ICBA
INDEPENDENT COMMUNITY BANKERS of AMERICA®

March 16, 2020

Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Deposit Insurance Applications by Industrial Banks and ILCs

Dear Chairman McWilliams:

ICBA is extremely concerned about the proposed rulemaking on parent companies of industrial banks and industrial loan companies (ILCs) which will be considered by the FDIC Board tomorrow. ICBA requests the FDIC refrain from approving any deposit insurance applications submitted by ILCs until the proposed rulemaking is finalized. Furthermore, the FDIC should hold a hearing on each of the pending ILC applications.

ICBA is particularly concerned about three of the ILC applicants—Square Financial Services, Inc., Nelnet Bank and Rakuten Bank America—since the owners of those ILCs have substantial commercial interests. **Under no circumstances should the FDIC approve these ILC applicants for deposit insurance without commitments from their owners and affiliates that they will divest their present commercial interests and that prospectively, they will be subject to the same restrictions community bank holding companies are subject to.** As you know, Congress enacted a moratorium on new ILC charters as part of the Dodd-Frank Act and legislation has been recently introduced in the Senate to close the ILC loophole going forward.

Banks hold a unique place in the American economy. As independent and neutral arbiters of commercial and consumer credit, banks assess risk and create fair access to credit based on the power of an idea, the track record of management, the current marketplace, and economic potential. **That critical role would be jeopardized if the FDIC approves any of the ILC applicants that are owned by companies that are engaged in substantial commercial activities. To preserve the character and safety of our economy and to uphold consumer**

and business confidence in our banks, commercial companies must not be allowed to own banks or bank-like institutions.

The separation of banking and commerce is a long-standing principle of American economic policy. It was first embodied in statute in the Bank Holding Company Act of 1956 (the BHCA), which created a formal definition of a bank holding company, established consolidated supervision, and limited the activities of bank holding companies to those closely related to banking, effectively separating the business of banking from "pure" commercial activities. Subsequent amendments to the BHCA have reaffirmed the separation of banking and commerce. In 1999, the Congress debated the issue of mixing banking and commerce as it considered the Gramm Leach Bliley Act and Congress decided not to extend the safety net to commercial firms. It recognized the lessons of the 1980s and the banking collapse of the early 1930s--that our deposit insurance system was created for the protection of depositors of regulated banks and not for the protection of commercial firms.

As ICBA stated before in our comment letters regarding these applications, if the FDIC approves for deposit insurance an applicant such as Square Financial Services, Inc. or Rakuten Bank America without commitments from their holding companies to comply with the BHCA, the consequences to our financial system would be enormous. Other fintech firms such as Amazon or Google will also want to own ILCs and get into the business of banking without divesting their commercial interests. The integration of these technology, e-commerce, and banking firms would not only result in an enormous concentration of financial and technological assets but also would pose conflicts of interest and privacy concerns to our banking system.

For instance, if Rakuten, Inc. were to own an ILC, they and its affiliates could accumulate large amounts of financial data on people which, combined with the shopping data they already have from Rakuten.com would pose a strong privacy risk to individuals. Furthermore, Rakuten, Inc. would be tempted to direct its ILC to engage in transactions that benefitted the holding company's affiliates but were detrimental to the ILC's safety and soundness. For instance, Rakuten, Inc. could encourage its ILC to deny credit to customers of its affiliates' competitors or alternatively, could encourage its ILC to offer loans to affiliates' customers based on terms not offered to its competitor's customers.

For safety and soundness reasons and to maintain the separation of banking and commerce, the FDIC should deny any ILC applicant whose owner does not agree to be subject to the same restrictions imposed by the BHCA that community bank holding companies are subject to. Furthermore, Congress should close the ILC loophole because it

not only threatens the financial system but creates an uneven playing field for community banks. This loophole should never be allowed to be exploited by large commercial firms as a way to get into the U.S. banking business without complying with the BHCA.

Sincerely,
/s/ Rebeca Romero Rainey
Rebeca Romero Rainey
President and CEO

cc: Martin J. Gruenberg, FDIC Director
Joseph M. Otting, Comptroller of the Currency
Kathleen L. Kraninger, Director of the CFPB