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February 18, 2021

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

RE: Deposit Insurance Applications by Non-Banks

Dear Chairman McWilliams:

The American Bankers Association[1] (ABA) appreciates the opportunity to respond to the second re-submission by Rakuten Card Co., Ltd. (Rakuten), a subsidiary of Rakuten, Inc., of an application for federal deposit insurance (Rakuten Application) with the Federal Deposit Insurance Corporation (FDIC) to insure the deposits of Rakuten Bank America (Rakuten Bank). We believe that the Rakuten Application, as amended, has not materially changed from either the originally filed deposit insurance application or the previously re-submitted application, and therefore, fails to address the foundational concern of mixing banking and non-financial activity that was prominent in the prior applications. Consequently, we believe the issues raised in our prior letters remain valid and applicable to the Rakuten Application.[2] On the basis of these comment letters and for the reasons described below, **the FDIC should expressly disapprove the Rakuten Application.**

We believe that the Rakuten Application – as was the case with the previously submitted applications – raises critical legal and policy concerns, including: (i) a substantial risk to the Deposit Insurance Fund (DIF) raised by the affiliation, integration, and assimilation of banking and non-financial businesses, and (ii) consumer protection concerns raised by the collection, use, privacy, security, and safeguarding of customer information. We reiterate our concerns, expressed in our comment letter on the FDIC's proposed rule on industrial banks, about a non-financial business chartering or owning an industrial bank or industrial loan company that would create significant issues involving integration with the activities of non-financial affiliated

[1] The American Bankers Association is the voice of the nation's $21.2 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard $17 trillion in deposits, and extend nearly $11 trillion in loans. Learn more at www.aba.com.

[2] *See* Letter to Jelena McWilliams from ABA, Bank Policy Institute (BPI), and Consumer Bankers Association (June 22, 2020); Letter to Jelena McWilliams from ABA (Feb. 26, 2020); Letter to Kathy Moe, Regional Director, San Francisco Regional Office, FDIC from ABA and BPI (Aug. 30, 2019) (ABA 2019 Letter). *See also* ABA Comment Letter to FDIC, Proposed Rule: Parent Companies of Industrial Banks and Industrial Loan Companies (July 1, 2020).

entities, competitive concerns with the communities that would be served, and consumer protection issues raised by the gathering and use of customer data.[3]

The modifications made from the original and re-submitted applications in the Rakuten Application are largely cosmetic and temporary,[4] leaving undisturbed the embedded and interdependent relationships between Rakuten Bank and its non-financial affiliates. Rakuten's pledge to abide by the recently finalized FDIC rule that mandates certain commitments from parent companies of ILCs appears nothing more than a feint to demonstrate compliance with capital, liquidity, and source-of-strength requirements; it does not address or resolve the financial/non-financial inter-affiliation and consumer data protection issues.[5] The Rakuten Application makes clear that Rakuten Bank's business would remain closely integrated with, and reliant on, the parent company's "ecosystem."[6] This level of dependence exposes Rakuten Bank to the heightened risks of an intensely competitive and rapidly evolving e-commerce market in which the parent company and its non-financial affiliates operate, and indeed, raises doubts over whether Rakuten Bank presents a viable business model on a stand-alone basis, an issue of express concern to the FDIC.[7]

As we stated in our letter of August 30, 2019, "the [Rakuten] Application presents substantial concerns regarding the affiliation of banking and non-financial businesses, the separation of which is a core principle in the structure of financial services regulation in the United States."[8] Questions of mixing banking and non-financial commerce, particularly powered by data sharing across an enterprise, continue to raise serious policy questions as well as considerations over the role of federal deposit insurance, as the FDIC itself has acknowledged.[9] Given the above factors, we believe that the FDIC should not approve any new deposit insurance application that allows a non-financial company to own or control an ILC.

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[3] *See* 85 Fed. Reg. 17,771 (2020).

[4] The Rakuten Application states that Rakuten Bank will provide consumer deposits (NOW, savings, and time accounts) and consumer credit cards during its three-year de novo period. *See* Rakuten Application (Jan. 15, 2021) at 3.

[5] *See* FDIC Final Rule, Parent Companies of Industrial Banks and Industrial Loan Companies (Dec. 15, 2020) (Final Rule). The Final Rule generally codifies existing FDIC supervisory policies and practices on the regulation of ILCs and their parent companies. The Final Rule, however, does not address the integration of an ILC subsidiary's activities with those of its non-financial affiliates. Furthermore, although the Final Rule provides for an ILC parent company's *reporting* to the FDIC of its "[s]ystems for protecting the security, confidentiality, and integrity of consumer and nonpublic personal information," the FDIC has no authority to supervise or examine the consumer data activities of the parent company and its nonfinancial subsidiaries. *See* Final Rule.

[6] *See* Rakuten Application at 2.

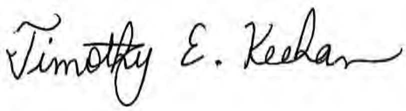
[7] *See Deposit Insurance Applications Procedures Manual Supplement – Applications from Non-Bank and Non-Community Bank Applicants* (*FDIC Manual*), p. 8.

[8] *See* ABA 2019 Letter, *supra*.

[9] *See* Statement of FDIC Chairman Jelena McWilliams on the Notice of Proposed Rulemaking: Parent Companies of Industrial Banks and Industrial Loan Companies (March 17, 2020) ("Questions about the mixing of banking and commerce, and the ability of banks to affiliate with nonfinancial firms, involve complicated policy trade-offs that are best addressed by Congress."); *See FDIC Manual, supra* ("Risk to the [Deposit Insurance Fund] increases as the degree of dependence on the parent company or affiliates expands, particularly with respect to the primary business functions of the proposed institution."). *See also* Note, "Fintech Industrial Banks and Beyond: How Banking Innovations Affect the Federal Safety Net, *Fordham Journal of Corporate & Financial Law* (2018).

Thank you for your consideration of our views and recommendations. If you have any questions or wish to discuss, please do not hesitate the undersigned at 202-663-5479.

Sincerely,



Timothy E. Keehan
Vice President & Senior Counsel

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