Regulatory and legislative advisory

Title	Advisory 2017-01 – Restrictions on the use of the words “bank”, “banker” and “banking”
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Introduction:

This Advisory sets out how the Office of the Superintendent of Financial Institutions (OSFI) interprets and administers (a) the *Bank Act* restrictions on the use of the words “bank”, “banker” and “banking”, and (b) the exception to these restrictions that applies where the use of these words is not in relation to a financial services business.

In this Advisory, references to provisions are to those of the *Bank Act*.

The context for, and compliance expectations related to, this Advisory are set out in a related cover note.

Legislative References:

Section 983

Use of the Word "Bank" by Non-financial Businesses (Excluded Entities) Regulations

Definitions:

In this Advisory:

"Bank Words"

refers to the words "bank", "banker" and "banking", either alone or in combination with other words, including Pursuant to subsection 983(13). (a) any of those words in any language, and (b) any word or words, in any language, that are equivalent to any of those words. In OSFI's view, words – including words not found in dictionaries, and compound words and contractions containing parts – that resemble, in writing or phonetically, any of the words "bank", "banker" or "banking" are Bank Words (e.g., "banc", "mybank" and "bancorp").

"Canadian Bank"

refers to a bank listed in Schedule I or II of the *Bank Act*.

"Non-bank Entity"

refers to an entity that is not a Canadian Bank.

"Non-bank Person"

refers to a person that is not a Canadian Bank, including a Non-bank Entity.

Section 1: Restrictions on the use of the Bank Words

Section 983 contains two restrictions on the use of the Bank Words. The first restricts every Non-bank Entity from acquiring, adopting or retaining a name that includes the Bank Words to indicate or describe a business in Canada or any part of a business in Canada (the "Name Restriction").See subsection 983(2). OSFI is of the view that the Name Restriction applies to both corporate and trade names. The second restricts every Non-bank Person from using the Bank Words to indicate or describe a business in Canada or any part of a business in Canada (the

"Business Description Restriction").See subsection 983(2.1). The phrases "to indicate or describe" and "a business" in both restrictions are discussed below.

1.1. Meaning of the phrase "to indicate or describe"

As it relates to the Name Restriction, OSFI is of the view that Bank Words indicate or describe a Non-bank Entity's business (or any part of its business) where these words are acquired, adopted or retained in a name that could reasonably suggest to the public the nature of the entity's business (or any part of its business).

Similarly, as it relates to the Business Description Restriction, OSFI is of the view that Bank Words indicate or describe a Non-bank Person's business (or any part of the person's business) where these words are used in a manner that could reasonably suggest to the public the nature of the person's business (or any part of the person's business).

By way of example, and subject to any applicable exception under section 983, OSFI views the Name Restriction and/or the Business Description Restriction as prohibiting a Non-bank Entity from adopting any of the trade names, or from using any of the phrases, set out below in connection with its business, or any part of its business, in Canada (whether in a logo, slogan, advertisement or otherwise). This is because each of these trade names and phrases could reasonably suggest to the public the nature of the entity's business or a part of its business, and therefore the entity would be adopting or using them "to indicate or describe" its business or a part of its business.

a. [Non-bank Entity's name] Co-operative Banking;
b. [Non-bank Entity's name] Banking Centre;
c. "Own your bank";
d. "Welcome to Canada's newest online bank";
e. Commercial Banking Centre;
f. Better Banking/Convenient Banking;
g. Mobile Banking/Telephone Banking/Branch Banking;
h. Bank accounts/Bank services;
i. Automated Banking Machine;

j. “[Non-bank Entity’s name] offers business / personal banking…”;

k. “…for all your banking needs”;

l. “Come do your banking with us”;

m. “Bank at your convenience”.

As another example, and subject to any applicable exception under section 983, OSFI views the Business Description Restriction as generally prohibiting a Non-bank Entity from advertising under the “banks” heading of a Canadian directory. By doing so, the entity would be using the word “banks” to indicate or describe its business, or a part of its business, in Canada.

For clarity, the Name Restriction and the Business Description Restriction apply regardless of the medium used to communicate the Bank Words, including webpages, web addresses, apps, signage, print and radio.

1.2 Meaning of the phrase “a business”

As it relates to the phrase above, OSFI is of the view that:

a. the term “business” means the carrying on of a serious occupation, and that as a result, not-for-profit entities may be subject to the Name Restriction and the Business Description Restriction;See Ruling 2004-08 – Unauthorized use of the word “bank”. The substance of the ruling continues to apply despite the revisions to section 983 that came into force in 2008 (these revisions, among other things, renumbered certain subsections referred to in the ruling). and

b. the concept of “a business” refers to a business engaged in or carried on by the Non-bank Entity that acquires, adopts or retains a name that includes – or by the Non-bank Person that uses, directly or indirectly The term “indirectly” refers to a circumstance where the Non-bank Person causes another person to use the Bank Words to indicate or describe the Non-bank Person’s business, or any part of the Non-bank Person’s business, in Canada. – the Bank Words to indicate or describe its business.

Section 2: Non-financial Exception to the Name Restriction and the Business Description Restriction

Section 983 contains several exceptions to the Name Restriction and the Business Description Restriction.See paragraphs 983(4)(c), (d) and (e), and subsections 983(5), (5.1), (6) and (12). While most of them are self-explanatory, the exception "in relation to a business that is not engaged in financial activities, unless the business is carried out by a prescribed entity"See subsection 983(5.1). (the "Exception") merits discussion.

OSFI is of the view that a Non-bank Person may resort to the Exception if the use of the Bank Words is not in relation to any part of the person's financial activity business, but in no case may a prescribed entity resort to the Exception. Under the *Use of the Word "Bank" by Non-financial Businesses (Excluded Entities) Regulations*, a prescribed entity includes, among other entities, an entity in which a Canadian Bank has a substantial investment, and a provincially or federally-regulated financial institution.Canadian Banks and authorized foreign banks do not have to rely on the Exception: see subsections 983(2) and (2.1) and paragraph 983(4)(e).

As a result, and by way of example, an entity that:

a. is not a prescribed entity, whose sole business is to collect and stock food, and give it to persons in need, could adopt the trade name "Food Bank";
b. is not a prescribed entity, whose sole business is to purchase and sell real estate, could adopt the trade name "Land Bank";
c. is not a prescribed entity, whose businesses are to purchase and sell real estate and to provide financing to purchasers, **could not** adopt the trade name "Land Bank";
d. is not a prescribed entity, whose business is to develop and make available software or apps that persons may use to carry out financial transactions, **could not** adopt the trade name "Tech Bank"; and
e. **is a prescribed entity**, whose sole business is genetics-based research and development, **could not** adopt the trade name "Gene Bank".

* 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.