ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

Via Electronic Submission

July 1, 2020

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Notice of Proposed Rulemaking – Parent Companies of Industrial Banks and Industrial Loan Companies [RIN 3064–AF31]

Dear Mr. Feldman,

The Independent Community Bankers of America ("ICBA")[1] appreciates this opportunity to provide feedback to the Federal Deposit Insurance Corporation's ("FDIC") request for comments in response to its Notice of Proposed Rulemaking ("NPR")[2] on the supervision of the Parent Companies of Industrial Banks and Industrial Loan Companies. As the financial services industry continues to evolve, it is critical that the FDIC, and all prudential regulators, take appropriate steps to regulate all financial institutions that offer banking products.

ICBA Position

While ICBA commends the FDIC's effort to strengthen its existing supervisory processes and policies that apply to parent companies of industrial banks that are not subject to consolidated supervision by the Federal Reserve Board, these proposed supervisory enhancements fall considerably short of what is needed to ensure the safety and soundness of these companies. Furthermore, because of the unique risks that they pose to our

[1]The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than $5 trillion in assets, nearly $4 trillion in deposits, and more than $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America.
ICBA 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.
[2] 85 Fed. Reg. 17771 (available at: https://beta.regulations.gov/document/FDIC-2020-0033-0001).

financial system, commercial firms should never be allowed to own an ILC or bank even if they are subject to enhanced supervision and regulation.

Industrial banks, also known as industrial loan companies or ILCs, currently account for a relatively small percentage of the assets of FDIC insured institutions (approximately 4.4% according to the December 2019 Call Report data). However, due to the statutory loophole that allows them to affiliate with and be owned by commercial (i.e. non-financial) companies, they present an outsized risk to the financial system.

We have consistently argued for statutory changes that would permanently close the ILC Loophole, including by supporting the Eliminating Corporate Shadow Banking Act of 2019, which would amend the Bank Holding Company Act to subject ILCs to consolidated supervision by the Federal Reserve Board and require that all commercial activities of new ILCs be divested.[3] Until such statutory changes are enacted, it is incumbent on the prudential regulators of ILCs to ensure that neither they nor their parent companies threaten the stability of the financial system.

Corporate conglomerates or other companies engaged in commercial activities should not be allowed to own full-service banks in violation of the longstanding U.S. policy of maintaining the separation of banking and commerce. In addition to preventing conflicts of interest, the separation of banking and commerce is a bulwark that prevents economic shocks that render commercial firms insolvent from directly impacting the financial system. The COVID-19 pandemic, which has threatened the solvency of many once blue-chip industrial companies, illustrates the danger of allowing commercial firms to own depository institutions.

ICBA has a long and consistent history of supporting the separation of commerce and banking. In 2005, we were strong opponents of Wal-Mart's ILC charter bid and we supported the inclusion of a moratorium on granting new ILC deposit insurance applications that was included in the Dodd-Frank Act. ILCs present outsized risk to the Deposit Insurance Fund ("DIF") and granting new ILC deposit insurance applications during an unprecedented global pandemic is contrary to the public interest.

For this reason, in addition to strengthening its supervisory process, the FDIC should ask Congress to transfer the supervision of the parent companies of ILCs to the Federal Reserve Board subject to the BHCA. The FDIC is well suited to conduct the bank-centric examinations of most state non-member banks, but the Federal Reserve Board is most expert at conducting the top-down consolidated supervision of complicated bank holding companies. Furthermore, the FDIC should impose a two-year moratorium on the review of all new ILC charter applications and an indefinite moratorium on the review of ILC charter applications by foreign companies to give Congress an opportunity to close this loophole.

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[3] S. 2839, 116th Cong. (2019).

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Background

As the FDIC observes in the NPR, ILCs, which were also sometimes known as Morris Plan Banks, were small, state-supervised financial institutions created in the early 1900s to provide small loans to industrial workers. At that time, many commercial banks did not offer small, uncollateralized loans to moderate income workers with no credit history. Therefore, industrial banks were able to occupy a niche in the lending market. Because many early ILCs were legally unable to accept deposits, they were not subject to FDIC supervision or able to receive deposit insurance.

