October 11, 2024

James P. Sheesley, Assistant Executive Secretary
Attention: Comments—RIN 3064-AF88
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Parent Companies of Industrial Banks and Industrial Loan Companies; RIN: 3064-AF88; Document Number: 2024-17637; 89 FR 65556 (Aug. 12, 2024)

Dear Mr. Sheesley:

Better Markets[1] appreciates the opportunity to comment on the proposed rule ("Proposal")[2] from the Federal Deposit Insurance Corporation ("FDIC" or "Agency") that would amend the existing regulations governing industrial loan companies ("industrial banks"), which have been in effect since April 1, 2021.[3]

Nearly 70 years ago, with the Bank Holding Company Act ("BHCA") of 1956,[4] Congress affirmed the importance of separating banking and commerce. The BHCA generally prohibits a bank holding company from (a) acquiring ownership or control of any company that is not a bank, or (b) engaging in any activity other than banking or managing or controlling banks and related financial subsidiaries. Congress imposed essentially the same limitations on savings and loan holding companies in the Home Owners Loan Act ("HOLA").[5] The FDIC's supervision of industrial banks is conducted in the context of a statutory exception that allows commercial enterprises, in certain circumstances, to own and control federally insured banking institutions.

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Parent Companies of Industrial Banks and Industrial Loan Companies; RIN: 3064-AF88; Document Number: 2024-17637; 89 FED. REG. 65556 (Aug. 12, 2024), https://www.federalregister.gov/documents/2024/08/12/2024-17637/parent-companies-of-industrial-banks-and-industrial-loan-companies.

3 Parent Companies of Industrial Banks and Industrial Loan Companies; RIN: 3064-AF31; Document Number: 2020-28473; 86 FED. REG. 10703 (Feb. 23, 2021), https://www.federalregister.gov/documents/2021/02/23/2020-28473/parent-companies-of-industrial-banks-and-industrial-loan-companies.

4 12 U.S.C. § 1843(a)(l), (2).

5 12 U.S.C. § 1467a(c)(2)(H); *see also* 12 U.S.C. § 1467(a)(c)(l) (prohibiting savings and loan holding companies and subsidiaries from commencing or continuing "any business activity," subject to exceptions).

In 2020, Better Markets opposed[6] the proposal that eventually resulted in the industrial bank regulation framework that was implemented in 2021. This framework disproportionately benefits a small subset of commercial companies, fosters unfair competition, and brings the potential for significant harm to Main Street Americans, taxpayers, and financial stability.[7] Moreover, the parents and affiliates of industrial banks are not subject to FDIC, which could increase instability risks because these entities may have to serve as a source of strength for the industrial bank.

In this Proposal, the FDIC also recognizes the risks of industrial banks. Specifically, the FDIC cites experience and examples that underscore the serious challenges that result from industrial banks:

> The FDIC's experience during the 2008-2009 Financial Crisis showed that business models involving an insured depository institution (IDI) inextricably tied to and reliant on the parent and/or its affiliates ***creates significant challenges and risks to the DIF***, especially in circumstances where the parent organization experiences financial stress and/or declares bankruptcy. ***Where an industrial bank is significantly reliant on and interconnected with its parent organization to generate business on both sides of the balance sheet (e.g., for funding and for lending), as well as operational systems and support, financial difficulties at the parent organization could be transmitted to the dependent industrial bank.*** Such a captive model creates ***material concerns about the viability of the industrial bank's proposed business model on a standalone basis and the industrial bank's franchise value*** in the event the parent organization experiences financial difficulty or failure.[8]

Furthermore, the FDIC explains how the industrial bank business model causes problems and increases costs in the resolution process:

> In some industrial bank proposals that the FDIC has received, the viability and operations of the bank are dependent on ongoing support from the parent organization. In such cases, ***financial or operational stress at the parent company or any of its affiliates reduces the franchise value of the industrial bank in the event of failure and complicates its resolution***. The underlying value of such an industrial bank lies in its connection with the parent organization, which may provide benefits including, but not limited to, name recognition, clients or referrals,

6 Better Markets Comment Letter, *Notice of Proposed Rulemaking with Request for Public Comment, Parent Companies of Industrial Banks and Industrial Loan Companies* (July 1, 2020), https://bettermarkets.org/wp-content/uploads/2021/07/Better_Markets_Comment_Letter_on_Parent_Companies_of_Industrial_Banks_and_Industrial_Loan_Companies-RIN_3064%E2%80%93AF31.pdf.

