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# Ruling

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**Category:** Sanctions

**NOTICE\***

**Subject:** Unauthorized use of the word “bank”

**No:** 2004-08

**Issues:** The issues were whether a not-for-profit investment entity (the applicant) could adopt a name that included the word “bank”, or its French-language equivalent “banque”, and whether it could use those words to describe its investment activities.

**Background:** As part of its investment activities, the applicant provides equity and debt financing that are commonly referred to in the financial community as “merchant banking activities”. The applicant wished to use a name other than its corporate name that included the word “bank” and its French-language equivalent “banque” to describe those activities.

The applicant submitted that its use of the word “bank” or “banque” would not contravene subsection 983(2) of the *Bank Act* because these words would not be used to “indicate or describe a business in Canada or any part of a business in Canada”. The applicant submitted that:

- (a) it was a non-share capital corporation set up exclusively to manage and administer the assets of its stakeholders;
- (b) its investment activities were in furtherance of those obligations; and
- (c) it was not conducting those obligations out of a profit motive.

Therefore, the applicant did not regard itself to be engaging in a business. In support of this submission, cases were quoted where the courts determined that the making of a profit was a dominant or preponderant factor in deciding whether a person/entity was carrying on business.

**Considerations:** In assessing whether the applicant could use the word “bank” and its French-language equivalent “banque”, OSFI considered the following:

1. Whether the applicant would be acquiring, adopting or retaining a name (i.e., a corporate name or a name other than a corporate name) that included the word “bank”.

Subsection 983(2) of the *Bank Act* prohibits all entities from acquiring, adopting or retaining a name that includes the word “bank”, “banker” or “banking”, either alone or in combination with other words. The applicant proposed to adopt a name other than its corporate name that included the word “bank”.

2. Whether the applicant would be using the word “bank” to indicate or describe a business in Canada.

Subsection 983(2) of the *Bank Act* also precludes the use of the word “bank” to indicate or describe a business in Canada. The applicant submitted that this prohibition did not apply because it was not conducting its obligations to manage and administer the assets of its stakeholders for a profit and did not regard itself to be engaging in a business. In reviewing the cases quoted by the applicant, OSFI noted that they generally related to taxation or assessment issues where the question of whether an activity entails profits or earnings is a preponderant factor.

There are also cases in which the courts have found that the term “business” is not necessarily restricted to “profit-making activities”, but rather that “business” could be described as “the carrying on of a serious occupation, not necessarily confined to commercial or to profit-making undertakings”.<sup>1</sup> Given that the basic objective of section 983 of the *Bank Act* is to protect the public from incorrectly assuming they are dealing with a Canadian bank, OSFI believes that this broader interpretation of the term “business” should apply to section 983 of the *Bank Act*.

The applicant is carrying on a serious occupation. It is responsible for investing and managing assets of its stakeholders, and has a fiduciary duty to administer and manage those assets in the best interests of its present and future stakeholders, who benefit from the profitability of the entity.

3. Whether the applicant could avail itself of any of the exceptions to subsection 983(2) of the *Bank Act*.

The applicant, in providing equity and debt financings, is engaged in financial activities. Therefore, the applicant could not make use of the exception set out in paragraph 983(4)(a) of the *Bank Act*. The other exceptions to the unauthorized use of the word “bank” referred to in subsections 983(4) to (6.1) and (10) to (12) of the *Bank Act* do not apply to the applicant.

**Conclusion:** OSFI concluded that subsection 983(2) of the *Bank Act* precluded the applicant from both adopting a name that included the word “bank” and its French-language equivalent “banque” and using those words to describe its equity and debt financing activities. Further, OSFI concluded that the applicant could not avail itself of any of the exceptions in subsections 983(4) to (6.1) and (10) to (12) of the *Bank Act* to adopt such a name or to use those words to describe its activities.

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1. *Aeric Inc. v. Chairman of the Board of Directors, Canada Post Corporation*, [1985] 1 C.F. p. 127.

**Legislative References:** Subsection 983(2) of the *Bank Act* states that every entity that acquires, adopts or retains a name that, in any language, includes the word “bank”, “banker” or “banking”, either alone or in combination with other words, or any word or words of import equivalent thereto, and every person who, in any language, use the word “bank”, “banker” or “banking”, either alone or in combination with other words, or any word or words of import equivalent thereto, to indicate or describe a business in Canada or any part of a business in Canada, without being authorized to do so by this Act or any other Act of Parliament, is guilty of an offence. Subsections 983(4) to (6.1) and (10) to (12) of the *Bank Act* state circumstances where a person may use the word “bank”, “banker” or “banking”.

**Table of Concordance:** The legislation of other federal financial institutions does not contain similar provisions.

\* Rulings describe how OSFI has applied or interpreted provisions of the federal financial institutions legislation, regulations or guidelines to specific circumstances. They do not negate the need to obtain any necessary approval of the transaction under the relevant federal financial institutions legislation. Rulings are not necessarily binding on OSFI’s consideration of subsequent transactions as these transactions may raise additional or different considerations. Legislative references in a Ruling are not meant to substitute provisions of the law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Ruling’s publication.