When commercial banks began expanding their consumer lending operations in the 1940s and 50s, the market share of industrial banks shrunk dramatically. ILCs almost became a historical curiosity. However, in 1982, the Garn-St. Germain Depository Institutions Act made all ILCs eligible for FDIC insurance. This change has allowed the ILC industry to grow its market share consistently ever since. Some states, namely Utah, have enacted "business friendly" laws that have broadened the powers of ILCs beyond their traditional niche role of consumer lending and made them equivalent to full-service banks.[4]

When Congress passed the Competitive Equality Banking Act (CEBA) in 1987, ILCs chartered in the handful of states where they existed were exempted from the definition of "bank" in the Bank Holding Company Act. As is acknowledged in the NPR, this exemption "provides an avenue for commercial firms to own or control a bank. By contrast, BHCs and savings and loan holding companies are subject to Federal consolidated supervision by the FRB and are generally prohibited from engaging in commercial activities."[5]

The ILC Loophole

The CEBA exemption from the definition of "bank" has created a backdoor in the banking code that allows large, commercial conglomerates, which would otherwise be prohibited from owning insured depository institutions, to purchase full-service banks without becoming bank holding companies or becoming subject to consolidated supervision**. In an era where large technology conglomerates are already under antitrust scrutiny, policymakers should not open the door to allow Big Data, social media, fintech and e-commerce companies to have even more of a reach into the economic life of Americans.**

This backdoor has not escaped the notice of commercial giants. In 2005-06, Wal-Mart and Home Depot both applied for ILC charters. These applications were ultimately withdrawn in the face of

[4] Under Utah law, industrial banks are authorized to make all kinds of consumer and commercial loans and to accept federally insured deposits. For Utah ILCs that exceed $100 million in assets, the use of NOW accounts makes them functionally equivalent to traditional banks.
[5] 85 Fed. Reg. 17772.

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overwhelming public backlash. The FDIC correctly responded, at that time, by imposing a moratorium on new ILC charters until the danger they posed could be evaluated more fully. Regulation of ILCs was proposed in 2007, but because of the 2008 Financial Crisis, was never finalized.[6] In 2010, the Dodd-Frank Act imposed a three-year moratorium on ILC deposit insurance applications.

Though the controversy surrounding ILC charters receded for a time following Wal-Mart's failed bid, their unique regulatory status was not forgotten by commercial firms seeking to gain access to the federally subsidized funding source of FDIC-insured deposits. Firms like SoFi, Nelnet, and Square have applied for ILC charters in recent years, with Square and Nelnet's charters being approved by the FDIC earlier this year. ICBA opposed Square, Nelnet, and SoFi's applications for deposit insurance. These companies chose to apply for Utah ILC charters and not commercial bank charters because their parent companies wish to retain their current commercial activities and to further engage in new activities unrelated to banking, and avoid consolidated supervision by the Federal Reserve as a bank holding company.

Even more troublingly, less than a week after the FDIC's approval of Square and Nelnet's applications, Rakuten, the "Amazon of Japan," announced its plans to refile its previously withdrawn ILC application. Its new application was filed on June 1, 2020. The possibility of large, foreign, commercial conglomerates owning U.S. depository institutions, backed by FDIC insurance, is contrary to the FDIA.

First, granting such a charter application poses outsized risks to the DIF. Rakuten's primary business is to operate an e-commerce marketplace in Japan. This business would not be under the direct supervision of the FDIC, and the FDIC is not well-situated to evaluate the myriad of risks that may jeopardize Rakuten's solvency. Economic shocks, changing consumer tastes, increased regulation, and foreign or domestic competition in the Japanese e-commerce market all may significantly disrupt Rakuten's business model, thereby threatening its ILC subsidiary. The FDIC, a U.S. bank regulator, is not adequately positioned to foresee when these risks will materialize.

If Rakuten's e-commerce business fails, it would bring down its ILC- Rakuten Bank America- therefore creating liability for the DIF. This concern is not unique to Rakuten, it applies to all commercial firms that seek to enter banking. Due to Rakuten's size, complexity, and principal place of business being a foreign market, the risks may be more easily evident. However, it is certainly possible that some new technology or changing payment habits could disrupt the business of Square, for example. The FDIC would be similarly unsuited to foresee this risk.

Second, a unique risk presented by granting ILC charters to large technology conglomerates such as Rakuten is the danger presented by the concentration of consumer data. In 2017, *The Economist* published an article arguing that data is "the oil of the digital era," arguing for a new

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[6] 72 Fed. Reg. 5217.

