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August 21, 2019

Kathy Moe
Regional Director
FDIC San Francisco Regional Office
25 Jessie Street at Ecker Square
San Francisco, California 94105

Re: FDIC Deposit Insurance Application of Rakuten Bank America

Dear Ms. Moe:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the federal deposit insurance application of Rakuten Bank America. According to its application, Rakuten Bank America will be an online-only bank with no branches headquartered in Midvale, Utah.

The Bank will provide a wide variety of traditional bank products including consumer loans, consumer credit cards, consumer deposits (NOW, savings, and time), merchant acquiring, commercial loans, and commercial savings accounts. Rakuten says that this product suite was "selected to specifically serve the users of the U.S.-based online marketplace, both consumers and merchants" and that "these offerings will essentially complete the Rakuten U.S. ecosystem, whereby consumers and merchants are served in a common online marketplace that creates loyalty and provides real value to both sets of customers." Rakuten Bank America will market its products primarily in the existing Rakuten community to consumers who are already existing customers of the Bank's Rakuten affiliates, including but not limited to Ebates (currently being rebranded as Rakuten) and Rakuten.com.

The direct parent company of Rakuten Bank America is Rakuten Card Co., Ltd., (Rakuten Card Japan). Rakuten Card Japan will contribute $50 million cash in organizing and startup costs and $350 million in cash as the initial capital injection. This amount of capital could support a de novo bank growing to approximately $4 billion in assets.

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[1] *The Independent Community Bankers of America®, the nation's voice for more than 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 765,000 Americans, hold $4.9 trillion in assets, $3.9 trillion in deposits, and $3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.*

Rakuten, Inc.

Rakuten Bank America's parent company is owned by Rakuten, Inc. According to Wikipedia, since Rakuten, Inc. is the largest electronic commerce and internet company in Japan, it is often referred to as the "Amazon of Japan." With total sales worldwide of about $7.2 billion dollars and with nearly 17,000 employees, Rakuten has enormous commercial interests in online shopping, travel reservations, professional sports (i.e., it owns a professional Japanese baseball team), book distribution, marketing, and data analysis. Rakuten also owns the largest internet bank in Japan.

In the United States, Rakuten significantly expanded its commercial interests by acquiring Buy.com in 2010 which became Rakuten.com. That website offers a series of virtual storefronts for shoppers to browse and connect online providing a "merchant-friendly" experience. Rakuten has also launched e-commerce sites in Germany, Brazil, France, China, Thailand, Malaysia, Indonesia, Taiwan, South Korea, Austria, Russia, Canada and the United Kingdom. In 2014, Rakuten purchased Ebates.com for $1 billion which now allows customers to earn cash back when shopping online. With 2,600 retailers offering products on Ebates, Rakuten now has a large presence in the US e-commerce market and according to its application, owns 43 different companies in the U.S.

ICBA's Comments

In addition to raising a number of significant legal and regulatory issues, Rakuten Bank America's deposit insurance application is antithetical to the long-established policy in the United States that banking and commerce should be kept separate. In fact, not only at the holding company level but at the bank level, Rakuten Bank America's desire is to link e-commerce with banking so as to create a "synergistic ecosystem" with "leading edge mobile technology." Rakuten says this this strategy is a "win-win" for both merchants and consumers.

As we indicated with the Square and SoFi's deposit insurance applications to the FDIC, ICBA's objection to their applications is their use of the ILC charter to avoid the legal prohibitions and restrictions under the Bank Holding Company Act (BHCA). We said that the Square application presented a threat to the separation of banking and commerce since the holding company of Square and its affiliates already engage in a diverse set of commercial activities including a food delivery business, a software business, and an online hardware store. Regulation under the BHCA entails consolidated supervision of the holding company by the Federal Reserve and restricts the activities of the holding company and its affiliates to those that are closely related to banking. Because of a loophole, companies that own ILCs are not subject to BHCA supervision. As a result, a company that owns an FDIC-insured ILC can engage in non-banking commercial activities and not be subject to consolidated supervision.

Banks hold a unique place in the American economy. Banking is not simply a business among other businesses. 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 commercial firms were allowed to own or control banks or their functional equivalents. 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.

Similar to Walmart's application in 2005, Rakuten Bank's application presents the mixing of commerce and banking at a new and unprecedented level since Rakuten, Inc.'s e-commerce and other commercial activities are so diverse and operate on a global stage. For instance, in addition to its massive e-commerce activities, the company owns an online marketing business, Rakuten Marketing, and has investments in companies as diverse as Pinterest (a social media web and mobile application company), Ozon.ru (a Russian online retailer) Lyft (a ride-hailing service), Cabify (a Latin American ride-hailing service), Careem (a middle-Eastern transportation startup company), and Carousell (a Singapore-based consumer-to-consumer marketplace app). Rakuten has made several large investments in e-book distribution, electronic publishing, and digital content particularly after purchasing Overdrive, Inc. in the United States and has also made large investments in video-on-demand service companies. In 2004, Rakuten Baseball was created and the baseball team Tohoku Rakuten Golden Eagles was formed and joined the Nippon Professional Baseball League.

Rakuten Bank America is applying as an ILC and not as a commercial bank because its parent company and the company that owns the parent company do not want to divest their commercial activities and be subject to the legal restrictions of the BHCA**. As we stated in our comment letter regarding the Square application, for safety and soundness reasons and to maintain the separation of banking and commerce, the FDIC should deny Rakuten Bank America's application and impose a temporary moratorium on future ILC deposit insurance applications.** Rakuten, Inc. should be subject to the same restrictions and supervision that any other bank holding company of a full service bank is 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 a huge foreign e-commerce company as a way to get into the U.S. banking business without complying with the BHCA.**

If the FDIC approves the Rakuten Bank America application, the consequences to our financial system would be monumental and irreversible. Rakuten's chief e-commerce competitor in the United States is Amazon and it is not difficult to envision Amazon also wanting to get into the banking business through an ILC. 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.

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.

Furthermore, examining the affiliate relations of Rakuten Bank America will be a tremendous challenge to the FDIC. According to its application, Rakuten Bank America will enter into six master services agreements with various Rakuten affiliates for limited services and four marketing agreements with other affiliates include Ebates, Kobo, Viber and Viki to allow the Bank to market products to their respective customer bases. These services will be provided to the Bank "at or below market rates in compliance with Section 23B of the Federal Reserve Act and Regulation W." **However, since many of these relationships will be with foreign companies, the work will be overwhelming for the FDIC and will require an examination team working an entire year to determine whether these relationships violate Regulation W. We question whether the FDIC has the resources or even the skills to examine and supervise this many different e-commerce affiliate relationships, particularly when so many of them operate overseas.**

In 1999, the Congress debated the issue of mixing banking and commerce as it considered the Gramm Leach Bliley Act and Congress decided to maintain the separation of banking and commerce and 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.

The FDIC should deny Rakuten Bank America's application and impose an immediate moratorium on ILC deposit insurance applications. Furthermore, Congress should immediately address this issue and permanently close the ILC legal loophole before it is too late and we have these large e-commerce and technology firms owning FDIC-insured ILCs and operating them without adequate holding company supervision and without any restrictions on the types of activities in which the holding company or the ILC's affiliates can engage.

The implications to our financial system and economy of a Rakuten Bank America ILC are enormous and illustrate exactly why the U.S. policy has been to separate banking and commerce for the good of the economy, consumers and businesses alike.

ICBA appreciates the opportunity to comment on Rakuten Bank America's deposit insurance application. If you have any questions or would like additional information, please do not hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel