with the ability to offer ILC charters is restricted and the number of charters has remained fairly stable, recent history has seen a significant increase in the total asset base. This asset growth has been concentrated in the four largest ILCs all with assets over $10 billion and accounting for 74% of total industry assets[8]. The three largest are all domiciled in Nevada and the fourth in California. Each one of these four largest ILCs can be categorized as to their mission or purpose as being embedded in organizations whose activities are predominantly financial in nature which is the most common one of the four broadly defined business models ILCs are generally grouped into:

- **(33 Institutions)** Predominately Financial in Nature — Institutions that are embedded in organizations whose activities are predominantly financial in nature, or within the financial services units of larger corporate organizations. These institutions may serve a particular lending, funding, or processing function within the organization. Lending strategies can vary greatly, but, within a specific institution, are often focused on a limited range of products, such as credit cards, real estate mortgages, or commercial loans. Corporate strategies play a larger role in determining funding strategies in these cases, with some institutions periodically selling some or all outstanding loans to the parent organization. Parent assessments of funding options across all business units frequently determine the specific tactics at the ILC level. A few institutions restrict themselves to facilitating corporate access to the payment system or supporting cash management functions, such as administering escrowed funds.

---

[7] FDIC collects, corrects, updates and stores Reports of Condition and Income data submitted by all insured national and state nonmember commercial banks and state-chartered savings banks on a quarterly basis. This "call report" information is extensively used by the bank regulatory agencies in their daily offsite bank monitoring activities. Reports of Condition and Income data are the only publicly available source of information regarding the status of U.S. banking system.

[8] Ibid

- **(14 Charters)** Non-Financial — Institutions that directly support the parent organizations' distinctly commercial activities. These institutions largely finance retail purchases of parent company products, which can range from general merchandise to automobiles, truck stop activities, fuel for rental car operations, and heating and air conditioning installations. Loan products might include credit cards, lines of credit, and term loans. Funding is generally limited to wholesale or money center operations, borrowings, or other options from within the parent organization.

- **(8 Charters)** Community Focused — Institutions that are operated as community-focused institutions, including stand-alone institutions and those serving a community niche within a larger organization. These institutions often provide credit to consumers and small- to medium-sized businesses. In addition to retail deposits (many ILCs offer NOW accounts), funding sources may include commercial and wholesale deposits, as well as borrowings. Institutions that operate within a larger corporate organization may also obtain funding through the parent organization.

- **(4 Charters)** Large Corporate Service Oriented Organizations — Independent institutions that focus on specialty lending programs, including leasing, factoring, and real estate activities. Funding sources for this relatively small number of institutions may include retail and commercial deposits, wholesale deposits, and borrowings.[9]

Generally, the authority of industrial loan companies and industrial banks (collectively, ILCs) to engage in activities is determined by the laws of the chartering state. The authority granted to an ILC may vary from one state to another and may be different from the authority granted to commercial banks. Except for offering demand deposits, an ILC generally may engage in all types of consumer and commercial lending activities and all other banking activities permissible for banks in general.

Core ILC functions are traditional financial activities that can generally be engaged in by institutions of all charter types. The exception would be institutions organized and chartered as limited-purpose institutions, which generally focus on credit card or trust activities.[10]

The following chart, based on Table 2 of the summer, 2004 edition of the FDIC's online publication, *Supervisory Insights,* has been modified to insert a column pertaining to the powers of a Texas state savings bank in a comparative format with commercial banks and ILCs.

---

[9] FDIC, *The Future of Banking: The Structure and Role of Commercial Affiliations*, July 16, 2003, <http://www.fdic.gov/news/conferences/future_bennett.html> (June 1, 2006)

[10] Ibid.

