

July 19, 2017

The Hon. Steven T. Mnuchin
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Executive Order 13772 - Core Principles for Regulating the United States Financial System

Dear Secretary Mnuchin:

The following comments are filed on behalf of the American Financial Services Association (AFSA)¹ in response to Presidential Executive Order 13772 (Order) outlining efforts to end policies that inhibit federal regulation of the U.S. financial system in a manner consistent with the core principles² enunciated by the president. As part of that effort, AFSA recommends that the Trump administration encourage the Federal Deposit Insurance Corporation (FDIC) to approve new industrial bank charters.

As you know, the Order directs the Treasury Secretary to report to the president on which existing laws, regulations, guidance, etc. promote the core principles. We commend the Treasury Department on its first report, *A Financial System That Creates Economic Opportunities: Banks and Credit Unions*, issued in June 2017. The report states that the Treasury Department will divide its review of the financial system into a series of reports. We hope you will consider our comments as you prepare the report on non-bank financial institutions, financial technology, and financial innovation.

The June 2017 report emphasized the importance of new banking institutions. The report stated:

*“Encouraging De Novo Activity: Formation of new banking institutions is crucial for a dynamic and growing economy, and Treasury strongly supports efforts to encourage de novo formation. Treasury recommends implementing changes to the existing regulatory capital requirements and other burdensome rules for community banks as discussed above and a critical review of capital requirements applicable to de novo banks. Further, the application process of obtaining deposit insurance should be significantly streamlined, and Treasury supports the FDIC’s recent efforts to encourage de novo charters.”*³

¹ 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. We are proud to continue to represent a number of these financial institutions.

² According to the Order, the core principles: (a) empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth; (b) prevent taxpayer-funded bailouts; (c) foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry; (d) enable American companies to be competitive with foreign firms in domestic and foreign markets; (e) advance American interests in international financial regulatory negotiations and meetings; (f) make regulation efficient, effective, and appropriately tailored; and (g) restore public accountability within federal financial regulatory agencies and rationalize the federal financial regulatory framework.

³ U.S. Department of the Treasury, “A Financial System that Creates Opportunities: Banks and Credit Unions.” June 2017. p. 60.

This conclusion is equally true as it relates to industrial banks—the only current bank charter available to commercial entities seeking to offer innovative financial products. 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 FDIC.

For the past 40 years, 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 states have inadequately regulated the industrial banks they chartered. For a decade, the FDIC failed to process any industrial bank application. During most of this time, the moratorium was imposed by administrative fiat without any legal authorization, public announcement, statement of reasons, or opportunity for public input on this critical and damaging policy. No industrial bank application has been approved since 2006. (Please see the appendix for additional details.)

We believe the Treasury Department’s initiative is especially timely in light of the differing attitudes about new charters shown by the federal banking agencies. While the Office of the Comptroller of the Currency (OCC) embraces new charters and proposes a limited purpose charter for the nascent “FinTech” sector, the FDIC refuses to process insurance approvals for existing types of bank charters.

The FDIC serves the dual role of operating the insurance fund as well as approving the required insurance coverage for new banks chartered under state law. In the case of industrial banks, the bank commissioners of Nevada and Utah, whose statutes permit these institutions, are ready and willing to welcome new entrants. These state banks—whose history predates the national bank charter—include community banks which provide vital economic benefit to smaller markets and industrial banks, the only class of banks which may be owned by commercial companies. The Nevada and Utah legislatures that chose to permit, and indeed encourage, these charters, now find their policy decision frustrated by a non-responsive federal agency. These states serve their role as laboratories for change and have demonstrated beyond any reasonable and objective doubt that industrial banks operate as safe, sound, responsible and beneficial providers of credit.

While the 2008 bank crisis is long gone, the FDIC has only approved three new bank charters since 2008, and no *industrial* bank charters since 2006. In 2014, the FDIC released an updated FAQ that clarified its guidance on charter applications. However, no action has or is taking place. This *de facto* moratorium on new charters is particularly harmful to Nevada and Utah.

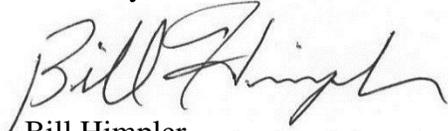
Chartering a bank is, properly, a rigorous process that follows requirements found in Sections 4, 5 and 6 of the Federal Deposit Insurance Act. In the case of state-chartered banks, applications are reviewed by both the FDIC and the state banking regulator. However, a rigorous process need not be an endless process. The FDIC is required to process applications on a timely basis. Section 343 (a) of the Riegle Community Development and Regulatory Improvement Act of 1994 “*requires*” federal banking agencies — including the FDIC — to take action on an application within one year of the day upon which “*a complete application is received.*”

Despite the fact that Congress created this timely and efficient application process, the FDIC peppers applicants with requests for data and additional information to prevent an application from being deemed completed. The *FDIC Case Manager Manual (April 2004)* states “it is expected that processing time frames approaching the one-year time limit and/or needing a waiver will occur in rare and unusual circumstances.” Still, applications remain pending. In reality, the one-year approval period is a hollow requirement as the FDIC has the discretion to

determine when an application is considered “*complete*” and has repeatedly delayed this decision on industrial bank applications by never deeming applications as completed.

