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# Advisory

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**Category:** Regulatory & Legislative

**NOTICE\***

**Subject:** Corporate Names, Registered Names and Trade Names

**No:** 2002-01-R1

**Issued: November 2002**

**Revised: June 2004**

**Introduction:** This Advisory provides an overview of the factors OSFI considers as part of its assessment of whether:

- (a) the corporate name of a bank, a federally incorporated insurance, trust or loan company, cooperative credit association, fraternal benefit society, bank or insurance holding company (a federally incorporated entity (FIE)) is permitted;
- (b) the Superintendent should direct a FIE or an authorized foreign bank (AFB) not to use a particular trade name to carry on business or identify itself; and
- (c) the registered name of an AFB, a foreign insurance company (FIC) or a foreign fraternal benefit society (FFBS) is permitted.

In this Advisory,

“FRE” means “federally-regulated entity”: a FIE, an AFB, a FIC or a FFBS;

“corporate name” means the name set out in the letters patent incorporating the FIE;

“registered name” means, in respect of an AFB, the name of the AFB and, where applicable, the name under which it is permitted to carry on business in Canada, as set out in the order made under subsection 524(1) or 528(1) of the *Bank Act*; and, in respect of a FIC or a FFBS, the name under which the FIC or FFBS is to insure in Canada risks as set out in the order made under subsection 573(1) of the *Insurance Companies Act*; and

“trade name” means, in respect of a FIE, a name other than its corporate name; and, in respect of an AFB, a name other than its registered name.

## Legislative References:

Sections 40, 42(3), 42(4), 255, 530, 531, 533, 693, 696(4), 696(5) and 832 of the *Bank Act*

Sections 41, 44(3), 44(4) and 260 of the *Trust and Loan Companies Act*

Sections 42, 44(3), 44(4), 278, 575, 578(2), 730, 733(4), 733(5) and 880 of the *Insurance Companies Act*

Sections 35, 38(3), 38(4) and 250 of the *Cooperative Credit Associations Act*

**Interpretation:** The legislative provisions referenced above:

- (a) list circumstances where a corporate name, registered name or trade name is prohibited;
- (b) set out requirements with respect to the name that a FRE must use in all contracts, invoices, premium notices, applications for policies, policies, negotiable instruments and other documents evidencing rights or obligations of the FRE with respect to other parties; and
- (c) authorize the Superintendent to direct a FIE or an AFB not to use a trade name if the Superintendent is of the opinion that the trade name is a prohibited name.

These legislative provisions do not provide guidance on the factors that the Superintendent may take into account in determining whether a corporate name, registered name or trade name will be prohibited.

OSFI generally considers the following factors when interpreting the legislative provisions that set out when a corporate name, registered name or trade name would be prohibited.

**A. *The name is prohibited by an Act of Parliament***

In making such a determination, the Superintendent would consider whether a corporate name, registered name or trade name is prohibited by other legislation such as, for example, sections 21 and 22 of the *Canada Business Corporations Regulations, 2001*.

**B. *The name is deceptively misdescriptive***

- 1. In making such a determination, the Superintendent would consider whether the corporate name, registered name or trade name would likely mislead a person with respect to:<sup>1</sup>
  - (a) the business, products or services of the FRE: the name should not suggest that the FRE is engaging in a business or offering a product or service that the FRE is precluded from engaging in or offering;
  - (b) the conditions under which the products or services will be produced or supplied, or the persons to be employed in the production or supply of the products or services: the name should not imply relationships or affiliations that do not exist; and
  - (c) the place of origin of the products or services: the name should not suggest that the FRE carries on business in a location where it is not authorized to do so.

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<sup>1</sup> It should be noted that these factors are similar to those set out in paragraphs 32(a), (b) and (c) of the *Canada Business Corporations Regulations, 2001*.