Comparison of Powers Shows Key Differences between Texas State Savings Banks, Commercial Banks and ILC Charters			
Powers	**Texas State Savings Bank**	**State Commercial Bank That Is a BHCA Bank**	**Industrial Loan Company (or Industrial Bank) That Is Not a BHCA Bank**
1. Ability to accept demand deposits	Yes	Yes	Varies with the particular state. Where authorized by the state, demand deposits can be offered if either the ILCs assets are less than $100 million or the ILC has not been acquired after August 10, 1987
2. Ability to export interest rates	Yes	Yes	Yes
3. Ability to branch interstate	Yes	Yes	Yes
4. Ability to offer full range of deposits and loans	Yes	Yes	Yes, including NOW accounts, but see the first entry above regarding demand deposit accounts
5. Authorized in every state	No	Yes	No. ILCs currently are chartered in seven states*
6. Examination, supervision, and regulation by federal banking agency	Yes	Yes	Yes
7. FDIC may conduct limited scope exam of affiliates	Yes	Yes	Yes
8. Golden Parachute restrictions apply	Yes	Yes	Yes, to the institution; no, to the parent
9. Cross Guarantee liability applies	Yes	Yes	No
10. 23A & 23B, Reg. O, CRA apply	Yes	Yes	Yes
11. Anti-tying restrictions apply	Yes	Yes	Yes
12. Parent** subject to umbrella federal oversight	Yes	Yes	No
13. Parent** activities generally limited to banking and financial activities	No***	Yes	No
14. Parent** could be prohibited from commencing new activities if a subsidiary depository institution has a CRA rating that falls below satisfactory	Yes	Yes	No
15. Parent** could be ordered by a federal banking agency to divest of a depository institution subsidiary if the subsidiary becomes less than well capitalized	Yes	Yes	No
16. Full range of enforcement actions can be applied to the subsidiary depository institutions if parent fails to maintain adequate capitalization	Yes	Yes	Yes
17. Control owners who have caused a loss to a failed institution may be subject to personal liability	Yes	Yes	Yes

*California, Colorado, Hawaii, Indiana, Minnesota, Nevada, and Utah.

**Parent, with respect to a state commercial bank, refers to a bank holding company or financial holding company subject to supervision by the Federal Reserve. Under a proposed rule, broker-dealers who own ILCs may soon be able to choose consolidated supervision by the Securities and Exchange Commission. See "Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities," 62 Fed. Reg. 62872 (proposed November 6, 2003, to be codified at 17 C.F.R. Part 240).

*** Parent, with respect to a Texas State Savings Bank, refers to either a unitary diversified thrift holding company subject to supervision by the Office of Thrift Supervision or a bank holding company subject to supervision by the Federal Reserve.

Note: NOW = negotiable order of withdrawal; CRA = Community Reinvestment Act

Items 12 through 15 of the previous chart are the heart of differences that distinguish ILCs from other FDIC insured depositories. At its core is the absence of a federal regulator with explicit chartering and umbrella supervisory authority over the holding company. Parent activities are not generally limited to banking and financial activities and limited enforcement power to prohibit parent from entering into new activities or divest of current activities if deemed necessary. The FDIC imposes on the holding company regulatory oversight referred to as a "bank-centric" supervision. In the absence of explicit authority over the operations of the parent holding company, bank-centric supervision seeks to isolate the insured depository from risks posed by the parent or its affiliates by imposing limitations at the time of issuing insurance of deposits, reviewing any transactions with the insured depository and enforcing regulations applicable to all holding companies. However, when there is no relationship with an affiliate, any reputation or other operational risks may not be detected. In contrast, the OTS and FRB are granted consolidated supervisory authority over the parent holding company and may review all banking and nonbanking activities conducted directly or indirectly through subsidiaries and affiliates with only some limitations related to reasonable cause and material adverse affect on the insured depository. This is further elaborated in the following chart:

Comparison of Explicit Supervisory Authorities of the FDIC, Board, and OTS[11]

Description of Explicit Supervisory Authority	FDIC[a]	Board	OTS
Examine the relationships, including specific transactions, if any, between the insured institution and its parent or affiliates.	●[b]	●[b]	●[b]
Examine beyond specific transactions when necessary to disclose the nature and effect of the relationship between the insured institution and the parent or affiliate.	●[b]	●[b]	●[b]
Examine the parent or any affiliate of an insured institution, including a parent or affiliate that does not have any relationships with the insured institution or concerning matters that go beyond the scope of any such relationships and their effect on the depository institution.	○	●[b]	●[b]
Take enforcement actions against the parent of an insured institution.	⊙[bc]	●[b]	●[b]
Take enforcement actions against affiliates of the insured institution that participates in the conduct of affairs of, or acts as agent for, the insured institution.	⊙[b]	●[b]	●[b]
Take enforcement action against any affiliate of the insured institution, even if the affiliate does not act as agent for, or participate in the conduct of, the affairs of the insured institution.	○	●[b]	●[b]
Compel the parent and affiliates to provide various reports such as reports of operations, financial condition, and systems for monitoring risk.	⊙[b,d]	●[b]	●[b]
Impose consolidated or parent-only capital requirements on the parent and require that it serve as a source of strength to the insured depository institution.	⊙[d]	●	●
Compel the parent to divest of an affiliate posing a serious risk to the safety and soundness of the insured institution.	⊙[e]	●	●

