

July 24, 2025

J. Mark Love
Deputy Regional Director – Dallas Region
Federal Deposit Insurance Corporation
600 North Pearl Street, Suite 700
Dallas, TX 75201

RE: ICBA LETTER IN OPPOSITION TO THE APPLICATION FOR DEPOSIT INSURANCE BY NISSAN BANK U.S.

Dear Deputy Regional Director Love,

The Independent Community Bankers of America (ICBA)¹ strongly opposes Nissan Bank's application for Federal Deposit Insurance Corporation (FDIC) insurance. Industrial loan companies (ILCs) owned by commercial parent companies – like the proposed Nissan Bank – pose an undue risk of loss to the Deposit Insurance Fund (DIF) and add unnecessary systemic risk. Accordingly, we strongly urge the FDIC Board to reject Nissan Bank's application for deposit insurance.

ICBA has opposed the approval of all ILCs with commercial parent companies because they are risky and lack appropriate levels of prudential regulation and supervision at the holding company level. They can potentially harm consumers by creating companies with undue concentrations. In the auto industry specifically, ownership of ILCs by automakers has a history of failure. The 2008 failure of the General Motors Acceptance Corporation (GMAC) and subsequent bailout cost taxpayers \$17.2 billion. There is no valid reason for the FDIC to allow Nissan to benefit from FDIC insurance given the history of automaker-owned ILCs failing during times of financial stress.

While the creation of new commercial ILCs remains legal, the FDIC has a statutory duty to reject the applications of institutions that pose undue risks to the DIF and that fail to serve the convenience and needs of the community. It must exercise that duty with respect to the application of Nissan Bank.

¹ The Independent Community Bankers of America® has one mission: to create and promote an environment where community banks flourish. We power the potential of the nation's community banks through effective advocacy, education, and innovation. As local and trusted sources of credit, America's community banks leverage their relationship-based business model and innovative offerings to channel deposits into the neighborhoods they serve, creating jobs, fostering economic prosperity, and fueling their customers' financial goals and dreams. For more information, visit ICBA's website at <https://www.icba.org/>.

Executive Summary

The FDIC should deny Nissan Bank's application because of critical shortcomings with the proposed institution's business model and the risks associated with ownership of an ILC by a commercial parent company. More specifically, these risks include:

- **Inherent Conflict of Interest and Risk to the Deposit Insurance Fund:** Because Nissan Bank will be owned by a commercial automaker, it cannot act as a neutral arbiter of credit when underwriting loans to Nissan-affiliated dealerships. This conflict increases the risk of loan mispricing and failure, posing an undue threat to the DIF.
- **Undiversified Business Model Amplifies Systemic Risk:** The bank's narrow focus on loans to Nissan dealerships leaves it vulnerable to downturns in the auto market or declines in the popularity of Nissan vehicles. This lack of diversification could lead to significant losses for the DIF if the bank fails during an economic crisis.
- **Inadequate Supervision Due to ILC Loophole:** The exemption of ILCs from the Bank Holding Company Act (BHCA) prevents consolidated Federal Reserve oversight of Nissan, limiting the FDIC's ability to mitigate risks or recover losses from Nissan's global assets, amplifying losses to the DIF.
- **Failure to Serve Community Needs:** Nissan Bank's application prioritizes lowering its own borrowing costs over addressing unmet credit needs, benefiting Nissan's own financial interests while offering a minimal Community Reinvestment Act (CRA) plan and undermining the convenience and needs of the broader community.

History of the ILC Loophole

ILCs began as small, state-supervised financial institutions created in the early 1900s to provide small loans to industrial workers. Because early ILCs were legally unable to accept deposits, they were not subject to FDIC supervision or eligible to receive deposit insurance. Over time, the distinctions between ILCs and commercial banks diminished, and today ILCs can make the same types of commercial and consumer loans as full-service banks. They can also offer Negotiable Order of Withdrawal (NOW) accounts, which are functionally identical to demand deposits and are FDIC insured.

