Utah Commissioner of Financial Institutions
before
Utah Association of Financial Services
The Canyons Resort, Park City, Utah
August 24, 2007

UTAH INDUSTRIAL BANKS

Good morning. As always, it is a delight to attend your Convention. Thank you for extending an invitation to speak. This is a great honor for me.

I remember a presentation where it was stated if you want your audience to remember a point state it first.

First Point. We are doing Holding Company Inspections of all Holding Companies under our jurisdiction - both commercial and industrial banks. This should <u>not</u> be a surprise to anybody in this room but I am still hearing that an institution was not aware that we were planning on during holding company inspections.

I have stated in the last two speeches delivered before this group, we were gearing up to do them.

I quote from last year's speech.

> "Utah industrial bank owners, like the banks they control, are subject to state regulation. For example, pursuant to Section 7-8-16 of the Utah Code, owners of industrial loan banks must register with the Department and provide statements of financial condition.
>
> (Pursuant to Section 7-1 510*), The Utah Commissioner is authorized by law to examine the books and records of financial institution holding companies, compel the furnishing of reports necessary to supervise the holding company's bank subsidiary, and take any other action that is necessary to protect the bank, its depositors, its customers or taxpayers. The reality is that Utah should be and thanks to industry support will be taking a much closer look at all holding companies. (Your) ... industry support of the Fee Increase Bill demonstrates the sincerity of the industry's desire to support quality regulation.*

The fee increase also allows us to hire five more examiners bringing our total number of field examiners to forty-one. While we have a cadre of experienced holding company examiners and have been conducting these inspections regularly. It is our intention to provide further training and increase their number so that they can conduct, independently, if need be, holding company inspections of all financial institution holding companies registered in Utah. We will be expanding our capacity in this area and by the end of this year ("2006") you should start experiencing more holding company inspections during 2007 and beyond."

Shaun Berrett (please stand) was appointed Holding Company Supervisor last November. He is responsible for ensuring that we get on a on examination cycle for all of our holding companies.
He will be sending you a (PERK) Pre-Examination Report Kit, similar to an Entry Letter request in advance of an inspection. Yes, it is lengthy, but for these first inspections, we need to establish a base-line of information. Shaun has decided to draft a letter to be sent to each institution outlining what will be required during the holding company inspection and what your holding companies can expect. This letter will go to the holding company contact person registered with the Department and to the industrial bank President.

No, we do not have unlimited resources for this activity, if there is a federal regulator already overseeing the holding company we are offering to work jointly with them and benefit from shared resources.

If the industrial bank does not have federal agency oversight, we will unilaterally conduct those inspections. This policy would apply to most commercially-owned industrial banks. The PERK requests information in an attempt to determine what we can do offsite and what must be done at the parent company. The first couple of inspections will attempt to determine at what level of the holding companies, we need to review operations and statements. The primary focus of these inspections is a determine if the parent company is a "source of strength" to the bank or stated another way, if operations at the holding company endanger the safety and soundness of the bank.

While the department has statutory authority to charge for these inspections, we are not at this point in time going to do so. We believe the industrial bank supervision fees are adequate to cover our expenses including the costs of doing holding company reviews.

Yes, this is a policy statement that could be revised at a future time. Only those holding company inspections that require out-of-state travel will be charged be for the out-of-state travel related expenses, similar to the reimbursement sought for out-of-state examinations of industrial banks.

If you have more questions, I would suggest you take an opportunity at the break to talk with Shaun.

UTAH INDUSTRIAL BANK PROFILE

Utah Profile - (**Handout 1**)

I have passed out a **summary** of the June 30, 2007 call report listing total assets and applications pending of Utah industrial banks.

(**Handout 2) - Utah Fact Sheet**

APPLICATION PROCESSING

On January 31, 2007, the FDIC Board extended the Moratorium for one year on all "non-financial" applications and issued a Notice of Proposed Rulemaking (NPR) which, among other things, creates four categories of industrial banks.

While the comment period for the Proposed Rule has lapsed, the FDIC has not indicated its intentions with respect to finalizing the Proposed Rule. In the Rule, the FDIC states it will consider applications for industrial banks that will be controlled by financial companies that are not subject to Federal Consolidated Bank Supervision (FCBS) on a case-by-case basis.