7 Press Release, Better Markets, *FDIC Gives Early Holiday Gift to Banks with Approval of Rules on ILCs and Brokered Deposits* (Dec. 15, 2020), https://bettermarkets.org/newsroom/fdic-gives-early-holiday-gift-banks-approval-rules-ilcs-and-brokered-deposits/.

8 Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 2 at 65561 (emphasis added).

> personnel and back-office support, and/or specific product offerings that complement the parent company's or affiliates' lines of business. ***If such connections were to be severed, the FDIC likely would find it more difficult to facilitate a resolution with a healthy bank, and it likely would be forced to employ less efficient resolution methods that are more lengthy, cumbersome, and costly,*** such as depositor payouts and piecemeal loan (or other asset) sales.
>
> Similarly, the loss of critical support services previously provided to the industrial bank by its parent organization or affiliates would pose a potentially significant challenge in a resolution scenario, as the parent or affiliated entities may no longer be able to fulfill their obligations under existing service agreements. . . . If such arrangements are terminated, the industrial bank's franchise value would be significantly diminished. ***This situation could leave the FDIC in a position where it has no choice but to conduct resolution methods that are more disruptive and expensive.***[9]

We broadly agree with the FDIC's recognition of industrial bank risks and recommend that the FDIC reconsider its Proposal before finalizing it, to protect the financial system and Main Street Americans from the risks, instability, and costs of industrial banks. Stronger and more comprehensive action is needed to address the risks posed by the statutory loophole that allows commercial firms to own industrial banks. Moreover, the FDIC should apply the same standards to all industrial banks, not just new applications. There should also be much more transparency provided to banks and the public regarding specific metrics and benchmarks that the FDIC will use to identify risky industrial banks. Finally, public hearings should be employed in all cases before approval of an industrial bank application, to ensure that the public has the opportunity for input, particularly related to convenience and needs of the community.

The bottom line is that the American people deserve a more forceful and comprehensive set of actions by the FDIC to protect the US financial system and the American public. This Proposal takes important steps in the right direction toward the identification of industrial bank risks and stronger oversight of them, but the FDIC needs to strengthen this proposal and then follow through to fully protect the public and the financial system.

BACKGROUND

Industrial banks began in the early 1900s as small, state-chartered loan companies. Early industrial banks made small loans to factory workers and others with low or moderate incomes.[10] However, industrial banks have changed materially since their humble beginnings.

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[9] *Id*. at 65563-64 (emphasis added).

[10] Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 3 at 10704.

In 2024, the 24 industrial banks in operation account for less than 1% of the total count of FDIC-supervised banks[11] but together hold more than $230 billion in total assets and account for more than 5% of total assets at FDIC-supervised banks.[12] The largest industrial bank—UBS Bank USA—had nearly $110 billion in total assets as of June 23, 2024,[13] making it about the same size as the failed Signature Bank which required a systemic risk exception to protect the financial system in March 2023.[14] UBS Bank USA describes itself as "dedicated to serving the deposit and borrowing needs of affluent and high net worth investors".[15] Other industrial banks support a variety of corporate giants, including auto companies BMW and Toyota, fintech company Square, and office supply and shipping company Pitney Bowes.[16]

Industrial banks exercise many of the same commercial and consumer lending powers today as commercial banks.[17] Moreover, they have experienced tremendous growth in complexity, variety, and size.[18]

In part, this growth stems from Congress creating a carve-out for industrial banks in 1987 with amendments to the BHCA, known as the Competitive Equality Banking Act ("CERA"), which expanded the definition of a "bank" so that the law would apply more broadly and to a wider variety of financial institutions. Industrial banks were exempted from the "bank" definition and from the general prohibition against the acquisition of banks by enterprises that fall outside the bank holding company framework. It thus made it easier for commercial companies to own and control federally insured banks.

