Speeches, Statements & Testimonies

Statement by FDIC Chairman Jelena McWilliams on the Notice of Proposed Rulemaking: Parent companies of industrial banks and industrial loan companies; FDIC Board Meeting

Last Updated: March 17, 2020

State-chartered industrial banks and industrial loan companies (collectively, "industrial banks"), frequently referred to as ILCs, have existed in the United States for more than a century. In the 1980s, Congress made two key statutory changes to establish the framework we have today. In 1982, Congress amended the Federal Deposit Insurance Act to expressly make all industrial banks eligible for deposit insurance. In 1987, Congress amended the Bank Holding Company Act to exclude parent companies that control industrial banks from being subject to supervision by the Federal Reserve solely as a result of such control.

The FDIC *approves*, regulates, and supervises industrial banks under the same statutory and regulatory framework as any state-chartered bank that is not a member of the Federal Reserve system. The FDIC evaluates all applications for deposit insurance, including those for industrial banks, based on the same statutory factors, and the same FDIC regulations that apply to any insured depository institution apply equally to industrial banks.

In addition, prior to the financial crisis, the FDIC began requiring parent companies of industrial banks applying for deposit insurance to enter into capital and liquidity maintenance agreements (CALMAs) as a precondition for approval. These agreements contractually obligate a parent company to serve as a source of strength for an industrial bank, and require a parent company to inject capital or liquidity if the bank's capital or liquidity falls below a certain threshold.

These obligations to support the insured bank apply under all circumstances. If the parent company falls into bankruptcy, the claim against the parent is entitled to special priority under the bankruptcy code.

The proposed rule before the Board today would codify a number of required commitments that the FDIC has typically included as a precondition for approval of industrial banks in the past. The rule would require that any industrial bank seeking deposit insurance[1] agree to such commitments as a precondition for approval. The rule would accomplish two important goals:

- First, it would provide transparency to potential future applicants and the broader public as to what the FDIC requires of parent companies of industrial banks; and

- Second, the rule would ensure that all parents of industrial banks approved for deposit insurance going forward would be subject to such required commitments.

The FDIC typically requires industrial banks to have significantly higher capital than other insured banks. Nothing in the proposal today limits the ability of the FDIC to require

commitments that go beyond the provisions in the rule, and to the extent the FDIC considers ILC applications that present novel issues, I expect such additional commitments will be prudent.

Separate and apart from the CALMAs, industrial banks are also subject to the provisions of Sections 23A and 23B of the Federal Reserve Act, which impose restrictions on transactions between banks and affiliates. This generally prevents, for example, a bank from subsidizing affiliates by underpricing loans to affiliates.

Later today, the FDIC will consider applications for deposit insurance from two industrial banks. As I described, Congress expressly authorized deposit insurance for industrial banks and provided a framework for the FDIC to approve, regulate, and supervise such banks. As a result, the FDIC has a responsibility to consider such applications and, if such an application satisfies the statutory factors, approve such an application, no different than any other type of application. The outcome of the vote on these applications should not be interpreted as an endorsement, or a criticism, of the industrial bank charter, but rather the fulfillment of a statutory responsibility to consider such applications.

The two applications we will consider today are both for industrial banks owned by firms whose businesses are predominantly financial in nature. Some industrial banks today are owned by nonfinancial commercial firms, and the FDIC has received applications from groups seeking to establish new banks owned by commercial parents. Questions about the mixing of banking and commerce, and the ability of banks to affiliate with nonfinancial firms, involve complicated policy trade-offs that are best addressed by Congress.

Our job as a regulatory agency is to implement the law as it exists today. As someone who grew up in a country that did not respect the rule of law, and aspired to live in a country that did, I take this particularly seriously.

I am aware that legislation has been proposed in Congress that would alter the current framework. I neither support nor oppose such legislation today, and I have no plans to support or oppose such legislation in the future. We are applying the law as it exists today. Should Congress choose to change the law, we will apply the law as changed by Congress.

Thank you to the staff for all their hard work on the proposal before us today.

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[1]The proposal would also apply to merger applications and change in control applications.