

**Statement of
John C. Dugan
Comptroller of the Currency
Regarding the
ILC Moratorium Extension
At the January 31, 2007 Meeting of the
Federal Deposit Insurance Corporation
Board of Directors**

I support the one-year extension of the moratorium regarding applications for deposit insurance for industrial loan companies with commercial affiliations. I do so because key leaders in Congress have expressed strong interest in addressing the important policy question of whether commercial firms should continue to be allowed to own ILCs. In the face of this strong interest, I believe it would be unwise to proceed with decisions that might have to be reversed shortly as the result of near-term congressional action. The FDIC should not put itself in the position of having to “unscramble the egg,” and for that reason I commend the Chairman for developing this consensus compromise.

Indeed, I believe this is a legitimate policy question for Congress to address given the growth in ILCs and the recent uptick in applications by commercial companies. ILCs have powers virtually identical to those of commercial banks, and the two types of insured depository institutions are regulated and supervised in very much the same way. But their holding companies are not. Bank holding companies are subject to consolidated regulation and a prohibition on commercial affiliations; ILC holding companies are not. Why should that be? Why should a commercial company be allowed to own a large or small ILC, but not a large or small national bank? And why should the holding company be regulated in one case but not the other? In short, given the recent growth in ILCs, it is

entirely appropriate for Congress to re-examine the anomalous regulatory treatment of ILC holding companies.

In saying so, however, I want to be clear: this is a policy decision for Congress to address, not the FDIC. Indeed, Congress has enacted a particular statute whose fundamental purpose is to address the regulation of holding companies of different types of insured depository institutions, including permissible commercial affiliations. That statute is the Bank Holding Company Act, not the Federal Deposit Insurance Act. When enacted in 1956, the Bank Holding Company Act expressly prohibited commercial affiliations of multi-bank holding companies. It was amended in 1970 to expressly prohibit such affiliations for one-bank holding companies. A similar change was made in 1987 to expressly prohibit commercial affiliations for so-called “nonbank banks.” And in 1999, the Gramm-Leach-Bliley Act grafted the same express prohibition on to the Savings and Loan Holding Company Act to prohibit commercial affiliations for thrifts.

But Congress also knew how to make straightforward exceptions to the prohibition on commercial affiliations. That’s what it did in 1987, expressly, for industrial loan companies – even as it extended the prohibition to nonbank banks. The ILC exception was a deliberate choice, and later Congresses defended the exception from efforts to remove it.

This legislative history makes clear that Congress plainly authorized commercial companies to own ILCs. For 20 years the FDIC has recognized this fact by repeatedly granting deposit insurance to ILCs affiliated with commercial companies and by establishing a supervisory regime to address unique issues raised by such affiliations.

In this context, I frankly don't believe the FDIC can or should deny an application for deposit insurance to an ILC merely because of commercial affiliations, and nothing in the comments we have received in the last six months has changed my view. Unlike the Bank Holding Company Act, the Federal Deposit Insurance Act has no specific prohibitions on commercial ownership. Likewise, the seven statutory factors expressly to be considered by this Board in making deposit insurance determinations say nothing about commercial affiliations.

Indeed, of those seven factors, only one is really relevant to the commercial affiliation issue, which is the fundamental need to assess the risk of a depository institution to the deposit insurance fund. There is no statutory authority for the Board to consider competitive effects, or potential conflicts of interest, or any of the other policy concerns unrelated to risk that commenters would like us to consider.

Instead, our sole statutory concern in this context is in essence the risk to the fund presented by commercial affiliations of industrial loan companies. As a general matter, I believe Congress has directly spoken to and addressed this issue by exempting ILCs from the Bank Holding Company Act's restrictions. But even if one were to ignore that fact – which we cannot – the record before us simply does not establish that commercial affiliations present an undue risk to the fund. While the Board may take into account potential or hypothetical risk, as discussed in the text of the moratorium, it seems to me that the very best evidence of risk in this area is the FDIC's own 20-year experience in supervising ILCs owned by commercial companies. Here I quite agree with the Chairman's statement about the strong track record of the FDIC in supervising such ILCs – though I am very disappointed that the moratorium itself makes no reference to that

track record. As staff has told me expressly, there have indeed been some unique safety and soundness issues raised by commercial ownership of ILCs. But in every such case over these last 20 years, FDIC supervision has more than adequately addressed those risks, and no commercially owned ILC has caused a single dollar of loss to the deposit insurance fund. Likewise, the comments we received during the last six months have provided virtually no empirical evidence to support the proposition that commercially owned ILCs are more risky than non-commercially owned ILCs.

In short, denying an ILC application for deposit insurance based merely on commercial affiliation would be fundamentally inconsistent with first, the express congressional exemption of ILCs from the Bank Holding Company Act's restriction on commercial affiliation, and second, the FDIC's track record in addressing risks raised by such affiliations during the last 20 years. The continued ability of commercial firms to own ILCs will undoubtedly be a close and difficult policy decision for Congress, but it is not a close decision for me as a legal determination to be made by this agency. As a result, if Congress fails to change the law permitting commercial ownership of ILCs during the extension of the moratorium, and if a deposit insurance application is submitted thereafter by an ILC with commercial affiliations, I will not vote to deny the application merely because of that affiliation. In the meantime, I strongly urge Congress to address this issue.