● Explicit authority
⊙ Less extensive authority
○ No authority

Sources: GAO analysis of the supervisory authorities of the FDIC, Board, and OTS.

[a]FDIC may examine an insured institution for interaffiliated transactions at any time and can examine the affiliate when necessary to disclose the transaction and its effect on the insured institution.

[b]The authority that each agency may have regarding functionally regulated affiliates of an insured depository institution is limited in some respects. For example, each agency, to the extent it has the authority to examine or obtain reports from a functionally regulated affiliate, is generally required to accept examinations and reports by the affiliates' primary supervisors unless the affiliate poses a material risk to the depository institution or the examination or report is necessary to assess the affiliate's compliance with a law the agency has specific jurisdiction for enforcing with respect to the affiliate (e.g., the Bank Holding

[11] "Industrial Loan Corporations: Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority", *Report to the Honorable James A. Leach, House of Representatives,* GAO-05621, United States Government Accountability Office, Washington D.C, September 2005, page 35.

Company Act in the case of the Board). These limits do not apply to the Board with respect to a company that is itself a bank holding company. These restrictions also do not limit the FDIC's authority to examine the relationships between an institution and an affiliate if the FDIC determines that the examination is necessary to determine the condition of the insured institution for insurance purposes.

[c]FDIC may take enforcement actions against institution-affiliated parties of an ILC. Atypical ILC holding company qualifies as an institution-affiliated party. FDIC's ability to require an ILC holding company to provide a capital infusion to the ILC is limited. In addition, FDIC may take enforcement action against the holding company of an ILC to address unsafe or unsound practices only if the holding company engages in an unsafe or unsound practice in conducting the affairs of the depository institution.

[d]FDIC maintains that it can achieve this result by imposing an obligation on an ILC holding company as a condition of insuring the ILC. FDIC also maintains it can achieve this result as an alternative to terminating insurance. FDIC officials also stated that the prospect of terminating insurance may compel the holding company to take affirmative action to correct violations in order to protect the insured institution. According to FDIC officials, there are no examples where FDIC has imposed this condition on a holding company as a condition of insurance.

[e]In addition to an enforcement action against the holding company of an ILC in certain circumstances (see footnote b), as part of prompt corrective action the FDIC may require any company having control over the ILC to (1) divest itself of the ILC if divestiture would improve the institution's financial condition and future prospects, or (2) divest a nonblank affiliate if the affiliate is in danger of becoming insolvent and poses a significant risk to the institution or is likely to cause a significant dissipation of the institution's assets or earnings. However, the FDIC generally may take such actions only if the ILC is already significantly undercapitalized.

SML has direct supervisory authority over the activities of a savings bank holding company. Under §97.006(a) and §79.44 each holding company and each subsidiary of a holding company is subject to examination as the Commissioner may require. Further, although the department may approve the creation of a state chartered holding company, that entity must seek additional approval from either the OTS or FRB to act as a bank holding company and submit to the regulatory oversight of one of these federal regulators. SML is comfortable with this level of oversight and has a longstanding working relationship with each of these federal regulators and does not recommend any structure with less regulatory oversight at either the bank or holding company level.

Having stated that no current or anticipated insured depository charter offered by the State of Texas would deviate from the consolidated supervisor model of regulatory oversight at the parent holding company level, then the only aspect of change or enhancement in seeking an alternative charter choice would be in the operations of the insured depository itself. To determine what additional powers and/or flexibility might be sought the Department conducted a comparative analysis of charter choices currently available in Texas as shown in Exhibit I.

This has led us to reach the same conclusion on any form of alternative charter that the General Accounting Office reached during its review of ILCs. ***"During our review, we did not identify any banking activities that were unique to ILCs that other insured depository institutions were not permitted to do."*** GAO report previously cited. With the automatic parity provisions contained in the Texas state savings bank charter there is sufficient flexibility to allow these charters to compete on a level playing field with any other charter.

EXHIBIT I

FINANCIAL INSTITUTION CHARTER COMPARISON

POWERS & REGULATORY ENVIRONMENT

Characteristic	Texas State Bank	National Bank	Texas Savings Bank	Texas S&L	Federal S&L
POWERS (General)	+General Banking-Broader than National Bank (Automatic parity provision) +TX Business Law Expands Corporate Authorities	Similar to State Banks (No automatic parity provision)	Same as Federal Savings Association, State S&L, and State or National Bank (Automatic parity provision)	Same as Federal Savings Association (Automatic parity provision) + Real estate development through subsidiary (with FDIC approval) or Holding Co.	Same as State S&L (No automatic parity provision) + Real estate development through subsidiary or Holding Co.
DISTINCTION (Positive)	+ Locally Oriented + Access to Regulator + Less Costly	+ National Regulation + Single Regulator	+ Locally Oriented + Accessible Regulator + Less Costly + SSB is a "Bank" under federal law	+ Locally Oriented + Accessible Regulator + Less Costly	+ Nationwide Regulation + Single Regulator
DISTINCTION (Negative)	- Multiple Regulators (State & Primary FRB, FDIC or FRB) - Varied Interstate Regulation	- National Orientation - Regulator Less Accessible - More Costly	- Multiple Regulators (State & Primary Federal - FDIC) - Varied Regulation Interstate	- Multiple Regulators (State & Federal - OTS & FDIC) - Varied Regulation Interstate	- National Orientation - Regulator Less Accessible - More Costly
REGULATOR	Banking Commissioner & FDIC or FRB	OCC	S&L Commissioner & FDIC or FRB	S&L Commissioner, OTS & FDIC	OTS Primary & FDIC Backup
MUTUAL FORM PERMITTED	No	No	Yes	Yes	Yes
FDIC INSURANCE SAIF v. BIF	Bank Insurance Fund (BIF)	Bank Insurance Fund (BIF)	BIF - New Charter SAIF - If Converting SAIF Institution	Savings Association Insurance Fund (SAIF)	Savings Association Insurance Fund (SAIF)
FRB MEMBERSHIP	Optional	Required	Optional	Not Eligible	Not Eligible
FHLB MEMBERSHIP	Optional	Optional	Optional	Optional	Required
ACTIVITIES	State Law May Exceed National Banks with Approval of FDIC	Federal Banking Law	State Law May Exceed National Banks with Approval of FDIC + Parity With Federal Savings Associations	State Law May Exceed National Banks with Approval of FDIC + Parity With Federal Savings Associations	Federal Thrift Law

