July 18, 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 SoFi Bank. According to the application, Social Finance, Inc. (SoFi) seeks to establish an industrial loan corporation or an industrial bank (ILC) chartered by the state of Utah for the purposes of providing its customers an FDIC insured NOW account and a credit card product. The bank will offer no other products and services and the proposed ILC will be 100% owned by SoFi and will be named SoFi Bank, a wholly owned subsidiary of SoFi.

SoFi Bank will be an online-only bank with no branches. SoFi intends to capitalize SoFi Bank with $166 million in cash and will invest $4 million to fund bank organization expenses. In addition to the cash capitalization, SoFi will also contribute the core-banking system it acquired in its Zenbanx acquisition earlier this year. Arkadi Kuhlmann, who was the founder, chairman and CEO of ING Direct, will be the CEO of SoFi Bank.

ICBA's Comments

ICBA's main objection with the deposit insurance application is SoFi's use of the ILC charter to avoid the legal prohibitions and restrictions under the Bank Holding Company Act (BHCA). 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

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[1] *The Independent Community Bankers of America®, the nation's voice for more than 5,800 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 760,000 Americans, hold $4.7 trillion in assets, $3.7 trillion in deposits, and $3.2 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.*

Reserve and restricts the activities of the holding company and its affiliates to those that are closely related to banking, such as extending credit and servicing loans, or performing appraisals of real estate and personal property. 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.

SoFi Bank is applying as an ILC and not as a commercial bank because its parent company does not want to be subject to the legal restrictions and supervision attendant to the BHCA**. For safety and soundness reasons and to maintain the separation of banking and commerce, the FDIC should deny SoFi Bank's application and impose a moratorium on future ILC deposit insurance applications.** SoFi 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.**

ILCs began in the early 1900s as small, state chartered loan companies that served the borrowing needs of industrial workers who were unable to obtain noncollateralized loans from commercial banks. However, these institutions grew significantly in the 2000s and, like credit unions, evolved from small, limited-purpose institutions to a diverse group of insured financial institutions with a variety of business models engaging in activities that are a far cry from their original purpose.

When Wal-Mart proposed establishing an ILC to engage in banking activities in 2006, ICBA was the first national bank trade association to oppose Wal-Mart's deposit insurance application. ICBA advocated for a permanent closure of the ILC loophole and was particularly concerned with Wal-Mart mixing commerce and banking. In letters 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.

In June 2009, these concerns were also raised again by the Department of Treasury in the financial regulator reform plan that it presented to Congress. Treasury proposed that all holding companies owning an insured depository institution be subject to the BHCA restrictions and to Federal Reserve supervision, and recommended that Congress close the ILC loophole. Following Treasury's recommendations, Section 603 of the Dodd-Frank Act imposed a three-year moratorium on approving federal deposit insurance for ILCs. ICBA strongly approved of the ILC moratorium and advocated for its extension when the moratorium expired on July 21, 2013.

In January 2012, the GAO, as required under the Dodd-Frank Act, issued a report entitled

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"Bank Holding Company Act—Characteristics and Regulation of Exempt Institutions and the Implications of Removing the Exemptions" which discussed the ILC exemption in detail. The GAO report clearly articulated the concerns of both the Federal Reserve and the Treasury Department with the ILC exemption.

For instance, the BHCA establishes a consolidated supervisory framework for assessing the risks to a depository institution that could arise because of its affiliation with other entities in a holding company structure. Consolidated supervision of a bank holding company includes the parent company and its subsidiaries and allows the regulator to understand the organization's structure, activities, resources and risks and address financial, managerial, operational, or other deficiencies before they pose a danger to the bank holding company's subsidiary depository institutions.

The Federal Reserve also establishes capital standards for bank holding companies helping to ensure that they maintain adequate capital to support their activities and to make sure they do not become excessively leveraged, and are able to serve as a source of strength to their depository institution subsidiaries. The Federal Reserve also examines holding companies and their nonbank subsidiaries to assess the nature of the operations and the financial condition of the holding company and its subsidiaries, the financial and operational risks within the holding company that may pose a threat to the safety and soundness of any depository institution subsidiary, and the systems for monitoring and controlling such risks.

In contrast, the FDIC does not have consolidated supervisory authority over the holding companies of FDIC-insured ILCs and does not have the authority to look at the entire organization and examine all relationships within the holding company structure--not just what affects only the depository institutions. Furthermore, as was acknowledged by the FDIC and the OCC, holding companies of ILCs are not held to the same risk management and capital standards as bank holding companies and the FDIC cannot take enforcement actions to compel nonbank holding companies to maintain those standards. As the GAO reported,

"Federal Reserve and Treasury officials contend that the BHCA exemptions (like the ILC exemption) represent gaps in the current regulatory structure that pose risks to the financial system" and since these institutions are not subject to consolidated supervision, "potential activities within the holding company…may be missed" because of this "supervisory blind spot."

The Federal Reserve also warned in its comments to the GAO Report that if Congress did not close the ILC loophole, "the number and size of ILCs could grow to much higher levels then they had reached prior to the financial crisis." The Federal Reserve also noted that maintaining the ILC exemption resulted in "differing regulatory oversight," raising questions about whether the exemption provides an "unfair competitive advantage."

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Although SoFi does not presently engage in the type of commercial activities that Wal-Mart engages in, it certainly would be legally free to do so in the future. In fact, there are no limitations on the types of businesses that SoFi and SoFi Bank's affiliates could legally engage in. For instance, SoFi might want to set up an online retail affiliate that specializes in selling products and services to members of SoFi's community, i.e., millennials who recently graduated from college. SoFi might even become ambitious enough to set up an online retail company that would compete with Amazon. Because of the BHCA exemption, none of these affiliates would be subject to the supervision or examination of the Federal Reserve.

The dangers of mixing commerce and banking are clear enough and were noted in the GAO Report and by the Treasury Department in its 2009 report. For instance, an ILC could be directed to engage in transactions that benefitted the holding company's affiliates but were detrimental to the ILC's safety and soundness. In the case of SoFi Bank, SoFi could encourage SoFi Bank to deny credit to customers of SoFi's competitors or alternatively, could encourage SoFi Bank to offer loans to SoFi's customers based on terns 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 SoFi could adversely impact SoFi Bank, circumvent the Section 23A restrictions and escape the FDIC's supervision, particularly when there is no consolidated supervision.

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.

Conclusion

For safety and soundness reasons and to affirm the long-standing policy prohibiting affiliations or combinations between banks and non-financial commercial firms, the FDIC should reimpose a moratorium on deposit insurance for ILCs similar to the moratorium that was imposed in 2006 and require SoFi Bank to apply for deposit insurance as a commercial bank and not as an ILC. 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 SoFi Bank's deposit insurance application. If you have any questions or would like additional information, please do not

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hesitate to contact me by email at Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel