December 11, 2019

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing, & Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, & Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

The American Financial Services Association (AFSA) opposes S. 2839, the "Eliminating Corporate Shadow Banking Act of 2019," a pejoratively titled bill which would end the century old industrial banking industry.

Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. In 1971, AFSA merged with the American Industrial Bankers Association, an organization of industrial banks, thrift and loan companies and sales finance companies, and we are proud to continue to represent those banks.

Industrial banks, known in some states as industrial loan companies, thrift and loan companies or Morris Plan banks, are among the types of applications for new charters which languish at the Federal Deposit Insurance Corporation.

WHAT IS AN INDUSTRIAL BANK?

Far from being the inventively named "shadow banks"—in reality, industrial banks are state-chartered banking institutions that may be owned by a commercial entity. They are regulated by the FDIC and state bank regulators.

Industrial banks were first formed in 1910—predating the passage of the Federal Reserve Act in 1913. Industrial banks are FDIC-regulated depository institutions chartered under the laws of Utah, California, Colorado, Nevada, Hawaii, Indiana, and Minnesota. Industrial banks are subject to the *same* banking laws and are regulated in the same manner as other depository institutions. They are supervised and examined both by the states that charter them and by the FDIC. They are subject to the *same* safety and soundness, consumer protection, deposit insurance, Community Reinvestment Act, and other requirements as other FDIC-insured depository institutions.

Most owners of industrial banks are exempted from Federal Reserve Board supervision as bank holding companies. Similar Bank Holding Company Act exemptions apply to thousands of institutions not owned by other companies, and to financial institutions that do not offer a full range of banking services, such as credit card banks, Edge Act banks, grandfathered non-bank banks and trust banks. These exemptions benefit bank customers by introducing additional competition into the marketplace, without increased risk to the deposit insurance system.

Though not required to be regulated as federal bank holding companies, owners of industrial banks are not "*unregulated*." They are subject to many of the same requirements as bank holding companies, such as strict restrictions on transactions with their bank affiliates. They are regulated under state law and are subject to examination by the FDIC, and to "*prompt corrective action*" and capital guarantee requirements if the banks they

control encounter financial difficulties. Industrial banks engage in consumer and commercial lending on both a secured and unsecured basis. They accept time deposits and deposits that may be withdrawn through negotiable orders of withdrawal ("NOW" accounts).

Industrial banks, which have existed for over a century, evolved from Morris Plan Banks, consumer lending institutions organized at a time when commercial banks generally did not make consumer loans or offer deposit accounts to individuals. The word "*industrial*" in their names stems from the original mission of providing credit to industrial workers, not to the industries themselves.

In the Dodd-Frank Act, Congress placed a temporary moratorium on commercial firms chartering or acquiring Industrial banks in order to allow Congress time to study the merits of allowing commercial firms to own industrial banks. Congress decided not to renew the moratorium when it expired in July 2013, meaning that federal law continues to allow commercial firms to charter and acquire Industrial banks.

S. 2839 IS AN EFFORT TO WREST POLICYMAKING FROM THE STATES

For over a century, industrial banks, many owned by commercial parents, have compiled the best record of capitalization and profitability of any group of banks in the nation. There is *no* evidence that the states have abused or inadequately regulated the industrial banks they chartered. The Nevada and Utah legislatures chose to permit (and indeed encourage) these charters, but if S. 2839 is enacted would find their lawful policy frustrated by preemptive federal agency. These states serve their role as laboratories for change and have demonstrated beyond any reasonable and objective doubt that industrial banks can operate as safe, sound, responsible and beneficial providers of credit.

As is so often the case, Thomas Jefferson said it best:

> "It is a fatal heresy to suppose that either our State governments are superior to the Federal or the Federal to the States. The people, to whom all authority belongs, have divided the powers of government into two distinct departments, the leading characters of which are foreign and domestic; and they have appointed for each a distinct set of functionaries. These they have made coordinate, checking and balancing each other like the three cardinal departments in the individual States; each equally supreme as to the powers delegated to itself, and neither authorized ultimately to decide what belongs to itself or to its copartner in government."[1]

In an era of new fintech entrants in the financial marketplace, AFSA sees no policy reason for a longstanding, successful, and thoroughly regulated industry to be destroyed. We urge you to oppose S. 2839 and continue to support a vibrant dual banking system. Should you need more information or have any questions, please do not hesitate to contact me at (202) 466-8606, aharter@afsamail.org. Thank you for the opportunity to comment on this issue.

Ann Harter
Vice President, Congressional Affairs

[1] Thomas Jefferson letter to Spencer Roane, 1821. ME 15:328