2. With respect to the use of a trade name, the Superintendent would also consider whether the trade name would suggest or appear to suggest to a person that the entity with which the person is, or would be, dealing is distinct from the FIE or the AFB. OSFI expects the FIE or AFB to ensure that a person is made aware of the fact that the person is, or would be, dealing with it. FIEs and AFBs are reminded of their obligation to set out their name in legible characters in (as applicable) all contracts, invoices, premium notices, applications for policies, policies, negotiable instruments and other documents evidencing rights or obligations with respect to other parties that are issued or made by or on behalf of the FIE or AFB.<sup>2</sup>
3. With respect to a registered name that is different from the name under which an AFB, a FIC or a FFBS was incorporated, the Superintendent would also consider whether the registered name would suggest or appear to suggest to a person that the entity with which the person is, or would be, dealing is distinct from the AFB, FIC or FFBS. OSFI expects the AFB, FIC or FFBS to ensure that a person is made aware of the fact that the person is, or would be, dealing with the AFB, FIC or FFBS. These entities are reminded of their obligation to set out their registered name in legible characters in (as applicable) all contracts, invoices, premium notices, applications for policies, policies, negotiable instruments and other documents evidencing rights or obligations with respect to other parties that are issued or made by or on behalf of the AFB, FIC or FFBS.<sup>3</sup>

**C. *The name is substantially the same or confusingly similar***

1. There are generally two types of confusion that could arise with respect to a corporate name, registered name or trade name:
  - (a) entity A could be confused with entity B in the sense of being the other entity, even though it is not; or
  - (b) entity A could be viewed as being associated with entity B, even though it is not.
2. In assessing whether a corporate name, registered name or trade name would be confusingly similar to the name of an existing entity (i.e., an existing trade-mark or trade name, an existing corporate name of a body corporate, or the known name under or by which any entity carries on business or is identified), OSFI will consider the following factors:
  - (a) the degree of resemblance in appearance or sound between the name and the name of an existing entity;
  - (b) if there are one or more common or similar elements between the name and the name of an existing entity, the extent to which this is likely to lead to confusion having regard to the following factors:

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<sup>2</sup> See section 255, 531 or 832 of the *Bank Act*, section 260 of the *Trust and Loan Companies Act*, section 278 or 880 of the *Insurance Companies Act*, or section 250 of the *Cooperative Credit Associations Act*.

<sup>3</sup> See section 531 of the *Bank Act* or subsection 578(2) of the *Insurance Companies Act*.

- (i) whether the existing entity has developed a distinctive brand in terms of the common element,
  - (ii) how long the existing entity has used the similar name,
  - (iii) the existing entity's operating status (i.e., inactive or no longer undertaking new business), and
  - (iv) how descriptive the common or similar elements are of the function, quality or other characteristics of the business or activities of each of the FRE and the existing entity;
- (c) if there are one or more distinct elements between a corporate name, registered name or trade name and the name of an existing entity, the extent to which this is likely to reduce or eliminate confusion (i.e., how would these elements, alone or together with any of the common or similar elements, describe any specific function, quality or characteristic of the current or proposed business or activities of the FRE, or the FRE's corporate relationship with other entities);
- (d) other factors that may likely cause, reduce or eliminate confusion:
- (i) the nature of the products or services offered by the FRE versus those associated with an existing entity, including the likelihood of any competition between the FRE and the existing entity,
  - (ii) the territory in which the FRE operates or will operate versus the territory of operation of an existing entity, taking into consideration existing licences or statutory limitations of operation; and
  - (iii) the nature and extent of the distribution channels and the target market(s) of the FRE versus those used by an existing entity, including an assessment of the current and potential customers of both the FRE and the existing entity.

**D. *The name is reserved for an FIE***

A name that is reserved is considered prohibited. FREs seeking to determine whether a name is reserved should contact OSFI. For guidance on the nature of information to be provided in support of an application to reserve a name, FIEs should refer to [Instruction Guide – Regulatory Approval](#) and to Transaction Instruction [A No. 20](#) – Name Reservation.

<p>* Advisories describe how OSFI administers and interprets provisions of existing legislation, regulations or guidelines, or provide OSFI's position regarding certain policy issues. Advisories are not law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Advisory's publication, when considering the relevancy of the Advisory.</p>
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