



Ruling

Category: Regulatory & Legislative [NOTICE*](#)

Subject: Alternate Name - Use of a trade name

No: 2008 – 05

Issue: The issue was whether the Superintendent would direct a federally incorporated trust company (the “Company”) not to use a trade name composed of both a distinctive element of the corporate name of an affiliate and the word “trust”.

Background: The Company proposed to enter into networking arrangements with certain affiliated financial services entities (the “affiliates”) whereby the affiliates would offer the Company’s deposit and loan products to their clients. The Company’s products would be offered under a trade name composed of the distinctive element of the corporate name of the affiliate coupled with the word “trust”.

The Company requested a confirmation that the Superintendent would not issue a direction under subsection 44(4) of the *Trust and Loan Companies Act* (the “Act”) directing it not to use the proposed trade name. In support of its request, the Company represented that:

- (a) the affiliates are engaged in the business of selling investment products but were not permitted to engage in the business of accepting deposit liabilities;
- (b) the corporate name of each of the affiliates is composed of a distinctive element and words that described the business of the affiliate, such as “Investment Corporation” or “Securities Services”;
- (c) the affiliates would consent to the use of the distinctive element of their corporate name by the Company;
- (d) to reduce the possibility of confusion when distributing the Company’s products, the affiliates would undertake to disclose to clients that the products are being provided by the Company; and
- (e) the Company would ensure, as required by the Act, that its corporate name would appear on all contracts, invoices, negotiable instruments and other documents evidencing its rights and obligations.

Considerations: Under the Act, the Company is allowed to carry on business or identify itself under a name other than its corporate name provided that the Company sets out its



corporate name in all legal documents, and the Superintendent does not direct the Company not to use that other name. The Superintendent may take such action where the Superintendent is of the opinion that the trade name is prohibited under the Act.

One of the prohibitions under the Act is where the trade name is substantially the same as another name. In this case, the proposed trade names and the corporate names of the affiliates would each have distinguishing descriptive elements, and as such, would not be substantially the same.

Another prohibition under the Act is where the trade name is confusingly similar to another name. Confusion could arise with respect to the use of the proposed trade names if they lead to the inference that the products offered under the proposed trade names were those of the affiliates.

The proposed trade names and the corporate names of the affiliates would include a common element, the distinctive element of the corporate name of the affiliate. They would also include a distinguishing descriptive element, which would represent the respective business of the Company or the affiliate (e.g., the word “investment” or “securities” for the affiliate and the word “trust” for the Company), as the case may be. In this case, confusion could arise because the trade name would include the distinctive element of the affiliate’s corporate name, and a representative of the affiliate would be offering the products of the Company.

Given the possibility of confusion, mitigating elements were put in place by the Company and the affiliates with respect to the use of the trade names. First, the Company would ensure that the affiliates would disclose to prospective clients that the products offered under the trade names were those of the Company. In addition, the corporate name of the affiliate and the trade name of the Company include distinguishing descriptive elements identifying their respective business. Finally, the Company would set out its corporate name in legible characters in all contracts, invoices and negotiable instruments, as required by the Act.

Conclusion: On the basis of the Company’s representations, the Superintendent confirmed that it would not issue a direction under subsection 44(4) of the Act.

Legislative References: Paragraph 41(1)(d) of the Act provides that a name is prohibited where, in the opinion of the Superintendent, the name is confusingly similar to any existing trade-mark, trade name, corporate name, or the known name under or by which an entity carries on business or is identified.

Subsection 44(3) of the Act provides that a company may carry on business under or identify itself by a name other than its corporate name, subject to subsection 44(4) and section 260.

Subsection 44(4) of the Act provides that the Superintendent may, by order, direct a company that is carrying on business under or identifying itself by a name other than its corporate name, not to use that other name if the Superintendent is of the opinion that the other name is a name referred to in subsection 41(1).

Section 260 of the Act provides that a company shall set out its corporate name in legible characters in all contracts, invoices, 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 company.

Table of Concordance:

Section Description	BA	TLCA	ICA	CCAA
Prohibited names	40, 530, 693	41	42, 730	35
Other name	42, 696	44	44, 733	38
Publication of name	255, 832	260	278, 880	250

The table of concordance makes cross-references to similar provisions of other federal financial institutions legislation that may be of relevance to the reader.

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