The 1987 statutory exemption was misguided and unwise, to say the least. Allowing industrial banks to be acquired by commercial enterprises raises the same long list of underlying concerns that animated the general prohibition against the mix of commerce and banking in the BHCA of 1956:

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11 Federal Deposit Insurance Corporation, *Statistics at a Glance* (June 30, 2024), https://www.fdic.gov/system/files/2024-08/fdic-2q2024.pdf.

12 Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 2 at 65564.

13 FEDERAL DEPOSIT INSURANCE CORPORATION, BANK FIND SUITE: UBS BANK USA – FINANCIAL AND REGULATORY REPORTING – FDIC CERT# 57565, https://banks.data.fdic.gov/bankfindsuite/FinancialReporting/details/57565 (last accessed Sept. 27, 2024).

14 *See, e.g.*, Press Release, Federal Deposit Insurance Corporation, *FDIC Establishes Signature Bridge Bank, N.A., as Successor to Signature Bank, New York, NY* (Mar. 12, 2023), https://www.fdic.gov/news/press-releases/2023/pr23018.html.

15 UBS BANK USA, ABOUT US, https://www.ubs.com/us/en/wealth-management/who-we-serve/individuals-and-families/banking/ubs-bank-usa.html (last accessed Sept. 27, 2024).

16 NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, INDUSTRIAL BANK MEMBERS, https://www.industrialbankers.org/about (last accessed Sept. 27, 2024).

17 *See, e.g.*, Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 3 at 10704.

18 *See* Michelle Clark Neely, *Industrial Loan Companies Come Out of the Shadows,* Federal Reserve Bank of St. Louis, 1-2 (July 1, 2007), https://www.stlouisfed.org/publications/regional-economist/july-2007/industrial-loan-companies-come-out-of-the-shadows.

- They pose unique and unmanageable challenges for bank supervisors, who are ill- equipped in terms of resources and expertise to oversee business models that incorporate a wide range of industries far afield from banking and finance;

- They increase the risk of instability in the banks as well as their parent companies, and in the case of industrial banks that are part of large conglomerates, they can undermine the stability of the broader financial system;

- They present undue risk to the FDIC's Deposit Insurance Fund ("DIF") and the other components of the taxpayer-funded federal safety net;

- They can foster unfair and imprudent lending practices fueled by conflicts of interest; and,

- They are likely to embody concentrations of economic power that can lead to unfair competition.[19]

Indeed, the recent history of industrial banks is replete with concerns about the large and material risks that these institutions pose to Main Street Americans and the financial system. As Better Markets detailed in its response to the 2020 proposal,[20] the FDIC and Congress recognized the serious risks of industrial banks and imposed a series of moratoria on the industrial bank business model. Deep-seated opposition to these conglomerations was starkly revealed in 2005 when WalMart Bank applied to the FDIC for deposit insurance. The application triggered the submission of over 13,800 comment letters. The majority of those commenters opposed the application, particularly citing the heightened risks to the DIF by industrial banks owned by parent companies that are not subject to federal consolidated supervision.[21]

In 2010, the Dodd-Frank Act imposed new requirements, including a provision requiring any company that directly or indirectly controls an insured depository institution and falls outside the bank holding company framework to serve as a source of "financial strength" for that institution.[22] It also gave the appropriate federal banking agency the explicit statutory authority to require reports from the controlling company to ensure compliance with the "financial strength" mandate. However, having this authority does not equate with having the capacity to make meaningful assessments of non-financial companies and take action if there is a problem. Moreover, the Dodd-Frank Act imposed a fresh three-year moratorium on FDIC approval of any

