

February 12, 2021

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

Re: FDIC Deposit Insurance Application of Rakuten Bank America

Dear Ms. Moe:

The Independent Community Bankers of America (“ICBA”)¹ appreciates this opportunity to comment on the third resubmitted application by Rakuten Bank America (Rakuten Bank), a subsidiary of Rakuten Card Japan and an indirect subsidiary of Rakuten, Inc. Rakuten Bank will be an industrial bank or “ILC” chartered under Utah law and is filing its application for federal deposit insurance (the “Application”) with the Federal Deposit Insurance Corporation (FDIC).

According to the Application, Rakuten Bank will provide a more streamlined set of banking products during its three-year de-novo period—just consumer credit cards and consumer deposits (i.e., NOW, savings, and time accounts) although it is not clear from the public portion of the application if Rakuten Bank plans to expand its banking offerings. In previous applications, it stated that it also intended to engage in commercial loans, commercial savings accounts, and merchant lines of credit. According to Rakuten Bank, this straight-forward product suite was selected to serve the consumers in the U.S. with “an affinity toward digital and online transactions.” Rakuten Bank believes these offerings will enhance the Rakuten U.S. ecosystem by providing Rakuten customers with a broader suite of products and services that creates continued loyalty and adds “real value to customers.” Rakuten Card Japan has already contributed \$50 million cash for organizing and startup costs and will contribute \$350 million in cash as the initial capital for the Bank.

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.

ICBA's Position

Reference is made to our previous comment letters dated [June 25, 2020](#) and [August 21, 2019](#) which stated our specific concerns about the Rakuten application and particularly our general concerns about the ILC loophole and our desire legislatively to close that loophole. Our concerns about Rakuten Bank's application have not been allayed by this resubmitted application. Similar to Walmart's application in 2005, Rakuten Bank's resubmitted application presents the mixing of commerce and banking at a new and unprecedented level since Rakuten, Inc.'s ecommerce and other commercial activities are so diverse and operate on a global stage. Even though Rakuten now claims its banking activities will be operated more autonomously, Rakuten Bank will still enter into at least four master service agreements with four of its largest affiliated companies and may enter into marketing agreements with three other affiliates to market its products to existing Rakuten customers.

As we stated in our previous comment letters, the "synergistic ecosystem" between the ILC and its affiliates create undue risks to the FDIC's Deposit Insurance Fund (DIF). Rakuten's business of providing an online marketplace for electronic commerce would not be subject to direct regulatory supervision since Rakuten, Inc., Rakuten Card Japan and other affiliates would be exempt from consolidated supervision under the Bank Holding Company Act of 1956. Rakuten Bank's non-financial affiliates would be vulnerable to unexpected movements in the market and changing consumer preferences and tastes, with the potential for directly negative consequences for the ILC. These close relationships between Rakuten Bank and its affiliates present significant risks to Rakuten Bank, and, therefore, to the DIF. Rakuten Bank will be so intertwined with its commercial affiliates that instead of serving impartially the convenience and needs of its community, the ILC would be encouraged to subordinate those needs to the interests of its affiliates and its own commercial interests.

We also still believe that the application presents privacy and conflict of interest concerns since Rakuten Bank will be working so closely with its large tech affiliates to market its products. Specifically, we are concerned about data breaches at one of Rakuten's affiliates. Would the affiliates be able to contain a data breach so that the ILC would not be seriously impacted? Furthermore, if there were a data breach or other misuse of personal information, would Rakuten's reputation be so adversely affected that the ILC would be seriously impacted? These are questions that we believe the FDIC must seriously assess before approving the Application. While this contagion effect is possible in traditional bank holding companies, the concentrated business plan of Rakuten Bank, tied inextricably to the success of the non-bank tech affiliates, makes its business prospects very fragile and susceptible to major safety and soundness problems. Moreover, banks and their affiliates are subject to regulatory oversight and strict standards regarding the safeguarding of customer information.

Furthermore, examining and supervising the affiliate relations of big global tech company like Rakuten, Inc. will be a tremendous challenge to the FDIC. Since many of these relationships are with foreign companies, the work will be overwhelming for the FDIC and probably will require an extensive examination team. We question whether the FDIC has the resources to examine that many different e-commerce affiliate relationships, particularly when so many of them operate overseas.

Conclusion

For the reasons stated above and in our previous comment letters concerning Rakuten Bank's previous applications, we urge the FDIC to reject the application. If you have any questions or would like additional information, please do not hesitate to contact me at 202-425-6533 or at Chris.Cole@icba.org

Sincerely,

/s/

Christopher Cole
Executive Vice President and Senior Regulatory Counsel

cc: Jelena McWilliams, Chairman FDIC
Martin J. Gruenberg, Board Member
Blake Paulson, Acting Comptroller of the Currency
Dave Uejio, Acting Director, Consumer Financial Protection Bureau