Under the Proposed Rule, currently existing Utah IBs will be classified in the following categories:

A. **Federal Consolidated Bank Supervised Financial (FCBS) Companies - (6)**

Name	Federal Regulator
American Express	Office of Thrift Supervision (OTS)
GE	OTS
Lehman Brothers	OTS
Merrill Lynch	OTS
Morgan Stanley	OTS
UBS	Federal Reserve Bank

(1) *These institutions are not subject to the Proposed Rule.*
(2) All applications will be considered for any entity meeting this criterion.
(3) No *de novo* applications are currently pending in this category.

B. **Non-Federal Consolidated Bank Supervised Financial Companies - (13)**

Name	
Advanta	
Allegiance Direct	
Celtic	
CIT	
Exante	
Goldman	(SEC not recognized in the NPR as a bank regulator)
LCA Bank	
Medallion	
Merrick	
Sallie Mae	
WebBank	
World Financial	
Wright Express	

(1) *These institutions are "**grandfathered**".*
(2) All new applications would be considered for entities meeting this criterion, BUT would be subject to the conditions of the Proposed Rule.
(3) FDIC will commence processing the following applications that have been held up by the Moratorium:

Comdata Bank - a Ceridian Corp subsidiary which plans to offer a "Fleet Card" and a "Business Link Card". Utah approved December 19, 2003.

CapitalSource Bank - asset-based loans to commercial borrowers. Utah approved December 20, 2005. The FDIC approved with conditions on March 20, 2007. The applicant has not indicated if they will pursue the charter. It was announced on May 17, 2007 that the parent company made an offer to purchase a federal thrift in Nebraska.

Marlin Business Bank - small ticket commercial leases/loans. Utah has not approved. The FDIC approved with conditions on March 20, 2007. The applicant has not indicated if they will pursue the charter.

Blue Healthcare Bank - Because of the moratorium, applied for a Federal Savings Bank charter which was approved by the OTS. Opened as a FSB on March 8, 2007.

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ARCUS Financial Services Inc. - WellPoint - Delivered an application on February 2, 2007 which the Department accepted as complete on June 7, 2007.

C. **Individual Owned - (2)**

Name

Magnet Bank
Republic Bank

(1) *These institutions are not subject to Proposed Rule.*
(2) All new applications would be considered for entities meeting this criterion.

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(3) Magnet Bank applied to convert charter to commercial bank approved on July 26, 2007.

D. **Commercial Owned - (10)**

Name

BMW	
Capmark	(formerly GMAC Commercial)
EnerBank	
Escrow	(GMAC Affiliate)
First Electronic	(Fry Electronics)
GMAC	(formerly GMAC Auto)
Pitney Bowes	
Target	
Transportation Alliance	(Flying J)
VW	

Wright Express

(1) These institutions are NOT subject to the Proposed Rule; House bill (H.R. 689- see below) would "grandfather" these institutions with conditions.
(2) New applications will NOT be considered for entities meeting this criterion until January 31, 2008.
(3) FDIC will not process the following applications until Congressional action is taken or January 31, 2008. Utah has put these applications in an "inactive status" and is not processing them.

Daimler Chrysler - Utah approved April 6, 2006.

American Pioneer Bank - a Cargill/Firstcity joint venture. Utah has accepted as complete but not approved.

Wal-Mart Bank - Utah did not accept the application as complete. The application was withdrawn on March 16, 2007.

Home Depot/ EnerBank - A change of control application by Home Depot to acquire the charter of EnerBank. Utah has not accepted the application as complete.

Ford Motor Credit - Utah has not accepted the application as complete.

INDUSTRIAL BANK SUPERVISION AND REGULATION IN PARTNERSHIP WITH THE FDIC

Utah is participating in speciality exams that are being conducted which include: trust, information technology (IT), capital markets, CRA/Compliance and holding company inspections. Utah is one of a very few states performing CRA/Compliance examinations.

Utah also participates with the FDIC in the Large Bank Supervision Program for four industrial banks. An argument could be made that at least two other institutions could qualify for large bank treatment. The supervision of these large banks is coordinated by a full-time relationship manger for the State as well as the FDIC. These examiners coordinate the implementation of the supervisory plan for each bank. This plan generally involves three targeted reviews that roll-up to an annual Examination Report that is reviewed with management and the board.

A team of examiners and specialists from the state and FDIC conduct targeted reviews in areas such as: commercial and retail credit, capital markets, bank technology, asset management, and compliance and they track the quality and quantity of risk management procedures.

The large bank program allows the State and FDIC to develop a more thorough knowledge of the bank than is possible through the traditional one time periodic, discrete examination.