INVESTMENTS

Characteristic	Texas State Bank	National Bank	Texas Savings Bank	Texas S&L	Federal S&L
Commercial Concentration Lending Guideline [Concentration of credit would be a concern]	100% of Tier 1 Capital in Loans to an Industry Group	100% of Tier 1 Capital in any Commercial Loan	40% of Assets in Non-Real Estate Commercial Loans; 100% RE Commercial Loans	10% of Assets in Non-Real Estate Commercial Loans; 100% RE Commercial Loans	20% of Assets in Non-Real Estate Commercial Loans (half in Small Business Loans); 100% RE Commercial Loans
Loans to One Borrower Limit	25% or 40%* of Capital & Certified Surplus (excluding ALLL + Undivided Profits) [*If statutory and regulatory exceptions apply.]	15% or 25%* of Capital & Surplus (including ALLL) [*If statutory and regulatory exceptions apply.]	Same as National Banks, parity with State Banks + Greater Federal Savings Association limits [At least $500,000]	Same as Federal Savings Association through parity provision	Greater of National Bank authority, or $500,000 + 30% of Capital and Surplus for loans to develop domestic residential housing units, with Director approval
Investment in Subsidiary Corporation (Service Corporation) and Financial Subsidiaries	+ 10% of Capital and Certified Surplus in a Service Corporation, and no more than the Bank's total equity capital in all Service Corporations. + Operating subsidiaries that engage in activities the Bank could engage in directly are not subject to this investment limitation.	+ 10% of Capital and Surplus in a Service Corporation, and no more than 5% of the Bank's total assets in all Service Corps. + Operating subsidiaries that engage in activities the Bank could engage in directly are not subject to this investment limitation.	+ 10% of total assets. + Operating subsidiaries that engage in activities the savings bank could engage in directly are not subject to this investment limitation.	+ 10% of total assets. + Operating subsidiaries that engage in activities the savings association could engage in directly are not subject to this investment limitation.	+ 2% of total assets, or 3% if the additional percent serves primarily community development, etc. + Operating subsidiaries that engage in activities the savings association could engage in directly are not subject to this investment limitation.
Service and Financial Subsidiary Corporation Activities & Investments Permitted	+ May engage in any activity that can be engaged in directly by a Bank or Bank Holding Company including securities underwriting.	+ May engage in any activity that can be engaged in directly by a Bank or Bank Holding Company including securities underwriting.	+ May engage in loan origination and servicing, real estate acquisition, development and investment, real estate brokerage, securities brokerage services on a riskless principal basis, and insurance brokerage. + Also, parity with federal savings associations, state and national banks.	+ May engage in loan origination and servicing, real estate acquisition, development and investment, real estate brokerage, securities brokerage services on a riskless principal basis, and insurance brokerage. + Also, parity with federal savings associations.	+ May engage in loan origination and servicing, services to financial institutions, real estate services, acquisition, improvement and maintenance of real estate, securities brokerage services on a riskless principal basis, and insurance brokerage.

Thriftness Test: HOLA (Home Owners Loan Act) - QTL (Qualified Thrift Lender) Test	Not Applicable	Not Applicable	Yes - **50% if no OTS Holding Company <u>or</u> 65%** of Assets as pursuant to 12 U.S.C. §1467a(m) (defined as Cash, U.S. Government or Agency Securities, or Real Estate Related Lending, **<u>plus</u>** Consumer, Credit Card, and Small Business Lending);	Yes - Same as Federal Savings Association	Yes - **65%** of Assets as pursuant to 12 U.S.C. §1467a(m) (defined as Cash, U.S. Government or Agency Securities, or Real Estate Related Lending, plus Consumer, Credit Card, and Small Business Lending)
<u>or</u> **IRS Test for Domestic Building and Loan**			**<u>or</u>** IRS Rule as defined under Federal S&L column. NOTE: Most community banks qualify without any change to their lending or investment portfolio.		<u>or</u> **60%** of Assets in IRS defined Qualified Assets of Cash, U.S. Government or Agency Securities, Premises or Real Estate Related Lending and Investments [26 U.S.C., (Chapter 79)§7701(a)(19) 1986 Internal Revenue Code]

The Bank Holding Company Act and Alternative Charters

The viability of an alternative financial charter must include consideration of the Bank Holding Company Act (codified at 12 U.S.C. §1841 et seq., and hereafter the "BHC Act"). Specifically, one of the fundamental attractions of certain charters, such as that of industrial loan corporations (ILCs) has been the historical exemption of these institutions from the Bank Holding Company Act.

Definitions and Fundamental Concepts of the BHC Act. Section 2(a) of the BHC Act defines a bank holding company as a company that owns or controls a bank (12 USC 1841(a)). Section 2(c) of the BHC Act defines a bank as an insured institution as defined in Section 3(h) of the Federal Deposit Insurance Act (12 USC 1813(a)) or as an institution which both accepts demand deposits and makes commercial loans.

Section 4 of the BHC Act (12 USC 1842(a)) provides that it is unlawful to become a bank holding company or for a company to acquire control of a bank without prior approval of the Federal Reserve Board ("FRB"). Thus, entities which seek to become a bank holding company must file an application with the FRB and are subject to FRB jurisdiction.

Perhaps the key to the issue of alternative charters and the BHC is found in Section 4 of the BHC Act (12 USC §1843(c)). This section restricts a company from conducting any business other than that of banking or activities which the FRB determines are closely related to banking. This recognizes the long established principle of separating the business of banking from that of general commerce and prohibits manufacturing and other non-financial companies from engaging in the business of banking.

