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September 14, 2017

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20552

Dear Chairman Gruenberg:

As you may be aware, ICBA recently filed a comment letter with the FDIC objecting to the deposit insurance application of SoFi Bank, an industrial loan corporation to be chartered by the state of Utah. In our letter, we urged FDIC, for safety and soundness reasons and to maintain the separation of banking and commerce, to not only deny SoFi Bank's application but also impose a moratorium on ILC deposit insurance applications. Furthermore, we said that Congress should close the ILC loophole because it not only threatens the financial system but creates an uneven playing field for community banks.

The news that Square also intends to apply to the FDIC for deposit insurance as an industrial loan corporation has significantly increased our concerns and made it even more urgent that the FDIC immediately impose a moratorium on approving deposit insurance applications for ILCs. As we noted in our SoFi Bank letter, the ILC charter is nothing more than a loophole in the law to circumvent the legal prohibitions and restrictions under the Bank Holding Company Act. The BHCA contains a comprehensive framework for the supervision of bank holding companies and their nonbank subsidiaries. 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 this loophole, companies may engage in the full range of banking activities through an ILC but are not subject to BHCA supervision. In addition, a company that owns an FDIC-insured ILC can engage in non-banking commercial activities in contravention of the Bank Holding Company Act and not be subject to consolidated supervision.

SoFi Bank and Square are applying as ILCs and not as commercial banks because their parent companies and their affiliates do not want to be subject to the legal restrictions and supervision attendant to the BHCA. Square, for instance, already owns a point-of-sale hardware appliance business and a food delivery service and therefore could not own a commercial bank without divesting its commercial activities. **For safety and soundness**

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reasons and to maintain the separation of banking and commerce, the FDIC should deny SoFi Bank’s application and impose a moratorium for at least two years on future ILC deposit insurance applications, including any application by Square. This two-year period will give Congress time to consider whether it wants to maintain the separation of banking and commerce and close the ILC loophole. In short, SoFi and Square should be subject to the same restrictions and supervision that any other holding company of a full service commercial bank or community bank is subject to.

When Walmart proposed establishing an ILC to engage in banking activities in 2006, ICBA was the first national bank trade association to oppose Walmart’s deposit insurance application. ICBA advocated for a permanent closure of the ILC loophole and was particularly concerned with Walmart mixing commerce and banking. In letters and testimony to the FDIC, we stated that allowing corporate conglomerates to own banks not only violates the U.S. policy of maintaining the separation of banking and commerce, but jeopardizes the impartial allocation of credit, creates conflicts of interest and a dangerous concentration of commercial and economic power, and unwisely extends the federal safety net to commercial interests.

There is significant precedent for the FDIC imposing a moratorium on ILC deposit applications. In response to ICBA’s advocacy and requests from Congress about the ILC applications filed by Walmart and Home Depot, the FDIC Directors imposed a six-month moratorium on deposit insurance applications and change-in-control notices with respect to ILCs beginning July 28, 2006. The FDIC further extended the moratorium for one year on January 31, 2007, with respect to ILCs that would become subsidiaries of companies engaged in nonfinancial activities. Finally, Section 603 of the Dodd Frank Act imposed a three-year moratorium on ILCs controlled by commercial firms and prohibited the FDIC from acting favorably on applications for deposit insurance filed by such institutions after November 23, 2009. ICBA strongly approved of all three ILC moratoriums and advocated for an extension of the last moratorium when it expired.

If the FDIC does not immediately impose a two-year moratorium on ILC deposit insurance applications, the consequences to our financial system could be enormous. The Federal Reserve’s warning in 2012 that “the number and size of ILCs could grow to much higher levels than they had reached prior to the financial crisis” could turn out to be an understatement. With over 4,000 fintech firms actively engaged in financial activities including PayPal and Lending Club, it is not difficult to envision the ILC industry doubling in size in less than a year through new ILCs formed by huge technology companies.

The integration of these technology and banking firms would not only result in an enormous concentration of financial and technological assets but also would pose

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conflicts of interest and privacy concerns to our banking system. If Google or Amazon, for instance, were to own an ILC, they could accumulate large amounts of financial data on people which, combined with the shopping data they already have, would be invaluable and pose a strong privacy risk to individuals. Furthermore, Google or Amazon 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, Amazon could encourage its ILC to deny credit to customers of Amazon's competitors or alternatively, could encourage its ILC to offer loans to Amazon's customers based on terms not offered to its competitor's customers. While Section 23A of the Federal Reserve Act restricts the ability of insured depository institutions—including ILCs—to enter into transactions with affiliates, there are still many ways that a huge technology firm could circumvent the Section 23A restrictions and escape the FDIC's supervision, particularly when there is no consolidated supervision under the BHCA.

In 1999 the Congress debated the issue of mixing banking and commerce as it considered the Gramm Leach Bliley Act. Congress decided not to extend the safety net to commercial firms. It heeded the lessons of the 1980s and the banking collapse of the early 1930s and recognized that the system of deposit insurance was created for the protection of depositors of regulated banks and not for the protection of commercial firms.

In conclusion, in light of the ILC/deposit insurance applications of SoFi Bank and Square, we strongly urge the FDIC to immediately impose a two-year moratorium on any new ILC applications for deposit insurance similar to the moratoriums that were imposed in 2006 and 2007. This will give Congress further time to study the issue and determine whether it wants to maintain the separation of commerce and banking by ending the ILC loophole. Without such a moratorium, our financial system will become even more concentrated and subject to tremendous systemic risks that no banking regulator would be able to supervise and control.

Sincerely,



Camden R. Fine
President and CEO

cc: FDIC Vice Chairman Thomas Hoenig, Acting Comptroller of the Currency Keith Noreika, CFPB Director Richard Cordray, Federal Reserve Chair Janet Yellen

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