Utah has and will continue to defend (in partnership with the FDIC) our regulation and supervision of the industrial bank industry. The Department takes its supervisory role seriously.

BANKING & COMMERCE

I have given my views on the merging of banking and commerce in many forums.

Today, my thoughts go to these issues:

A. Congress believes that granting IBs new powers would further facilitate the IBs becoming nationwide banks that operate in competition with community banks.

B. The FDIC/STATE supervision and regulation model of IBs has succeeded, but the jury is still out on the more important question of whether their holding companies, are regulated to a comparable level of the national banks and their holding companies with nationwide operations.

C. While an argument has been made that IBs constitute a violation of the basic premise that banks cannot be owned by commercial corporations.

Industry and Banks need to be involved and work Congress.

Politics will decide the issues.

CONGRESSIONAL ACTION

House Financial Services Committee Chairman Rep. Barney Frank (D-MA) and Rep. Paul Gilmor (R-OH) introduced the *Industrial Bank Holding Company Act of 2007 (H.R. 698)* on January 29, 2007. The proposed bill contains some of the same provisions that passed the House last year but was not taken up by the Senate. The major provisions of H.R. 698 are:

(1) require new IB parents to derive more than 85% of their revenue from financial activities,
(2) IBs bought or chartered by a commercial firm between October 2003 and January 2007 could operate but not expand,
(3) IBs owned by commercial parents before October 2003 would not be subject to any new restrictions and
(4) gives the FDIC holding company powers similar to that of the Federal Reserve and Office of Thrift Supervision, including examination authority and the ability to establish minimum capital levels at the holding company; except for "grandfathered" holding companies that existed before October 2003.

The bill passed the House on May 21, 2007 under suspension of the rules.

A companion bill was introduced in the Senate as S1365 sponsored by Senators Sharrod Brown (D-OH) and Wayne Allard (R-CO) on May 10, 2007. The language was substantially similar to HR698.

UTAH OPPOSED PASSAGE OF H.R. 698 FOR THE FOLLOWING REASONS

The Utah Department of Financial Institutions opposed passage of H.R. 698 in testimony provided on April 25, 2007 before the House Financial Services Committee. Utah believes that bill is unnecessary and an effort to restrict and restrain state-chartered industrial banking without a valid safety or soundness concern or a crisis. Utah believes there is good supervision and a good regulatory model over the industry without a question of the competency of the regulators in that there has not been an industrial bank failure warranting this change in public policy.

Utah in partnership with the FDIC has built a regulatory model over the industrial banks to which the financial services markets have reacted favorably. This regulatory model is NOT a system of lax supervision and inadequate enforcement. Utah industrial banks are safe, sound, and appropriately regulated by both the state which charters them and the FDIC which is the relevant federal regulator and deposit insurance provider.

An analysis of the numbers as of December 31, 2006, developed by Utah indicates that we hold **88%** of all industrial bank assets. Based upon our knowledge of the holding companies, we estimate that **86%** of Utah industrial bank assets would be considered held by *"financial"* entities (22) and **14%** by *"non-financial"* entities (9).

Our analysis is that **seven** of Utah's industrial banks representing **80%** of our assets are subject to consolidated federal agency supervision at the holding company level. The federal agencies we considered are the Federal Reserve, the OTS and the SEC. The numbers for June 30, 2007 would show a diminished percentage under federal agency jurisdiction largely as the result of the extraordinary growth of an industrial bank owned by a commercial entity.

As stated in my testimony, H.R. 698 if signed into law will dismantle a Utah banking industry of thirty charters and a regulatory structure that has matured over twenty years with a record of safe, sound operations to forestall one entity from being granted a charter. This bill with its provisions that are designed to block any and all conceivable ways in which a retailer may employ an industrial bank charter today or in the future are disappointingly, anti-competitive and anti-consumer. The targeted large retailer withdrew its application with the application having never been accepted as complete by the Utah Department.

H.R. 698 provisions are being justified under the pretext of preserving the prohibition against the merging of banking and commerce. The broad brush strokes of this bill include as collateral damage, large financial arms of entities which have been in the financial arena for decades such as DaimlerChrysler and Ford, the former submitted an application for an industrial bank charter in May of 2005 which was approved by my state a year ago. Now under the provisions of this bill will not be allowed to proceed. This is a disappointing outcome when other auto lenders have a bank charter.