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approach to antitrust laws to regulate the massive conglomerates like Google, Facebook, and Amazon that control data flow.[7] Since that time, "data is the new oil" has become a generally accepted adage of the internet age, and its status as the central commodity of the digital economy has been further cemented.

By aggregating data, companies can use artificial intelligence to predict, and even modify, consumer behavior. This has been most controversial in the political sphere, where targeted ads can be aimed at very narrow groups, fueling extreme beliefs. The concern, however, should not be limited to politics. One of the reasons that Square and Rakuten want a bank charter is because they have a wealth of data about the sellers and businesses that use their platforms.[8]

This attempt by Big Tech to enter banking should be greeted skeptically by the FDIC. While the potential for using big data to simplify underwriting is being explored by traditional banks, these new arrangements create the potential for predatory lending or pricing. The insights possessed by e-commerce companies like Amazon and Rakuten or traditional commerce facilitators like Square, will potentially allow them to identify the businesses most desperate to receive financing, which they will then offer on predatory terms.

Furthermore, because banks necessarily handle the most sensitive of personal financial information, allowing commercial tech companies to own financial institutions will make them the most lucrative targets in the world for hackers. Even if the approval of an ILC charter makes the industrial bank's parent company a financial institution for the purposes of the Gramm Leach Bliley Act's Privacy and Safeguards Rules,[9] the wealth of data these institutions will contain ensures that they will be constantly under siege. This risk is relevant to the FDIC because if there is a data breach at an ILC's commercial affiliate, it may threaten the safety and soundness of the ILC by decreasing depositor confidence in the ILC and leading to a run on deposits.

Finally, if commercial firms like Rakuten and Square are able to own depository institutions, it means that they will be able to use the federally subsidized source of funding offered by insured deposits to make loans from the ILC subsidiary to the commercial parent, subject to Federal Reserve Regulation W. In addition, if the ILC makes loans to customers that use the loan proceeds to purchase goods or services from the ILC's parent, it runs the risk of violating the

[7] David Parkins, "The world's most valuable resource is no longer oil, but data," *The Economist,* May 6, 2017 edition. Available at: https://www.economist.com/leaders/2017/05/06/the-worlds-most-valuable-resource-is-no-longer-oil-but-data.

[8] In this same vein, see Amazon's recently announced partnership with Goldman Sachs's Marcus, which is designed to offer loans to Amazon sellers. *See* Hugh Son, "Amazon unveils small business credit line with Goldman in latest tie-up between tech and Wall Street," *CNBC.com*, June 10, 2020. Available at: https://www.cnbc.com/2020/06/10/amazon-and-goldman-sachs-unveils-small-business-credit-lines-up-to-1-million.html.

[9] It is not immediately clear that they would fall under the definition of "financial institution" outlined in 16 CFR 313.3(k). Certain companies that engage in financial activities are exempt from the definition if they are not "significantly engaged."

Attribution Rule, creating sales that would not occur but for the loan by the federally-insured ILC.[10]

In the case of Rakuten Bank America, the deep commercial interests of its affiliates would jeopardize the ILC's ability to act independently and without bias towards its customers. Rakuten Bank America would always be concerned with how its lending is influencing or affecting the commercial interests of its affiliates. Rakuten, Inc. would be tempted to direct Rakuten Bank America 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.

Congress relies on the expertise of federal banking regulators. For all the above reasons, the FDIC should ask Congress to close the ILC Loophole, by eliminating the ILC exemption from the definition of "bank" under the BHCA. The agency should also refrain from granting new ILC applications.

The Separation of Banking and Commerce

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. 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.

The decision to grant deposit insurance applications by Square and Nelnet, as well as advancing a framework that may result in a surge in new ILC applications, is a fundamental shift in policy. This weakening of the separation between banking and commerce "could transform our financial system as well as our economy and society" by creating issues with unfair competition, conflicts of interest, abusive sharing of customer data between Big Tech parents and ILC affiliates, and increased systemic risk.[11] This decision would not be justified during normal times, but it is particularly problematic during a global pandemic. The banking system is already facing considerable uncertainty caused by COVID-19. Though we stress that there is never a good time

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[10] Transactions with third parties are deemed affiliate transactions "to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that affiliate." 12 U.S.C. 371c(a)(2). If an ILC subsidiary of a commercial company makes loans to third parties that are known customers of the third party, the proceeds of those loans may directly or (due to the fungibility of money) indirectly be transferred to the ILCs commercial parent.