In 1987, Congress passed the Competitive Equality Banking Act (CEBA), which exempted ILCs from the definition of "bank" in the BHCA. As a result, non-financial, commercial companies can control an industrial bank without being subject to the BHCA's activities restrictions or consolidated supervision by the Federal Reserve Board. This ILC Loophole provides a dangerous avenue for corporate giants to enter the business of banking and potentially to make risky loans to the customers of their commercial parent companies.

While several commercial giants – including Home Depot and Walmart – have sought ILC charters and subsequently withdrawn their applications in the face of backlash, ILCs have a

history of being owned by motor vehicle manufacturers for the purpose of lending to customers of the ILC's parent company. However, history also demonstrates that allowing them this privilege has been a costly error.

Standard of Review for ILC Applications

Section 6 of the FDI Act requires the FDIC to consider the following statutory factors when evaluating applications for deposit insurance:

- 1) The financial history and condition of the depository institution.
- 2) The adequacy of the depository institution's capital structure.
- 3) The future earnings prospects of the depository institution.
- 4) The general character and fitness of the management of the depository institution.
- 5) The risk presented by such depository institution to the Deposit Insurance Fund.
- 6) The convenience and needs of the community to be served by such depository institution.
- 7) Whether the depository institution's corporate powers are consistent with the purposes of this chapter.²

According to the FDIC's Statement of Policy (SOP) on Applications for Deposit Insurance, "[i]n general, the applicant will receive deposit insurance **if all** [emphasis added] of these statutory factors ... are resolved favorably."³ In other words, if an applicant fails to satisfy the requirements of a single statutory factor, the FDIC has a sufficient basis to deny its application.

Nissan Bank Would Create an Outsized Risk to the DIF

The FDIC should deny Nissan's application for deposit insurance because of the bank's foreseeable risk of failure, leading to outsized losses to the DIF. This enhanced risk of failure stems from two main factors – the proposed bank's outsized dependence on the financial health of its dealer network and the conflict of interest that is inherent in primarily lending to Nissan and INFINITI dealers.

According to Nissan Bank's application, the bank's "primary purpose will be to support the financial services needs of the Nissan and INFINITI dealership network." The bank intends to provide "[m]ortgages to acquire land and build, expand, or renovate dealership business facilities; [c]apital loans to fund general dealership business; and [r]evolving lines of credit to fund shorter-term dealership working capital needs. In addition, Nissan Bank intends to provide wholesale floorplan financing for both new and used vehicles. The bank does not intend to

² 12 U.S.C. 1816.

³ 63 Fed. Reg. 44752 at 44756, available at: <https://www.govinfo.gov/content/pkg/FR-1998-08-20/pdf/9821488.pdf>.

provide auto loans to retail purchasers of Nissan vehicles or to offer deposit accounts to consumers.

This proposed business model is unduly risky because it is undiversified and entirely dependent on the solvency of Nissan dealers. If an economic downturn rapidly reduced the demand for new vehicles or if Nissan itself released an unpopular lineup of vehicle models, the solvency of many dealers in its dealer network could be threatened simultaneously. Without a diversified pool of loans and securities, Nissan Bank is entirely dependent on the health of a single industry – and indeed the popularity of a single manufacturer in that industry.

This lack of diversification is particularly notable to the FDIC because, if Nissan Bank failed due to a downturn affecting its dealer network, the remaining loans in its portfolio would likely sell at a large discount due to being in a challenged sector. This would likely result in outsized losses to the DIF.