AFSA believes it is time that the FDIC returns to chartering industrial banks to help the U.S. financial system. Thank you for the opportunity to share our views. If you have any questions, please contact AFSA’s Executive Vice President, Bill Himpler, at 202-466-8616 or bhimpler@afsamail.org.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive, flowing style.

Bill Himpler
Executive Vice President
American Financial Services Association

APPENDIX

What is an industrial bank?

Industrial banks are state-chartered banking institutions that may be owned by a commercial entity. First chartered in 1910, industrial banks predate the Federal Deposit Insurance Act by 23 years. Industrial banks are FDIC-regulated depository institutions chartered under the laws of Utah, California, Colorado, Nevada, Hawaii, Indiana, and Minnesota. Today, they principally operate in Nevada and Utah.

Industrial banks engage in consumer and commercial lending on both a secured and unsecured basis. They accept time deposits, money market accounts, savings accounts and deposits that may be withdrawn through negotiable orders of withdrawal.

Industrial banks are subject to the same banking laws and are regulated in the same manner as other depository institutions. Though not required to be regulated as federal bank holding companies, owners of industrial banks are not “unregulated.” Like any other state bank, 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 any other FDIC-insured depository institutions.

Industrial banks evolved from early twentieth century Morris Plan Banks, consumer lending institutions organized at a time when commercial banks rarely made consumer loans or offered 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 past four decades, industrial banks have compiled among the best record of capitalization and profitability of any group of banks in the nation and represent a sector of the financial services industry that should be encouraged to grow.

When did the moratorium on industrial bank charters start and when did it end?

In the Dodd-Frank Act, Congress placed a temporary moratorium on commercial firms chartering or acquiring industrial banks to allow Congress time to study the merits of allowing commercial firms to own these 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.

Despite Congress’ action, the FDIC has failed to process any new industrial bank applications, thereby blocking states’ rights to grant new charters and providing additional credit to consumers and small businesses. This decision disregards the preexisting federal law that requires the processing of applications within a reasonable time frame and ignores Congress’ intent to maintain a dual banking system in the United States. In fact, even former FDIC Chair Sheila Bair agreed the agency has a legal obligation under current statute to process these applications.

Despite federal law, Congress’ intent, and the safety and soundness of industrial banks, the FDIC has continued a *de facto* moratorium on granting industrial bank charters. There has been no legal authorization, public announcement, statement of reasons, or opportunity for public input to this policy. Industrial banks formerly were

subject to two moratoria on new charters both of which ended after a GAO study found *no* need for additional legislation.

Below is a timeline of the moratorium over the last decade.

- **7/28/06**-In response to an application filed by Wal-Mart, FDIC Chair Sheila Bair imposes a six-month moratorium on applications for deposit insurance by industrial banks and notices of change in bank control of existing industrial banks.
- **1/31/07**-The FDIC votes to extend the moratorium until 1/31/08. Oddly, Chairman Bair noted, “Industrial banks have a history of strength and innovation. Today's action ensures that industrial banks will continue to remain safe and important participants in the financial system and that the parent company will be a source of strength and not a source of risk.”
- **11/28/07**-FDIC Chair Bair announces she will lift the moratorium saying "*We've extended it for 18 months already, and I think if we go much longer, we expose ourselves to litigation. We have a legal obligation under current statute to process these applications.*"
- **7/21/10**-The Dodd-Frank Act was signed into law. The legislation includes section 603 which imposed a three-year moratorium on the ability of “*commercial firms*” to acquire FDIC-insured industrial banks and credit card banks and directing the GAO to study issues arising from commercial ownership of industrial banks.
- **5/9/11**-FDIC Chair Bair resigns.
- **7/9/11**-Martin Gruenberg becomes Acting FDIC Chair and is later confirmed.
- **1/19/12**-The GAO Report is published making *no* recommendations for additional legislation.
- **7/22/13**-The Dodd-Frank Act Moratorium expires.
- **Today**-The last new industrial bank charter was approved in 2006.

The FDIC should listen to the states and approve new industrial banks.