[11] *See* Art Wilmarth, "The FDIC Should Not Allow Commercial Firms To Acquire Industrial Banks," The FinReg Blog, Duke University School of Law (June 23, 2020). Available at: https://sites.law.duke.edu/thefinregblog/2020/06/23/the-fdic-should-not-allow-commercial-firms-to-acquire-industrial-banks/

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to mix banking and commerce, allowing commercial firms to enter banking at this moment increases the risk of financial contagion.

Depository institutions are already facing increased credit risk as a result of COVID-19 because of business closures to prevent the spread of the virus, decreased travel and consumer demand, and historic unemployment rates. Likewise, low interest rates have compressed net interest margins and put pressure on bank earnings. If ILC commercial affiliates become insolvent, they will jeopardize the safety and soundness of the ILC.

Orderly Liquidation Authority

The FDIC should not pave the way for the creation of commercial-financial conglomerates by accepting new deposit insurance applications for ILCs with commercial parents, because these parent companies exist outside the scope of the FDIC's Orderly Liquidation Authority ("OLA"). The FDIC's OLA only applies to financial companies[12] and commercial parents of ILCs fall outside this definition.

In the 2008 Financial Crisis, Bear Sterns, Lehman Brothers, and AIG were not eligible for FDIC receivership because they were not commercial banks.[13] As a result, they were forced to declare bankruptcy or to receive emergency aid from the Federal Reserve. This limitation was addressed in the Dodd Frank Act, which extended the FDIC's ability to resolve non-commercial bank financial companies. However, that authority does not extend to non-financial firms. Therefore, if a large commercial parent of an ILC fails in the next crisis, taxpayers may be compelled to bail out the firm in order to stop contagion from spreading to the banking system through its ILC subsidiary.

Though questions remain about the ability of OLA to resolve a large financial institution generally, including regarding the problems associated with accessing assets located in jurisdictions outside the United States, it remains an important tool in the FDICs arsenal in times of crisis. By contrast, the FDIC's tools to resolve a large commercial-financial conglomerate are more limited. By allowing for the creation of large, interconnected companies not subject to the BHCA to exist, the FDIC undoes much of the work undertaken by the FDIC and the Federal Reserve to craft resolution strategies for large financial firms since the last crisis.

The Proposed Rule

Having addressed the dangers presented by the blending of banking and commerce permitted by the ILC Loophole generally, this letter will now focus on the FDIC's March 31 NPR. In keeping with the principles that underlie the consolidated supervision of BHCs, it is important that the

[12] As defined in 12 U.S.C. 5381(a)(11).
[13] See Aaron Klein, "A Primer on Dodd Frank's Orderly Liquidation Authority," Brookings (June 5, 2017). Available at: https://www.brookings.edu/blog/up-front/2017/06/05/a-primer-on-dodd-franks-orderly-liquidation-authority/.

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FDIC's rule effectively allow the FDIC to monitor the structure, activities, resources, and risks of ILC parent companies, and to address the financial, managerial, and operational deficiencies of ILC parent companies and affiliates before they pose a danger to the subsidiary ILC.

Supervision of Covered Companies

The proposed rule defines a "covered company" as "any company that is not subject to Federal consolidated supervision by the FRB and that controls an industrial bank [as a result of a merger, change in control, or newly approved deposit insurance application]."[14] Covered companies are required to enter into a written agreement with the FDIC wherein they agree to:

(1) Submit to the FDIC an initial listing of all of the Covered Company's subsidiaries and update such list annually;
(2) Consent to the examination by the FDIC of the Covered Company and each of its subsidiaries to permit the FDIC to assess compliance with the provisions of any written agreement, commitment, or condition imposed;
(3) Submit to the FDIC an annual report describing the Covered Company's operations and activities to inform the FDIC as to the Covered Company's:
    (i) financial condition;
    (ii) systems for identifying, measuring, monitoring, and controlling financial and operational risks;
    (iii) transactions with depository institution subsidiaries of the Covered Company; and
    (iv) compliance with applicable provisions of the FDI Act and any other law or regulation.
(4) Maintain such records as the FDIC may deem necessary to assess the risks to the subsidiary industrial bank or to the Deposit Insurance Fund;
(5) Cause an independent audit of each subsidiary industrial bank to be performed annually;
(6) Limit the Covered Company's direct or indirect representation on the board of directors or board of managers of each subsidiary industrial bank to no more than 25% of the members and, in the case of a subsidiary industrial bank that is organized as a member-managed limited liability company, limit the Covered Company's representation as a managing member to no more than 25% of the managing member interests of the subsidiary industrial bank;
(7) Maintain the capital and liquidity of the subsidiary industrial bank at such levels as the FDIC deems appropriate, and take such other actions as the FDIC deems appropriate to provide the subsidiary industrial bank with a resource for additional capital and liquidity including, for example, pledging assets, obtaining and maintaining a letter of credit from a third-party institution acceptable to the FDIC, and providing indemnification of the subsidiary industrial bank; and

[14] 85 Fed. Reg. 17785.