Some of the Depratment's thoughts on Hr 698 are that the legislation relies in part on certain grandfathering dates to prevent commercial entities from owning IBs. Unfortunately, the concept of grandfathering appears to be illusory for those institutions already in existence. For example, under current federal law, a "change of control" could occur without changing ownership but still result in divestiture. As a result, a mandatory divestiture in that circumstance would be overly harsh.

The Department suggests that the grandfathering section could be modified to select another date or entirely remove the "grandfather" provision.

The Department recommends using the commercial test before turning to a divestiture requirement. In other words, if an entity that becomes an owner does not meet the commercial test then they could be required to either "cure" the situation within a year and "qualify" or submit to divestiture within two years.

The Department is concerned with the overly broad definition of branching, which includes deposit production offices, loan production offices, ATMs, and remote service units. The Department would recommend the branch definition under section 36 of the National Bank Act.

Finally, any concern dealing with the activities of commercial IBs should be dealt with by relying on the fact that, under current federal law, proposed activities must be approved under 12 U.S.C. Section 24.

In conclusion, the Department in our testimony tried to drive home the point that all industrial banks together comprise only 1.8% of total banking assets; therefore, the IBs are not a systemic crisis that threatens banking nor is the regulatory model a “parallel” bank regulatory system in that 80% of Utah assets are subject to federal agency oversight at the holding company level.

OTHER DEPARTMENT ISSUES:

Balanced Scorecard

Governor Huntsman has committed all state agencies to providing value to our citizens through consistently improving services we offer. He has also stressed improving performance in state government.

He has through the Governor’s Office of Planning and Budget adopted a “Balanced Scorecard” management approach.

The balanced scorecard is an internal management tool that focuses on key performance indicators, aligns agencies day-to-day operations with the state’s strategic vision and reported on monthly to the Governor’s office.

The Department, with the senior management team, held a series of meetings where analytical indicators of Department performance were offered, discussed and decided upon. These performance measures have been included in the Department’s Balanced Scorecard which we are now submitting monthly to the Governor’s Office.

I wanted you to be aware of the Governor’s adoption of the Balanced Scorecard methodology.

We have listed a number of metrics under broad captions that we believe indicate our level of performance as an agency.

They are:

Specific Metrics

- Supervision Efficiency
  - Assets per Examiner - total assets under supervision per examiner
  - Issued Reports - Avg. number of days to issue a ROE
  - Examination Performed - No. of exams initiated during the period
- Job Performance
  - Complaints Resolved - avg. # of days to resolve consumer complaints
  - Outreach Presentations - avg. # of attendees at Fin. Serv. Edu. Prsnt.
- Internal Process/Financial
  - Training Hours - avg. # of training hrs per examiner
  - Training Budget - training-related expenditures. to tot. expend.
- Industry Satisfaction
  - Examination Survey - overall quality assurance survey rating

Supporting Metrics

- Supervision Efficiency
  - Supervised Assets - tot. assets under supervision (billions)
  - Reports Issued - # of ROE issued
  - Safety & Soundness Exams - # exams initiated
  - Speciality Exams - # of speciality exams initiated
- Job Performance
  - Complaints Received - # of consumer complaints received
  - Complaints Outstanding - # of consumer complaints outstanding
  - Outreach Presentations - # of fin. svrcs. Outreach presentations
  - Outreach Attendees - tot. # attending presentations
- Internal Process/Fiancial
  - Training Related Hours - total hours spent in training
  - Training Related Expenditures - $ spent on training
- Industry Satisfaction
  - Exam Length - length of exam appropriate (survey Q #3)
  - Length of Contact - level of mgmt contact appropriate (Q#4)
  - Examination Conduct - exam conducted w/little disruption (Q#6)

Professionalism - DFI personnel courteous and professional (Q#7)

The program calls for a public website where key indicators of the Agency Balanced Scorecard will be published and citizens may review.

The metrics are not set in stone. As we gain some experience, we may amend or alter the metrics.

Quality Assurance Survey

The balanced scorecard shows the importance of the Quality Assurance Survey that you are asked to complete and return to the Department after each examination where Utah DFI is the lead agency.

We are only getting about 50% competed and returned to the Department. We ask that you take this request more seriously and complete honestly and return. It is one of the few real feedback mechanism that we have devised.

Industrial Bank Management

There are continuing probes to determine how far the Department is willing to allow the senior management of the industrial bank to be located elsewhere.

We have and will continue to resist efforts to relocated senior management. The Department believes that having senior management locally-based and accessible is one of the basic prudential standards that has helped establish the industry record of solid safety and soundness.

