

Statement by FDIC Board Member Martin J. Gruenberg on the Final Rule: Parent Companies of Industrial Banks and Industrial Loan Companies at the FDIC Board Meeting

Last Updated: December 15, 2020

Earlier this year, the FDIC Board adopted a Notice of Proposed Rulemaking (NPR) on Parent Companies of Industrial Banks and Industrial Loan Companies.¹

The impetus for the NPR is the favored status under the Federal banking laws provided to industrial banks and industrial loan companies. Industrial banks are exempt from the Bank Holding Company Act.² As a result, commercial companies, in addition to financial companies, are permitted to own industrial banks, and they are not subject to consolidated supervision by the Federal Reserve Board. The industrial banks may thus engage in higher risk activities with less supervisory oversight.

As the preamble to the NPR states,

"The purpose of the proposed rule is to codify existing practices utilized by the FDIC to supervise industrial banks and their parent companies, to mitigate undue risk to the DIF [Deposit Insurance Fund] that may otherwise be presented in the absence of Federal consolidated supervision of an industrial bank and its parent company, and to ensure that the parent company that owns or controls an industrial bank serves as a source of financial strength for the industrial bank, consistent with Section 38A of the FDI [Federal Deposit Insurance] Act."³

Today, the FDIC is considering a Final Rule based on that NPR. The preamble to the Final Rule states, however,

"The FDIC is now issuing a final rule, which is largely consistent with the proposed rule."⁴

The Final Rule in fact makes two changes to the NPR that significantly weaken the requirements of the rule.

First, in order to limit the extent of each parent company's influence over a subsidiary industrial bank, the NPR would have required each parent company to commit to limit its representation on the industrial bank's board of directors to 25 percent of the members of the board. The Final Rule revises the commitment of each parent company to limit its representation on the industrial bank's board to less than 50 percent.⁵

Second, in order to limit the influence of the parent company, the NPR would have required the subsidiary industrial bank to obtain the FDIC's prior approval to add or replace a member of the board of directors, or to add or replace a senior executive officer of the industrial bank.⁶ The Final Rule limits the requirement to obtain the FDIC's prior approval to a three-year period.⁷

The concern here is clear. The parent company of an industrial bank is not subject to consolidated supervision by the Federal Reserve Board and may engage in commercial activities, privileges not enjoyed by the parent companies of other banks. In order to mitigate the risks to the bank, the NPR would have limited the parent company's representation on the bank's board to 25 percent of directors, and required prior approval on an ongoing basis by the FDIC of board members and senior executive officers. This Final Rule significantly weakens the protections provided by the NPR.

For that reason, I will vote against the Final Rule.

¹Notice of Proposed Rulemaking: Parent Companies of Industrial Banks and Industrial Loan Companies, 85 FR 17771 (March 31, 2020).

²12 U.S.C. 1841(c)(2)(H). The Competitive Equality Banking Act of 1987, Pub. L. 100-86, 101 Stat. 442 (Aug. 10, 1987) established this exception for industrial banks as well as certain other special purpose banks.

³85 FR at 17772 (footnotes omitted).

⁴Preamble to the Final Rule at 5.

⁵Preamble to the Final Rule at 66.

⁶85 FR at 17779.

⁷Preamble to the Final Rule at 76. A senior executive officer that is, or in the last three years has been, associated with an affiliate would continue to require FDIC approval.