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(8) Execute a tax allocation agreement with its subsidiary industrial bank that expressly states that an agency relationship exists between the Covered Company and the subsidiary industrial bank with respect to tax assets generated by such industrial bank, and that further states that all such tax assets are held in trust by the Covered Company for the benefit of the subsidiary industrial bank and will be promptly remitted to such industrial bank.[15]

Many of these requirements mirror those of consolidated supervision of BHCs and will help the FDIC assess the risks posed to the stability of ILCs by their non-commercial parent companies. The annual report detailed in section 3 of the above list should be particularly useful in assessing controlling companies financial and operational risks. However, these enhanced supervisory requirements on parent companies will not eliminate the risks posed to our financial system by a commercial parent company owning an ILC.

There are certain flaws with the supervisory framework laid out in the proposed rule. Firstly, while the written agreement does establish reporting requirements that will help the FDIC to assess risks to the parent, the rule stops short of establishing capital requirements for the parent covered company of an ILC. Absence of adequate capital to support its groupwide activities may prevent a covered company from serving as a source of strength for its ILC subsidiary and creates a lower standard of supervision than is imposed by the BHCA.

The NPR poses the question, "In order to ensure that each Covered Company can serve as a source of financial strength to its industrial bank subsidiary and fulfill its obligations under a capital maintenance agreement, should the FDIC include a commitment that the parent company will maintain its own capital at some defined level on a consolidated basis in all circumstances? How should the FDIC determine the level?"[16] **ICBA answers this question strongly in the affirmative.**

Creating consolidated capital requirements for ILC parents will ensure that they are able to serve as a source of strength for their ILC subsidiaries. This will better protect the DIF from losses as a result of the failure of the parent company. Capital requirements should be established based on the FDIC's assessments of the risks posed by the parent company and all of its subsidiaries on a consolidated basis. The FDIC should examine the firm's credit risk, interest rate risk, and market risks. Likewise, the FDIC should consider an ILC parent's capital adequacy, to ensure that the parent company is able to weather exogenous shocks to the economy or its business. The capital requirements for the parents of ILCs should be no less than the capital requirements of other BHCs under Basel III. However, the FDIC should further examine the risks posed by commercial affiliates in order to determine whether what capital level would be appropriate to mitigate the risks to our financial system. ICBA does not believe that any capital requirements would sufficiently mitigate that risk.

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[15] *See* 85 Fed. Reg. 17785-86.
[16] 85 Fed. Reg. 17780.

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Limitation of Applicability to Industrial Banks

Question 6 of the NPR asks, "[s]hould the proposed rule also apply to other institutions that are excluded from the BHCA definition of ''bank'' pursuant to section 2(c)(2), such as credit card banks and trust banks? For example, the CEBA amended the BHCA to exempt certain other institutions from the requirement that the parent company of a bank must be a BHC, meaning that the parent companies of such institutions are not subject to Federal consolidated supervision. Explain what types of institutions should be addressed by the proposed rule and why.

The proposed rule should be limited only to the supervision of industrial banks and their parents because they are full-service banks. The reason, for example, that credit card banks are exempted from the definition of "bank" for the purposes of the BHCA is that they are limited purpose banks. A credit card bank cannot accept deposits of less than $100,000, operate more than one deposit-taking office, or engage in any other business than engaging in credit card operations.[17] Similarly, trust companies are limited to functioning solely in a trust or fiduciary capacity.[18]

ILCs were once subject to similar limitations on their business. Indeed, maybe at one time it would have made sense to exempt them from the definition of "bank" because they were limited by the factors described in 12 USC 1841(c)(2)(H). The most significant of these limitations was the prohibition against taking demand deposits once the ILCs assets exceeded $100 million. However, with the advent of NOW accounts, which are a perfect functional equivalent of demand deposits, the reason for the exemption no longer exists.

