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January 17, 2019

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 refiled federal deposit insurance application of Square Financial Services, Inc. (Square) a subsidiary of Square, Inc. This refiled application was filed on December 19, 2018 after Square withdrew its original federal deposit insurance application.

As we indicated in our letter dated October 10, 2017 concerning Square's original application (attached), ICBA's main objection with Square's deposit insurance application is its use of the industrial loan company (ILC) charter to avoid the legal prohibitions and restrictions under the Bank Holding Company Act (BHCA). This is a 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.

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$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. For more information, visit ICBA's website at www.icba.org.

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. **For safety and soundness reasons and to maintain the separation of banking and commerce, the FDIC should deny Square's application and impose a 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.**

ICBA believes that the failure to impose a moratorium on new ILC applications would have significant adverse consequences to our financial system. It would encourage other large fintech firms that are already engaged in financial activities to become insured depository institutions by exploiting the ILC loophole. As we outlined in our letter to the FDIC objecting to the original Square application, 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. Both the FDIC and Congress need to act 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 refiled 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

cc: Jelena McWilliams, Chairman, FDIC
Martin J. Gruenberg, Director, FDIC