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19 *See, e.g.*, Arthur E. Wilmarth, Jr. Comment Letter, *FDIC Docket RIN 3064-AF31 – Notice of proposed rulemaking: "Parent Companies of Industrial Banks and Industrial Loan Companies,"* (Apr. 10, 2020), https://www.fdic.gov/system/files/2024-07/2020-parent-companies-of-industrial-banks-3064-af31-c-002.pdf; Neely, *supra* note 18; Arthur E. Wilmarth, Jr., *Wal-Mart and the Separation of Banking and Commerce*, 39 CONN. L. REV. 1539 (May 2007), https://www.law.gwu.edu/sites/g/files/zaxdzs5421/files/downloads/AEW_Wal-Mart%20and%20Separation%20of%20Banking%20and%20Commerce%20SSRN.pdf.

20 Better Markets Comment Letter, *supra* note 6 at 4-8.

21 Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 3 at 10704.

22 Dodd-Frank Act, §§ 38.A.

deposit insurance applications for industrial banks that are owned or controlled by commercial firms.[23]

The Dodd-Frank Act also required the General Accounting Office ("GAO") to study the implications of removing all exemptions from the definition of "bank" in the BHCA, including the exemption in favor of industrial banks.[24] The GAO's resulting report validated several concerns surrounding the ownership of industrial banks outside the consolidated supervision framework. Most notably, the report set forth the Federal Reserve Board's emphatic view that the exemptions from the "bank" definition should be removed and that the holding companies of ***all*** federally insured depository institutions should be subject to consolidated supervision under the BHCA.[25] The GAO report also noted that Federal Reserve Board and Treasury officials are concerned that if the exemptions were to remain intact, companies owning exempted banks might grow large enough in the future to pose significant risks to the U.S. financial system.[26]

Finally, the loss rates for industrial banks that fail are much higher—nearly double the rate for other banks. One study showed that between 1986 and 2017, the loss rate—cost to the DIF relative to the total assets of the failed bank—for the 23 industrial banks that failed was nearly 25%, compared to the loss rate of only 13% for other banks.[27] ***This demonstrates that industrial banks present more risk to the DIF and taxpayers than traditional banks***, and should therefore be supervised more strictly and prudently, not be given additional leniency.

SUMMARY OF THE PROPOSAL

With this Proposal, the FDIC is making changes in three areas of the prior rule, implemented in April 2021.

The first group includes technical changes that would alter the definition of "covered companies," which are subject to supervision as an industrial bank outlined in Part 354[28] of the FDIC Rules and Regulations, including:

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23 Dodd-Frank Act, §§ 601 *et seq*.

24 Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 3 at 10706.

25 GOVERNMENT ACCOUNTABILITY OFFICE, BANK HOLDING COMPANY ACT: CHARACTERISTICS AND REGULATION OF EXEMPT INSTITUTIONS AND THE IMPLICATIONS OF REMOVING THE EXEMPTIONS 31 (Jan. 2012), https://www.gao.gov/assets/gao-12-160.pdf.

26 *Id*.

27 James R. Barth & Yanfei Sun, *A New Look at the Performance of Industrial Loan Corporations*, THE UNIVERSITY OF UTAH DAVID ECCLES SCHOOL OF BUSINESS: UTAH CENTER FOR FINANCIAL SERVICES, at 31 (Jan. 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3197316.

28 12 U.S.C. § 354.

- Include federal savings banks that convert to industrial banks, under section 5(i)(5) of the HOLA, as covered companies. This would codify the FDIC's current approach to such conversions and provide transparency to banks and the public.

- Include as covered companies any companies that control an industrial bank on or after it becomes subject to FDIC supervision. In the 2021 rule, there was an unintended gap that did not capture changes in control above the parent company of the industrial bank if there was not also a "trigger event" that affected the industrial bank. Consequently, parent companies of industrial banks could evade FDIC supervision.