The Industrial Loan Company Exception. The one historic exception to this wall of separation between commerce and banking has been the traditional exception for industrial loan companies. Prior to 1987, these entities were not "banks" as defined in the BHC Act, and therefore, a non-financial company could acquire and operate an industrial loan company.

In 1987, Congress amended both the BHC Act and the Federal Deposit Insurance Act. As amended an industrial loan company is specifically included in the definition of "bank" under FDIA Section 3(h). The result of this amendment is that any company which owns an industrial loan company is now considered a bank holding company subject to FRB oversight and, as a consequence, non-financial companies may not acquire or operate an industrial loan company. However, there is an important exception to this general provision. Section 2(h) of the BHC Act (12 USC §1841(c)(2)(H)) excepts from the Bank Holding Company certain industrial loan companies chartered in certain states which had statutes to grant charters to ILCs prior to March 5, 1987. Although a number of states provided for ILCs prior to this magic date, today two states remain popular havens for companies that desire to acquire or to charter ILCs which are prohibited from becoming or which do not wish to become a bank holding company, and therefore subject to FRB oversight. Those states are Nevada and Utah.

Texas Alternative Charter Choices and the BHC Act. As a result of this analysis, it is clear that any alternative charter for a depository institution in Texas would be a "bank" for purposes of the BHC Act. Therefore, any such entity owning or controlling such a charter would be required to

become a bank holding company. Since a bank holding company may not engage in non-financial related businesses, any Texas charter would be subject to the traditional separation of commerce and banking functions.

Conclusions and Recommendations

Texas, in crafting the State Savings Bank (SSB) charter, considered similar charters in other states and elements of financial modernization. Texas stakeholders and agency staff collaborated in the structuring of the SSB resulting in the creation of a very flexible charter which retains necessary elements of safety and soundness issues.

The ILC charter, in those states that offer it, has attracted many "non-bank" principals. This has been, and continues to be, a very contentious issue in the banking industry which strongly opposes mixing commerce with banking. As thrift regulators, the SML agrees with that concern. Although the FDIC and other states' regulators seem to have adequate oversight and control of these "non-bank" ILC operators, there exists the possibility of opening Texas' doors to future changes and legislative evolution that may allow such non-bank operations to charter an ILC if such a charter were offered. Therefore, we recommend against such offerings. Furthermore, it is recommended that Texas continue to market its SSB charter, extolling the flexibility and attractive elements therein.

ADDENDUM

INDEPENDENT BANKERS
ASSOCIATION OF TEXAS

1700 RIO GRANDE STREET
SUITE 100
AUSTIN, TEXAS 78701
P: 512.474.6889
F: 512.322.9004
WWW.IBAT.ORG

JAMES D. LINDSEY
IBAT CHAIRMAN
JLINDSEY@FIRSTSTATEBANK.COM
FIRST STATE BANK, MESQUITE

AL JONES
IBAT CHAIRMAN-ELECT
ABJONES@AMERICANBANK.COM
AMERICAN BANK, CORPUS CHRISTI

CLIFF McCAULEY
IBAT VICE CHAIRMAN
CMCCAULEY@FROSTBANK.COM
FROST NATIONAL BANK,
SAN ANTONIO

MILTON McGEE
IBAT SECRETARY/TREASURER
MMCGEE@CNBTEXAS.COM
CITIZENS NATIONAL BANK,
HENDERSON

RILEY C. PEVETO
IBAT IMMEDIATE PAST CHAIRMAN
RPEVETO@GNBTX.COM
GNB FINANCIAL, N.A.,
FORT WORTH

CHRISTOPHER L. WILLISTON, CAE
PRESIDENT & CEO
CWILLISTON@IBAT.ORG

STEPHEN Y. SCURLOCK
EXECUTIVE VICE PRESIDENT
SSCURLOCK@IBAT.ORG

KAREN M. NEELEY
GENERAL COUNSEL
KNEELEY@IBAT.ORG

MARY E. LANGE, CAE
SENIOR VICE PRESIDENT
MLANGE@IBAT.ORG

JANE HOLSTIEN
SENIOR VICE PRESIDENT
JHOLSTIEN@IBAT.ORG

URSULA L. JIMENEZ
SENIOR VICE PRESIDENT
UJIMENEZ@IBAT.ORG

CURT NELSON
SENIOR VICE PRESIDENT
CNELSON@IBAT.ORG

April 14, 2006

The Honorable Danny Payne
Commissioner
Texas Department of Savings and Mortgage Lending
2601 North Lamar Blvd.
Austin, TX 78705

RE: ILC Charters in Texas

Dear Commissioner Payne:

At your request, we are pleased to submit our comments relative to the exploration of creating an alternative charter in Texas similar to the existing Industrial Loan Company (ILC) charter in existence in several states.

