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April 19, 2006

ROBERT U. FOSTER III  
CHIEF OF STAFF

The Honorable Martin J. Gruenberg  
Acting Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429

Dear Acting Chairman Gruenberg:

Regarding the Wal-Mart Bank application for deposit insurance, I believe that the best solution would be for the Federal Deposit Insurance Corporation (FDIC) to approve no more industrial loan company (ILC) applications that do not meet the requirements established by Rep. Gillmor and myself in our provisions passed by the House as part of H.R. 1224 and H.R. 3505. Those provisions prohibit ownership of an ILC if more than 15 percent of the annual gross revenues of the ILC and all its affiliates were derived from activities that are not financial in nature or incidental to a financial activity, i.e., 85 percent of the revenues of the entity as a whole must come from activities that are financial. I believe that this is necessary because of the importance of keeping the separation of banking and commerce, including industrial, commercial and retail activities. I think the best policy would be to say no to any more ILC applications that do not meet the 85/15 test as contained in the Gillmor -Frank provisions. The 85/15 test is a reasonable and tested consensus position that has passed the House three times, twice in this Congress and once last Congress as part of H.R. 1375. Furthermore, I believe that such a determination is consistent with the statutory factors for applications that the FDIC is required to consider under section 6 of the Federal Deposit Insurance Act (FDI Act), particularly paragraph 2, the adequacy of the depository institution's capital structure; paragraph 5, the risk presented to the Deposit Insurance Fund; and paragraph 7, whether the institution's corporate powers are consistent with the FDI Act.

Wal-Mart has said that it only wants the ILC to conduct back office processing of debit and credit transactions. Whether it should be able to have this limited authority should be addressed separately from the authority to accept deposits, which it has included in its application. It is unclear whether the FDIC has the authority to impose conditions on the application that would permanently prohibit Wal-Mart from engaging in other activities than those enumerated in the public portion of the application and we are left with the possibility that the Wal-Mart Bank could engage in other activities at a future time. This lack of certainty is another reason the application should be denied.

  
BARNEY FRANK