The second relates to the relationship between written commitments made among covered companies, industrial banks, and the FDIC and the FDIC's evaluation of statutory factors. With this change, the FDIC is making clear that written agreements are used to provide transparency for covered companies, industrial banks, and the public on commitments or restrictions that are deemed appropriate. These do not take the place of statutory factors with which industrial banks must comply.[29]

The third relates to the FDIC's concerns about shell or captive industrial bank business models, including:

- Supervisory Concerns: substantial reliance on a parent company or affiliate makes an industrial bank more vulnerable to financial distress or operational disruptions at the parent.[30]

- Convenience and Needs Concerns: the nature of an industrial bank, which is highly dependent on the parent company and its customers, conflicts with the public purpose of a bank charter with deposit insurance that exists to serve the convenience and needs of the community broadly. Industrial banks that serve a niche market or only consumers that purchase a specific product sold by the parent company raise serious questions about the social benefit of an industrial bank.[31]

- Resolution Concerns: for industrial banks, a resolution in the event of failure would be difficult, lengthy, or more costly because there is a greater chance that the industrial bank will have limited franchise value which could cause the FDIC to have to establish a bridge bank or employ a payout.[32]

Finally, the FDIC recognizes that several of the ***existing*** industrial banks exhibit high levels of reliance on a parent company and provide banking services to a narrow set of consumers. Given this, the Proposal states that shell or captive characteristics observed in applications for new

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29 12 U.S.C. § 1816.

30 Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 2 at 65561.

31 *Id*. at 65562.

32 *Id*. at 65563.

industrial banks will "weigh heavily against favorably resolving one or more of the statutory factors" required for approval of the application and may result in not approving the bank application. At the same time, however, the FDIC downplays and justifies the risk of shell or captive industrial banks that are already in operation by saying that there is a small number of industrial banks in operation and they are ***currently*** in satisfactory financial condition.

SUMMARY OF COMMENTS

As stated earlier, we are encouraged by the FDIC's recognition of the clear and serious risks that industrial banks bring to the financial system. In the Proposal, the FDIC details how industrial banks inherently create elevated and serious supervisory concerns, have convenience and needs deficiencies, and cause resolution risks.

However, it is unacceptable that the FDIC only appears to be willing to consider these risks for applications for ***new*** industrial banks. Just because in the past something was not well understood by bank supervisors does not mean it is OK to continue with a dangerous practice once the elevated risks it creates are known. This is the equivalent of allowing drivers who are now known to be dangerous and a threat to the public to continue to drive on the roads because they have an existing license, or allowing medications that are now known to be harmful to continue to be prescribed simply because they were once thought to be effective.

Given this, we urge the FDIC to reconsider its Proposal before finalizing it, to protect the financial system and Main Street Americans from the risks, instability, and cost of industrial banks:

- Fully close the loophole that permits ownership of industrial banks by commercial firms. The FDIC should impose a new moratorium on industrial bank applications and urge Congress to close the statutory loophole exempting industrial banks and their parent companies from the supervisory framework that is normally applicable to bank holding companies. That supervisory framework is ill-equipped to adequately supervise commercial firms.

- Apply the risk considerations for shell or captive companies to all industrial banks—including those that are open and operating as well as those that apply to the FDIC for approval to open. The fact that the FDIC is unwilling to apply the same standards to existing industrial banks that it proposes for new banks does not make sense. Moreover, the fact that existing industrial banks are currently in satisfactory financial condition does not insulate them forever from the known problems that may stem from shell or captive characteristics and vulnerabilities.

- Provide the specific metrics or benchmarks that the FDIC plans to use to measure the degree to which an industrial bank exhibits shell or captive characteristics. The Proposal explains that the FDIC intends to increase transparency with these risk considerations, but it does not clearly define phrases and concepts such as "significantly reliant on or interconnected with" to measure potential funding or lending stress. While

we appreciate that industrial banks and business models can be unique, it is a disservice to the public and the banks to not provide more clarity around these metrics.

