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October 10, 2017

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

Dear Ms. Moe:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the federal deposit insurance application of Square Financial Services, Inc. (Square) a subsidiary of Square, Inc. According to the application, Square will be an industrial loan corporation (ILC) chartered by the state of Utah. Square's primary purpose will be to offer business loans to small businesses similar to the existing business of Square Capital, LLC and also to offer deposit products.

Square will be an online-only bank with no branches headquartered in Salt Lake City, Utah and will be capitalized with \$56 million in cash. Lending and deposit products will primarily be offered online and the ILC's intended geographical market will be all fifty states. According to the application, the holding company of Square already offers a merchant cash advance product to sellers and Square Capital partnered with a Utah ILC to facilitate the offering of loans to eligible sellers.

ICBA's Comments

As we indicated with the SoFi Bank application, ICBA's main objection with Square's

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.*

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deposit insurance application is its use of the ILC charter to avoid the legal prohibitions and restrictions under the Bank Holding Company Act (BHCA). **This is an even more significant problem with the Square application 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 in the law, 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.

Square is applying as an ILC and not as a commercial bank because its parent company does not want to divest its commercial activities and be subject to the legal restrictions of the BHCA. **As we stated in our comment letter regarding the SoFi Bank application, for safety and soundness reasons and to maintain the separation of banking and commerce, the FDIC should deny both deposit insurance applications and impose a two-year moratorium on future ILC deposit insurance applications.** Square should be subject to the same restrictions and supervision that any other bank holding company of a community 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.**

There is plenty of legal precedent for a moratorium. In response to ICBA's advocacy and requests from Congress about the ILC applications filed by Walmart and Home Depot, the FDIC 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.

If the FDIC fails to impose a moratorium on new ILC applications, the consequences to our financial system would be quite significant. There are thousands of fintech firms already engaged in financial activities and it is not difficult to envision some of Square's competitors such as an Amazon or a Google joining their ranks. 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 conflicts of interest and privacy concerns to our banking system.

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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.

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.

The FDIC should deny Square's application and impose an immediate two-year 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 huge commercial or technology firms like Amazon, Google or Wal-Mart 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.

ICBA appreciates the opportunity to comment on Square'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

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