



1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

*World-Class Solutions,
Leadership & Advocacy
Since 1875*

Edward L. Yingling
President and CEO
Phone: 202-663-5328
Fax: 202-663-7533
E-mail: eyinglin@aba.com

January 18, 2008

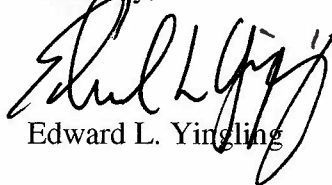
The Honorable Christopher J. Dodd
Chairman
United States Senate
Committee on Banking, Housing, and
Urban Affairs
Washington, DC 20510-6075

Dear Senator Dodd:

Thank you for your letter of December 10, 2007 in which you submitted questions following the hearing conducted by the Committee on Banking, Housing, and Urban Affairs on the regulation and supervision of industrial loan companies. Attached are my responses.

We appreciate your leadership on this important issue and stand ready to provide any additional assistance that you would find helpful.

Sincerely,



Edward L. Yingling

**Responses of
Mr. Edward Yingling, President and CEO, American Bankers Association
to Questions from Senator Richard Shelby
for the Hearing on “Examining the Regulation and Supervision of
Industrial Loan Companies”
October 4, 2007**

1. Is there a tension between our dual banking system and our desire to ensure a level playing field for all participants? In other words, in our effort to eliminate competitive inequities, do we run the risk of stifling both the dual banking system and the innovation that it spawns?

We believe there is no tension between having a vibrant dual banking system and a desire to ensure a level playing field in the context of ILCs. The ABA has vigorously and consistently supported the dual banking system, and we believe that this is entirely consistent with our opposition to the commercial ownership of ILCs.

Our nation’s banking policy is predicated on healthy competition between financial institutions. The dual banking system facilitates such competition by providing alternatives at the state and federal levels for institutions seeking to engage in new financial activities. This leads to a creative process, with ideas succeeding or failing depending on how well they facilitate a bank’s ability to meet the needs of its customers. In this sense, a level playing field – defined as identical opportunities for state and federal actors to engage in financial activities – is not, and should not be, a goal of our nation’s banking policy.

However, permitting commercial entities to own ILCs raises issues that go beyond the merits of the dual banking system. Such ownership transforms the very essence of what it means to be a financial institution. In so doing, it facilitates the problems caused when an unregulated commercial entity uses insured deposits to further its commercial interests. This mixing of banking and commerce simply is not needed for – or even consistent with – a dual banking system that seeks to ensure full, fair, and healthy competition. Stated another way, the success of the dual banking system depends in large part on making the banking playing field available only to those who abide by the rules of banking.

2. When the Congress eliminated new nonbank banks and unitary thrift holding companies in the Competitive Equality Banking Act and Gramm-Leach-Bliley Act, it permitted many of these entities to remain in existence under grandfather provisions.
- If the Congress did prohibit commercial ownership of ILCs based on safety and soundness concerns, would it not create competitive inequities to grandfather existing ILCs?
 - To take just a single example from the automotive industry: BMW, Volkswagen and Toyota own ILCs; should Chrysler be denied an ILC?

As you point out, the history of banking legislation contains many instances where Congress has prohibited certain arrangements going forward while permitting existing arrangements to continue, albeit subject to restrictions on their ability to be modified. This approach balances the goals of preventing certain conduct in the future while respecting business relationships that have been lawfully created.

While certainly not perfect from a policy perspective, we believe such an approach is workable in the context of ILCs. Commercial firms have acquired ILCs in good faith and in full compliance with existing law. We believe that it is fair to permit these arrangements to continue. This is likely to result in a competitive benefit to those commercial firms that own ILCs. Given our concerns about the mixing of banking and commerce through the vehicle of ILCs, we recommend that this benefit not be extended to other commercial firms engaged in comparable activities. Such resolution would be consistent with the similar legislative resolution for nonbank banks and unitary thrift holding companies affected by CEBA and GLBA, respectively.

3. The Gramm-Leach-Bliley Act defines activities that are financial in nature. The National Bank Act permits activities that are part of or incidental to the business of banking. The Fed recently determined that WellPoint's disease management and mail-order pharmacy activities are complementary to a financial activity. In attempting to distinguish between banking and commercial activities, where would you draw a line that is both appropriate and consistent with current laws?

We believe the current approach taken in the Gramm-Leach-Bliley Act is appropriate. The centerpiece of that approach is that the activity must be financial in nature. Congress provided guidance on where the line should be drawn by identifying 9 specific activities as "financial in nature" and directing the Federal Reserve Board (Fed) to clarify the extent to which the following activities are financial in nature:

- Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities;
- Providing any device or other instrumentality for transferring money or other financial assets; and
- Arranging, effecting, or facilitating financial transactions for the account of third parties.

The Fed also is authorized to approve a financial holding company's application to engage in an activity that is "complementary" to a financial activity and that poses no substantial risk to the safety or soundness of the institution or the financial system generally. Finally, the Fed and United States Treasury Department may determine that an activity is financial in nature or incidental to such financial activity. In so doing, the Fed and Treasury Department are to consider factors such as changes in the marketplace, changes in technology, and

whether the activity is necessary or appropriate to allow a financial holding company to compete effectively.

This structure for determining what activities are permissible provides meaningful guidance while preserving sufficient flexibility to accommodate change. Given the rapidly evolving financial institutions industry, it is important for our regulatory structure to be sufficiently nimble to avoid creating inappropriate roadblocks. That said, there must be a sufficient nexus to a financial activity to preserve the boundary between banking and commerce.

In the case of the WellPoint decision, the Fed noted as a threshold matter that WellPoint engages in selling and underwriting health insurance, an activity that Congress determined to be financial in nature in 1999. The issue for the Fed was whether disease management and mail-order pharmacy activities were complementary to the underlying financial activity, and the Fed found that these activities help WellPoint provide insurance services more effectively and efficiently. However, the Fed limited the disease management and mail-order pharmacy activities to no more than 2 percent of the insurer's consolidated assets or more than 5 percent of its consolidated annual revenues, and also limited to 5 percent of total consolidated capital the asset size of the subsidiaries engaged in those activities. Such an approach appears to be an appropriate application of the flexible authority that Congress has created.