The FDIC itself acknowledged this risk in 2024, saying “[t]he FDIC’s experience during the 2008–2009 Financial Crisis showed that business models involving an insured depository institution (IDI) inextricably tied to and reliant on the parent and/or its affiliates creates significant challenges and risks to the [Deposit Insurance Fund or] DIF, especially in circumstances where the parent organization experiences financial stress and/or declares bankruptcy.”⁴

Any bank with a business model dependent on lending to businesses in a single industry would be riskier than a diversified bank, but this risk is further heightened with respect to Nissan Bank because of the inherent conflict of interest at the heart of its business model. Traditional banks serve as neutral arbiters of credit – pricing the risk of default based on a customer’s credit history, income, assets, and a variety of other factors. Nissan Bank cannot act as a neutral arbiter of credit, because its parent company, Nissan, is dependent on its dealer network to serve as the retail outlet for the cars that it manufactures. If Nissan dealers can’t access floorplan loans to buy new inventory or working capital to fund their operations, Nissan can no longer sell cars. Because of this, Nissan Bank will be under pressure to lend to Nissan dealers without regard to their creditworthiness.

This conflict of interest increases the likelihood of bad loans being made, heightening the risk of failure and increasing losses to the DIF. When GMAC failed, it received a multibillion-dollar taxpayer funded bailout from Congress because it was necessary to rescue its parent company, General Motors. If Nissan Bank fails, will Congress be similarly motivated to save Nissan? Unlike General Motors, Nissan is not headquartered in the United States and employs about 1/5 of the number of domestic workers. In the absence of a bailout, the FDIC would have to resolve Nissan Bank, leading directly to losses to the DIF, which did not occur with the failure of GMAC.

⁴ See 89 Fed. Reg. 65556, available at: https://www.fdic.gov/system/files/2024-07/fr-proposed-rule-onparentcompanies-of-industrial-banks-and-industrial-loan-companies_0.pdf.

Inadequate Supervision Due to ILC Loophole

Because of their exemption from the definition of “bank” in the BHCA, ILCs are not subject to consolidated supervision by the Federal Reserve at the holding company level like all other BHCs. Consolidated supervision involves an assessment by the federal reserve of the financial and managerial strength and risks within the consolidated organization as a whole – meaning at the level of the BHC, the bank itself, and at any affiliates. The purpose of consolidated supervision is to ensure that the BHC can fulfill its purpose of serving as a “source of strength” to the bank in times of stress, for example through asset transfers. Consolidated supervision is a complex and specialized process – and it is unlikely that FDIC staff, who are hired to examine banks, have the appropriate training and experience to conduct the supervision of a large commercial company like Nissan.

Furthermore, if Nissan Bank fails, the FDIC would not be able to liquidate the assets of its parent company, Nissan, to mitigate losses to the DIF. That is because, unlike bank holding companies, the commercial parent companies of ILCs are outside the scope of the FDIC’s Orderly Liquidation Authority (OLA) as provided by the Dodd-Frank Act.

OLA provides “the necessary authority to liquidate failing **financial companies** (emphasis added) that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard.”⁵ Commercial parent companies of ILCs are, by definition, not financial companies, and are therefore outside the scope of OLA.⁶ This exemption could make it impossible for the FDIC to reach the assets of Nissan Bank’s non-financial parent company. Without the authority to liquidate the assets of Nissan in the event of failure, losses to the DIF would be inevitable. This loss would be further exacerbated by the fact that Nissan is a Japanese company with assets spread across Europe, Asia, and the Americas making any orderly liquidation costly and unlikely.

Nissan Bank Would Not Adequately Serve the Convenience and Needs of its Communities

According to the FDIC SOP on Deposit Insurance Applications, “[t]he essential considerations in evaluating this factor are the deposit and credit needs of the community to be served, the nature and extent of the opportunity available to the applicant in that location, and the willingness and ability of the applicant to serve those financial needs.”⁷

In evaluating an application under this factor, the FDIC may consider the adequacy of a prospective depository institution’s CRA plan, a record of previous fair lending and consumer compliance violations whether the depository institution will meet an unmet need in the

⁵ 12 U.S.C. 5384(a).

⁶ 12 U.S.C. 5381(a)(11).