ILCs are not limited like a credit card bank or a trust company with regards to the lines of business they can engage in; therefore the risk that they pose to the financial system is not siloed to a certain product line. They are no longer effectively limited in size or in terms of the ability to offer customers a product with identical functionality to a demand deposit. They are, in short, full-service banks, but without the being subject to limitations on their ability to affiliate with commercial firms and without being subject to the BHCA and consolidated supervision.

The FDIC's rule, therefore, should be tailored to address the risks posed by these unique institutions – which have drifted in character and purpose over the last hundred years far afield from their original limited purpose of offering small unsecured loans to industrial workers. This tailoring should include enhanced prudential supervision, extending beyond annual examinations and capital and liquidity requirements.

Consideration of Competitive Effects

The NPR asks "[i]n evaluating the statutory factors under section 6 of the FDI Act for deposit insurance applications, should the FDIC consider an evaluation of the competitive effects of the

[17] 12 USC 1841(c)(2)(F).
[18] 12 USC 1841(c)(2)(D).

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parent company's or the parent company's affiliates' provision of consumer products aggregated with the activities of the industrial bank?"[19]

ICBA answers this question in the affirmative. Consideration of competitive effects of the parent company's or the parent company's affiliates' provision of consumer products falls under two of the statutory factors of section 6 of the FDI Act. Specifically, the offering of consumer products implicates both 12 USC 1816(5) and (6): "[t]he risk presented by such depository institution to the Deposit Insurance Fund" and "[t]he convenience and needs of the community to be served by such depository institution."[20] [21]

Because consumer products present risks related to consumer preferences that are beyond the scope of the risks typically evaluated by the FDIC, a parent of an ILC that offers consumer products presents unique risks to its depository institution's stability and therefore to the DIF. These risks need to be accounted for when weighing an application for deposit insurance.

Regarding the convenience and needs of the community, there is a risk that a depository institution whose parent sells consumer products may engage in improper cross-selling of non-banking products to its depositors. This is particular harmful if the parent uses the ILC to provide customers credit to buy its consumer products in circumstances where that credit might otherwise not have been available. In these cases, where a transaction occurs that would not have occurred but for the relationship between the depository institution and its commercial parent, a two-fold harm is created. In the first place, the customer may receive credit that they would not have otherwise obtained, harming their interests by creating uncollateralized debt. Secondly, if the ILC is pressured to make these loans by its parent, its own safety and soundness may be implicated.

Conclusion

Once again, ICBA appreciates this opportunity to provide feedback to the FDIC in response to its NPR on the supervision of the Parent Companies of Industrial Banks and Industrial Loan Companies. In the case of non-commercial parent companies of ILCs, while we are supportive of the agency's efforts to formalize and strengthen existing supervisory processes and policies that apply to these companies, we believe that the FDIC should do much more to ensure their safety and soundness. However, because of the unique risks that they pose to our financial system, commercial firms should never be allowed to own an ILC or bank even if they are subject to enhanced supervision and regulation. The FDIC should ask Congress to permanently close the ILC Loophole by removing ILC's from the list of institutions exempted from the BHCA's definition of "bank."

[19] 85 Fed. Reg. 17782.
[20] 12 U.S.C. 1816(5)-(6)
[21] *See also* Independent Community Bankers of America, Comment Letter on FDIC Deposit Insurance Application of Rakuten Bank America (June 25, 2020) https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/comment-letter-to-the-fdic-on-rakuten.pdf?sfvrsn=23a02717_0, which discusses the risks of ILCs whose business model is dependent on the synergies with their commercial parent.

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The limitations that once existed on the ability of ILCs to accept demand deposits have been significantly eroded, making them are functionally indistinguishable from full-service banks. Therefore, ILC parent companies should be subject to the same federal consolidated supervision as bank holding companies. This includes capital requirements for the parent companies of ILCs, which will ensure they are able to serve as a source of strength to their subsidiary depository institution.

ICBA continues to oppose granting new applications for deposit insurance to industrial loan companies because it is a loophole that allows commercial firms to circumvent the BHCA and to own FDIC-insured depository institutions. This blending of banking and commerce prevents unique risks, including to financial stability, and represents a significant deviation from the original limited purpose of ILCs.

Please contact me at Chris.Cole@icba.org or at 202-425-6533 if you have further questions about the points raised in this letter.

Sincerely,
/s/Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel
Independent Community Bankers of America

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

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