The Independent Bankers Association of Texas has had a long and steadfast opposition to the blending of banking and commerce. One of the features of an ILC is the ability of commercial firms to breach this wall, if even for a limited purpose.

This issue is manifesting itself in the current debate regarding Wal-Mart's attempt to get into the banking business through the ILC loophole. Our comment letter on this troublesome application is attached.

We are unable, at this time, to imagine a circumstance where the objectives of a legitimate business plan could not be met with the charter options available at either the state or federal level. Additionally, we have observed the evolution of various charters over the years to react to changes in consumer demand, technology, regulatory fiat, legislative mandate and/or economic influences. While seemingly innocuous, a limited purpose charter *a la* the ILC has the potential to become something much more insidious over time.

Unless there is compelling evidence to the contrary, we would be very much opposed to any legislative initiative to introduce a limited purpose charter in Texas. Indeed, we are presently exploring legislative options to prohibit ILC entities from branching into Texas.

Thank you for the opportunity to comment, and for the excellent work you and your agency do for the industry and the citizens of Texas.

Sincerely,

Christopher L. Williston, CAE
President and CEO

Attachment

INDEPENDENT BANKERS
ASSOCIATION OF TEXAS

1700 RIO GRANDE STREET
SUITE 100
AUSTIN, TEXAS 78701
P: 512.474.6889
F: 512.322.9004
WWW.IBAT.ORG

JAMES D. LINDSEY
IBAT CHAIRMAN
JLINDSEY@FIRSTSTATEBANK.COM
FIRST STATE BANK, MESQUITE

AL JONES
IBAT CHAIRMAN-ELECT
ABJONES@AMERICANBANK.COM
AMERICAN BANK, CORPUS CHRISTI

CLIFF MCCAULEY
IBAT VICE CHAIRMAN
CMCCAULEY@FROSTBANK.COM
FROST NATIONAL BANK,
SAN ANTONIO

MILTON MCGEE
IBAT SECRETARY/TREASURER
MMCGEE@CNBTEXAS.COM
CITIZENS NATIONAL BANK,
HENDERSON

RILEY C. PEVETO
IBAT IMMEDIATE PAST CHAIRMAN
RPEVETO@GNBTX.COM
GNB FINANCIAL, N.A.,
FORT WORTH

CHRISTOPHER L. WILLISTON, CAE
PRESIDENT & CEO
CWILLISTON@IBAT.ORG

STEPHEN Y. SCURLOCK
EXECUTIVE VICE PRESIDENT
SSCURLOCK@IBAT.ORG

KAREN M. NEELEY
GENERAL COUNSEL
KNEELEY@IBAT.ORG

MARY E. LANGE, CAE
SENIOR VICE PRESIDENT
MLANGE@IBAT.ORG

JANE HOLSTIEN
SENIOR VICE PRESIDENT
JHOLSTIEN@IBAT.ORG

URSULA L. JIMENEZ
SENIOR VICE PRESIDENT
UJIMENEZ@IBAT.ORG

CURT NELSON
SENIOR VICE PRESIDENT
CNELSON@IBAT.ORG

March 22, 2006

Mr. John F. Carter
Regional Director
Federal Deposit Insurance Corporation
25 Jessie Street at Ecker Square, Suite 2300
San Francisco, CA 95105

RE: Comments Regarding FDIC Application #20051977; Wal-Mart Application for Insurance and Industrial Bank Charter

Dear John:

As you are aware, one of the longstanding "line in the sand" issues with the Independent Bankers Association of Texas is the separation of banking and commerce. Additionally, you are aware that a majority of our member banks have offices in rural areas – many of which have been negatively impacted and forever changed by the appearance of a Wal-Mart store in their respective communities. As such, you will not be surprised to know that we are adamantly and unconditionally opposed to the Wal-Mart application to enter the banking business with the benefit of federal deposit insurance.

