

# STATE OF COLORADO

## Department of Regulatory Agencies

Tambor Williams  
Executive Director



Bill Owens  
Governor

## DIVISION OF BANKING

Richard Fulkerson  
State Bank Commissioner

### OPERATING MEMORANDUM

**TO:** General Distribution

**FROM:** Richard Fulkerson  
State Bank Commissioner

**DATE:** August 1, 2005

**RE:** Use of the Word "Bank"

At a recent meeting of the Colorado State Banking Board, the Board considered the request of a foreign capital depository seeking approval for the filing of Statements of Trade Names with the Colorado Secretary of State using the word "bank". The Board also considered the company's use of the term "bank" in advertising and promotional materials.

After careful deliberation and consideration, the Banking Board concluded that the use of the term "bank" in the name of a foreign capital depository, or in any way to describe the company as a bank, is prohibited by statute. Section 11-37.5-105, C.R.S., makes the Colorado Banking Code applicable to foreign capital depositories, unless a Banking Code Provision conflicts with the Foreign Capital Depository Act. Section 11-37.5-110, C.R.S. grants the Banking Board the authority to approve a foreign capital depository application for charter. One of the criteria for issuing a State bank charter is that the proposed name of a proposed institution is not deceptively similar to that of another bank **or otherwise misleading** (Section 11-103-304(1)(b), C.R.S.). The Banking Board believes that use of the word "bank," or any derivative thereof, in the name of a foreign capital depository, its trade name, its trademark, or its d.b.a. would be misleading.

The Banking Board also observed that Section 11-101-401(5) defines bank as:

"Bank" means a state bank (other than an industrial bank) or bank and trust company, chartered by this state or a national bank; except that, for the purpose of part 2 of article 104 of this title, "bank" means any bank organized or chartered under articles 10.5 and 101 to 109 of this title, any bank organized or chartered as a bank under the laws of any other jurisdiction, or any bank organized or chartered under chapter 2 of Title 12 of the United States Code. The singular "bank" includes the plural "banks."

A foreign capital depository is not included in the foregoing definition and therefore may not hold itself out as a bank. Moreover, a foreign capital depository is precluded from using the word bank in any advertising or promotional material, including its website, in any way that would imply that the company is a bank. The use of the terms "bank" or "banking" as an adjective to describe services and products is acceptable, e.g. a foreign capital depository is authorized to accept deposits and provide certain other banking services."

The use of similar terms, such as *banc* or *banque*, as well as other foreign language versions, will be considered by the Division on a case-by-case basis; however, the Division will recommend that the Board (or if acting under delegated authority) deny the use of such terms where it appears that the entity is merely attempting to represent to the public and others that it is a bank. Where acting under delegated authority the Division will deny the use of such similar terms.

The foregoing prohibition on the use of word bank by foreign capital depositories is equally applicable to other financial services providers that are not defined as a bank pursuant to Section 11-101-401(5).