- Commit to holding a public hearing to gather input related to the convenience and needs of the community for every industrial bank application. The FDIC has rightly identified the challenges that industrial banks inherently face in meeting the convenience and needs of the community. It has also correctly stated that the benefits of an industrial bank may accrue to the parent company rather than the community. These observations point to the need for a comprehensive assessment of this factor and the potential negative consequences of approval for ***every*** potential new industrial bank.

COMMENTS

I. FULLY CLOSE THE LOOPHOLE THAT PERMITS OWNERSHIP OF INDUSTRIAL BANKS BY COMMERCIAL FIRMS.

The FDIC should impose a new moratorium on industrial bank applications and urge Congress to close the statutory loophole exempting industrial banks and their parent companies from the supervisory framework that is normally applicable to bank holding companies. That supervisory framework is ill-equipped to adequately supervise commercial firms In the Proposal, the FDIC recognizes the growth among industrial banks:

> There has been continuing interest in the establishment of industrial banks, particularly with regard to proposed institutions that plan to implement specialty or limited purpose business models, including those where the operations of the proposed industrial bank would be interconnected with, or reliant on, the operations of the parent company or its affiliates.[33]

Moreover, industrial bank ownership structures and business models have evolved and increased in complexity. As the GAO report explained, industrial banks experienced significant asset growth during the 2000s and changed from a class of limited purpose banks to a diverse group of insured institutions with a variety of business lines.[34]

Risks stemming from such a structure can include both direct financial risks and risks that are difficult to identify, quantify, and control, such as the effect on the industrial bank if the commercial parent or affiliates were to come under serious financial or reputational distress. ***At the end of the day, the regulatory framework for these institutions is primarily benefitting the handful of commercial enterprises that are affiliated with industrial banks, not Main Street Americans.***

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[33] Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 2 at 65557.

[34] GOVERNMENT ACCOUNTABILITY OFFICE, *supra* note 25 at 79.

II. APPLY THE RISK CONSIDERATIONS FOR SHELL OR CAPTIVE COMPANIES TO ALL INDUSTRIAL BANKS—INCLUDING THOSE THAT ARE OPEN AND OPERATING AS WELL AS THOSE THAT APPLY TO THE FDIC FOR APPROVAL TO OPEN.

The FDIC provides substantial detail in the Proposal regarding the supervisory, convenience and needs, and resolution risks that exist for industrial banks. Additionally, FDIC Chairman Gruenberg and Agency staff emphasize the serious risks that relate to the fact that shell or captive companies (1) could not function independently from the parent, (2) are substantially reliant on the parent company or its affiliates, or (3) serve only as a funding channel for an existing corporate entity or affiliate business line.[35]

In the Proposal, the FDIC provides several reasons why existing industrial banks should be exempted from the stronger oversight of new industrial banks. We do not think these stated reasons adequately remove the known risks of industrial banks.

- The FDIC states that the current group of industrial banks is small, but at the same time states:

> Some of the existing industrial banks ***rely to a significant extent on their parent companies or affiliates*** for business generation, operational aspects, and/or a variety of corporate support services.[36]

- The FDIC states that existing industrial banks are currently in satisfactory condition, but this does not mean that this condition will continue into the future, or that unforeseen risks can be ruled out. As stated in the backward-looking analysis:

> [Existing industrial banks] typically maintain adequate capital, have sufficient liquidity, and reflect satisfactory overall risk profiles. For the most part, the existing industrial banks are seasoned in nature (all but two were established between 1984 and 2006), and fared similarly to other types of financial institutions during previous banking crises.[37]