After a cursory perusal of the surprisingly large number of comment letters opposing this application, I have chosen to concentrate on a few key points, although we are concerned generally with the ILC charter and the inconsistent regulatory treatment thereof.

Community banks continue to operate in a highly competitive environment, with many of its primary competitors enjoying economies of scope and scale, and even outright favorable treatment regarding regulatory oversight and taxation. The trends toward consolidation of the banking and financial services industry are clear, and in our assessment, quite disturbing. It is our opinion that this seemingly small step into the breakdown of the wall between banking and commerce will only accelerate this trend, and provide fewer and less flexible choices for the American consumer.

We operate in a dynamic industry. The only constant is the expectation and realization of change. The ILC charter, just like the credit union charter and the savings and loan charter in the 1980's, continues to evolve. We have serious reservations regarding the stated future intentions of Wal-Mart, and feel strongly that the temptation to enter a full range of banking products and services will be something that they will not be able to resist. That notwithstanding, control of the payments system, or even a substantial portion thereof, by the world's largest retailer should send a chill down every rational person's spine.

INDEPENDENT BANKERS
ASSOCIATION OF TEXAS

1700 RIO GRANDE STREET
SUITE 100
AUSTIN, TEXAS 78701
P: 512.474.6889
F: 512.322.9004
WWW.IBAT.ORG

JAMES D. LINDSEY
IBAT CHAIRMAN
JLINDSEY@FIRSTSTATEBANK.COM
FIRST STATE BANK, MESQUITE

AL JONES
IBAT CHAIRMAN-ELECT
ABJONES@AMERICANBANK.COM
AMERICAN BANK, CORPUS CHRISTI

CLIFF MCCAULEY
IBAT VICE CHAIRMAN
CMCCAULEY@FROSTBANK.COM
FROST NATIONAL BANK,
SAN ANTONIO

MILTON MCGEE
IBAT SECRETARY/TREASURER
MMCGEE@CNBTEXAS.COM
CITIZENS NATIONAL BANK,
HENDERSON

RILEY C. PEVETO
IBAT IMMEDIATE PAST CHAIRMAN
RPEVETO@GNBTX.COM
GNB FINANCIAL, N.A.,
FORT WORTH

CHRISTOPHER L. WILLISTON, CAE
PRESIDENT & CEO
CWILLISTON@IBAT.ORG

STEPHEN Y. SCURLOCK
EXECUTIVE VICE PRESIDENT
SSCURLOCK@IBAT.ORG

KAREN M. NEELEY
GENERAL COUNSEL
KNEELEY@IBAT.ORG

MARY E. LANGE, CAE
SENIOR VICE PRESIDENT
MLANGE@IBAT.ORG

JANE HOLSTIEN
SENIOR VICE PRESIDENT
JHOLSTIEN@IBAT.ORG

URSULA L. JIMENEZ
SENIOR VICE PRESIDENT
UJIMENEZ@IBAT.ORG

CURT NELSON
SENIOR VICE PRESIDENT
CNELSON@IBAT.ORG

While our concerns are clearly centered around the potentially cataclysmic impact on the community banking industry, we also have grave concerns about the availability of credit to small businesses in rural areas. Imagine if you will a "Wal-Mart" bank, having purchased or "priced out of business" the only other bank in a small town. If indeed a small grocery store, hardware store, clothing boutique, auto repair/tire store or other small business is still surviving and in need of banking services, their only local alternative could well be their primary competitor – Wal-Mart. How uncomfortable and indeed ludicrous would it be to ask these small business borrowers to provide the last three years of income tax returns, personal and business financial statements, inventory and receivable reports, business plans, etc. to their primary competitor? And how likely would it be for that competitor to make an unbiased decision based upon the highest and best use of capital?

Our financial system is the envy of the world, and one of key – although shrinking as a percentage of the whole – components is a vibrant and adaptive community banking industry. We firmly believe that if Wal-Mart's application to enter the banking business is approved, history will prove that such was an ill-advised decision that started a dramatic change in our economic infrastructure – and not at all for the better.

As always, we appreciate you considering our comments and opinions, and are grateful for the FDIC's willingness to seriously contemplate the significant and long-lasting implications of this troubling application.

Sincerely,

Christopher L. Williston, CAE
President and CEO