⁷ 63 Fed. Reg. 44752 at 44760.

market, whether the institution will serve its entire market, whether the institution will destabilize competitors by siphoning deposits away from existing institutions, and other factors.

Nissan Bank has applied to become a wholesale institution, which means that it will not make home mortgage, small business, small farm, or consumer loans to retail customers. Instead, its purpose is to lend to its dealer network. Currently, Nissan offers loans to its dealer network through its non-bank financial subsidiary, Nissan Motor Acceptance Corporation (NMAC). NMAC currently finances its operations through the securitization of auto loans and by issuing both short- and long-term debt.

Because Nissan is currently able to make loans to its dealer network through NMAC, we know Nissan is not seeking an ILC charter out of business necessity or because an ILC charter would enable it to provide new products or services. Instead, it appears that Nissan's interest in an ILC charter is driven by a desire to reduce its own funding costs. Because deposits are FDIC-insured and federally guaranteed, depositors usually demand less interest than purchasers of corporate bonds. In short, Nissan is seeking an ILC charter because it views deposit insurance as a subsidy to benefit from. It does not intend to use its charter to provide loans to serve community needs more broadly, or even to provide any benefit to Nissan customers.

Nissan's decision to apply as a wholesale bank means that it will have a more limited CRA Evaluation than a traditional bank – being evaluated only under the Community Development Test. The Community Development Test evaluates whether a bank meets the needs of assessment areas through its record qualifying community development loans, investments, and services. Qualifying activities include affordable housing, economic development, community support services, etc. Nissan Bank will have the Salt Lake City-Provo-Orem, UT-ID CSA as its sole CRA assessment area.

Currently, NMAC, the proposed parent company of Nissan Bank, is headquartered in Irving, Texas. It has no ties to the Salt Lake City community, and Nissan Bank has not yet acquired any physical premises in Salt Lake City. Nissan Bank has chosen Salt Lake City not out of any desire to serve the banking needs of that community, but because of the legal loophole that allows commercial firms to own FDIC insured banks that the state of Utah enables. If this application is approved, Nissan bank will not provide, nor be required to provide, any community development loans or services outside of the Salt Lake City area despite conducting business nationwide.

In summary, Nissan Bank's application fails to meet the FDIC's standards for serving the convenience and needs of its community. By operating as a wholesale institution focused solely on lending to its dealer network, it does not address broader community credit or deposit needs, such as providing home mortgages, small business loans, or consumer loans. Its choice of Salt Lake City as its CRA assessment area appears driven by Utah's permissive ILC regulations rather than a genuine intent to serve that community, especially given its lack of physical

presence or ties to the area. Furthermore, Nissan's existing ability to finance its dealers through NMAC indicates that the ILC charter is primarily a means to reduce funding costs via FDIC-insured deposits, offering no tangible benefit to the community or Nissan's customers. Granting this application would not fulfill the FDIC's mandate to ensure that insured institutions meaningfully serve their communities.

Conclusion

Allowing captive finance companies to receive bank charters and FDIC insurance will not allow them to reach more customers or to better serve their needs. It will instead entrench the oligopolistic position they already hold in the market for auto loans – forcing smaller volume lenders like community banks out of the market for auto loans. FDIC insurance is a privilege, and it should not be granted to large commercial companies that are already on the cusp of monopolizing a major product line in the financial services industry.

The FDIC has the legal authority and obligation to reject applications for deposit insurance that do not satisfy one or more of the statutory factors outlined in the FDI Act. The FDIC has the authority to interpret these factors broadly to protect consumers and the DIF and should deny the application of Nissan Bank.

Please contact me at Mickey.Marshall@icba.org if you have any questions about the positions stated in this letter.

Sincerely,



Mickey Marshall
Vice President and Regulatory Counsel

**CC: Travis Hill, Acting Chairman, FDIC
Jonathan Gould, Comptroller, OCC
Russell Vought, Acting Director, CFPB**