[35] *See, e.g.*, Federal Deposit Insurance Corporation, *Statement of Martin J. Gruenberg, Chairman FDIC Board of Directors Notice of Proposed Rulemaking to Amend Part 354 of the FDIC Rules and Regulations* (July 30, 2024), https://www.fdic.gov/news/speeches/2024/statement-martin-j-gruenberg-chairman-fdic-board-directors-notice-proposed; Federal Deposit Insurance Corporation, *Memorandum to the Board of Directors: Proposed Rule to Amend Part 354, Parent Companies of Industrial Banks and Industrial Loan Companies* 7 (July 30, 2024), https://www.fdic.gov/system/files/2024-07/bc-proposed-rule-on-parent-companies-of-industrial-banks-and-industrial-loan-companies-073024.pdf.

[36] Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 2 at 65562.

[37] *Id*.

- The FDIC notes that written agreements are in place related to some of the industrial banks to bolster their resilience,[38] but these may not protect against unknown or unanticipated challenges in the future.

In short, the FDIC should simply apply the same standards to existing industrial banks that it proposes for new industrial banks.

III. PROVIDE THE SPECIFIC METRICS OR BENCHMARKS THAT THE FDIC PLANS TO USE TO MEASURE THE DEGREE TO WHICH AN INDUSTRIAL BANK EXHIBITS SHELL OR CAPTIVE CHARACTERISTICS.

The Proposal explains that the FDIC intends to increase transparency with these risk considerations, but it does not clearly define concepts such as "significantly reliant on or interconnected with" to measure potential funding or lending stress. While we appreciate that industrial banks and business models can be unique, it is a disservice to the public and the industrial banks to not provide more clarity around these metrics.

This lack of information exposes the public to significant risk if an industrial bank application is approved and then subsequently fails because one or more of the factors were given too much leniency. The lack of transparency around metrics also exposes the FDIC to increased risk if unequal criteria are used to approve or deny applications.

One example to illustrate the usefulness of specific metrics is the interagency guidance that was developed to provide clarity and transparency related to commercial real estate lending concentrations.[39] While not perfect, the guidance provides benchmarks to define concentration levels at which regulators will apply greater scrutiny to commercial real estate lending activity. With industrial banks, however, no metrics are provided and the FDIC simply states that all industrial banks are unique and the facts and circumstances around each are different.[40] This statement is not helpful for the industrial banks, the FDIC, or the public.

IV. COMMIT TO HOLD A PUBLIC HEARING TO GATHER INPUT RELATED TO THE CONVENIENCE AND NEEDS OF THE COMMUNITY FOR EVERY INDUSTRIAL BANK APPLICATION.

The FDIC has rightly identified the challenges that industrial banks inherently face in meeting the convenience and needs of the community. It has also correctly stated that the benefits of an industrial bank may accrue to the parent company rather than the community. These

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[38] *Id*.

[39] Federal Deposit Insurance Corporation, *Commercial Real Estate Lending Joint Guidance*, FINANCIAL INSTITUTION LETTER (Dec. 12, 2006), https://www.fdic.gov/news/financial-institution-letters/2006/fil06104.html.

[40] Parent Companies of Industrial Banks and Industrial Loan Companies, *supra* note 2 at 65562.

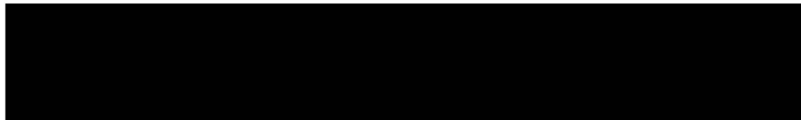
observations clearly point to the need for a comprehensive assessment of this factor and the potential negative consequences of approval.

While holding a public meeting would expend additional resources, the benefit of hearing from a wide set of stakeholders and members of the public would be useful and worth the expense. This process would also likely underscore how limited the benefits are and how high the costs are of approving additional industrial banks for deposit insurance coverage.

CONCLUSION

We hope these comments are helpful as the FDIC continues its important work to protect depositors and the banking system.

Sincerely,



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