The Department will resist all efforts to justify locating senior management elsewhere.

Credit Correction

Second Point. Final topic I will cover and encourage your banks to take all actions and steps necessary to protect your bank during this "credit correction" of the markets. The first analysis that I have read of what is going on in the market today addressing banking in particular was written by Gene Ludwig in an article in the *American Banker* last Friday, August 17, 2007.

He called what is going on a "credit correction that began with a re-evaluation of the risk-reward parameters for subprime lending is not over. There will be several very challenging weeks and months before it is."

He stated that, "*Importantly, and unlike many previous credit corrections, this problem has not originated in the commercial banking sector. The problem began with the failure of underregulated financial institutions to originate credits carefully or to evaluate and price risk adequately, and has evolved into a fundamental liquidity imbalance.*

Banks have generally been cautious, and the bank supervisory agencies have been appropriately prudent with their guidance and oversight throughout what has been a period of excess.

This does not mean that banks are unaffected. Virtually all financial market participants will be affected and ultimately the whole economy will be affected."

"The correction is a sizeable change in market realities and must be confronted. Banks should:

1. *Carefully examine their exposures; however pristine a portfolio may look now, it may have weaknesses that are easier to address as the correction begins than when it is mature. Firms that act on their problems and potential problems early are better served. As is always true of a credit correction, lenders are affected not just by direct, but also indirect impacts of the correction.*

2. *Ensure collections and workout divisions are well staffed. It is always easier to collect a credit earlier in the process rather than later. Adding collection and workout staff after the problems have become urgent is typically more expensive and less effective.*

3. *Be alert to the rapidly changing nature of the credit correction. We have seen many fine financial institutions hurt because they have not reacted quickly enough to changing market realities. Boards and executive*

management should set a tone of open discussion of potential problems. The rule should be "good news fast, bad news faster." The best chance to fix a problem is to address it promptly and decisively.

4. *Consider scenario analysis and stress testing. I recently attended a board risk committee where management presented various challenging scenarios to directors as a way of preparing for difficult times.*

5. *Assess opportunities. This turbulent marketplace will present important opportunities for those banks that have been disciplined and are disciplined through the correction. Good customers and good potential customers will look for solid financial counseling and assistance in these times and these customers can by loyal for years to come.*

He finished with the warning, *"It may not be business as usual, but banks that continue to evaluate both internal and external pressures, and make cautious - not panicky - business decision, will come out successfully."*

Closing Comments:

UTAH DEPARTMENT OF FINANCIAL INSTITUTIONS
UTAH INDUSTRIAL BANKS
FACT SHEET

as of June 30, 2007 (except where other date noted)

- 0 Number of FDIC insured Utah industrial banks that have failed.

- 30 Operating industrial banks as of July 26, 2007 (Magnet Bank converted to commercial bank).

- $201 Billion Total Assets of Utah industrial banks.

- 2 Applications approved by UDFI, awaiting FDIC approval. Now held by FDIC Moratorium until at least January 31, 2008. (**Comdata Bank** and **Daimler Chrysler Bank**)

- 1 Application approved by UDFI on August 16, 2005 and the FDIC on March 20, 2007 with conditions, awaiting applicant's decision if accept conditions.(**CapitalSource Bank**)

- 1 Application approved by the FDIC on March 20, 2007 with conditions, awaiting decision of UDFI and applicant if accept FDIC conditions. (**Marlin Financial**)

- 1 Application that UDFI has accepted as complete and will continue processing to the point of Commissioner's Approval Order then place in "inactive" status until FDIC Moratorium lapses. The applicant has amended the filing to be more "financially owned". (**American Pioneer Bank**)

- 3 Applications publically announced and received by UDFI, but not accepted as complete. (**SNFC Bank, ARCUS Financial Services, Home Depot** and **Ford Motor Credit**)

- 1 Application accepted as complete and actively processing (**ARCUS Financial Services,** June 7, 2007)

- 2 Applications filed as IB, caught in FDIC Moratorium, elected to pursue different charter, **Proficio Bank** converted to a commercial bank charter was approved and opened January 16, 2007 and **Blue Heathcare Bank** converted to a federal Savings Bank and approved by OTS, opened March 6, 2007.

- 14 Number of industrial banks with total assets exceeding $1 billion.

- 61 Billion in total assets for the largest industrial bank.

- 14 Million in total assets for the smallest industrial bank.

- 6 Number of industrial banks with total assets under $100 million.