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Statement of the Shadow Financial Regulatory Committee

Wal-Mart's Pending Application to Acquire an Industrial Loan Company

December 5, 2005

Wal-Mart has applied to acquire an industrial loan company (ILC) in the state of Utah. ILCs can offer FDIC-insured deposits, are examined by the FDIC, make loans, and can directly engage in transactions with other financial institutions through the payment system.

In past statements, the Committee has advocated the elimination of the longstanding barriers to mixing banking and commerce (see Statements No. 115, 118, 138, 142, 155, and 194) as a means to encourage new entry, competition, and beneficial takeovers of poorly run institutions in the financial services industry. The Committee has also expressed the view that ILCs can offer a useful means for non-financial companies to compete as financial service providers, because they can serve as an important potential vehicle for entry and competition. In Statement No. 194, for example, the Committee

stressed that: “Consumers might find these facilities more convenient, less costly, or otherwise preferable to their present banking arrangements.”

Prior to the passage of the Gramm-Leach-Bliley Act of 1999 (GLB), advocates of the separation of commerce and banking expressed three justifications for continuing the separation: (1) the possibility that a bank would lend preferentially to its commercial affiliate or parent, (2) the possibility that the bank would not lend to the competitors of its commercial affiliate or parent, and (3) the possibility that the bank’s resources would be inappropriately marshaled in support of a failing commercial parent or affiliate, thus jeopardizing the bank’s safety and soundness and potentially imposing a cost on the deposit insurance fund.

For reasons detailed in the earlier statements on this issue, the Committee does not believe that these arguments have merit. More importantly, Congress, through its recent actions, has also rejected these arguments. In the GLB Act, Congress permitted banks to be affiliated with other financial organizations, such as securities firms and insurance companies. Thus, although GLB did not eliminate the separation of banking and commerce, it did ignore all of the three rationales listed above for separating banking and commerce. Since those rationales apply as fully to the affiliation of a bank with a securities firm as to the affiliation of a bank with a retailer or other non-financial firm, it is fair to conclude that Congress agrees with us and sees no policy problem associated with combining banks with users of bank credit. Thus, it is no longer possible reasonably to argue that commercial banks should be able to affiliate with, and lend to, securities firms but not with retail firms.

Without a rational policy basis, the separation of banking and commerce is now only a way to protect banks and non-banks from competition from outside their industries.