



State of Washington  
**DEPARTMENT OF FINANCIAL INSTITUTIONS**  
**DIVISION OF BANKS**

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**ISGC – 2005 – 013 – DOB**

September 30, 2005



RE: Contemporaneous Use of Official Charter Name (“ABC Bank”) and Assumed Business or Trade Name (“XYZ Bank”)

Dear [REDACTED]:

As you are well aware, on September 23, 2005, xxxxxxxx Bancorporation (“Bancorp”) announced its intent to acquire xxx xxxxxxxxxxxx Inc. (“Bancshares”) and merge its subsidiary bank, xxx Bank (“123 Bank”), into Bancorp’s own subsidiary, ABC Bank (“ABC Bank”).

1.0 Issue Presented

Among the various issues associated with this merger, the Division of Banks of the Washington State Department of Financial Institutions (“DFI”) has been asked by counsel for the transaction whether it is appropriate for the surviving bank, ABC Bank, to contemporaneously do business as “ABC Bank” and as “XYZ Bank,” and, if so, in what manner it may continue to do so.

2.0 Determination

Based on federal and state law and policy and subject to the requirements set forth below, we have determined that [REDACTED] Bancorporation, in the operation of its wholly owned subsidiary, ABC Bank, may continue to use “XYZ Bank” as an assumed business and trade name in connection with its branching, Internet presence, signage, contracts, official documents and notices, and other indicia of existence.

Our view is that the contemporaneous use of two names by ABC Bank is *inherently* susceptible of confusion (especially to *depositors*) and may only be overcome if ABC Bank, has

standards and procedures of identification that, subject to our periodic examination, meet the requirements set forth below. In the past, we have only permitted this conduct when an institution has a “reasonable purpose” for it or engages in the conduct based upon “reasonable circumstance.” While we do not need to exhaustively recite all of the criteria or circumstances that must be present to meet this test. But we do take this opportunity to point out that the threshold criteria and circumstances are present in the case of ABC Bank and its assumed business or trade name, “XYZ Bank,” as follows:

- The presence of two distinctive geographic or product markets as between “ABC Bank” and “XYZ Bank”; and
- A previous merger-acquisition that initiated the use of “XYZ Bank” as an assumed business or trade name.

We note, in this regard, that the perceived or estimated cost of changing signage and other identification to conform to a single name will *not*, by itself, be considered as being sufficient enough to constitute a “reasonable purpose or circumstance.” This is consistent with the approach we have taken with other stakeholders in the past.

We will permit ABC Bank to continue to operate its existing “XYZ Bank” branches, plus the proposed “123 Bank” branch, under the assumed business or trade name of “XYZ Bank,” subject to the following conditions:

2.1 Clarity as to Charter: Generally. ABC Bank must clearly indicate its official charter name in denoting all of its branches and facilities (including non-branch “kiosks” and “production offices”), Internet Web sites, signage, contracts, official documents and notices, and other indicia of existence.

2.2 Clarity as to Character of Assumed Name. ABC Bank must clearly indicate that its assumed business and trade name, “XYZ Bank,” is *only representative of* the depository institution (and not its official charter name), when using “XYZ Bank” to denote a branch or facility (including a non-branch “kiosk” or “production office”), Internet Web site, signage, contract, official document or notice, or other indicia of existence.

2.3 Maintenance of Official State Registration for Assumed (Fictitious) Name. Registration of “XYZ Bank” with the Department of Licensing must be maintained and not lapse.

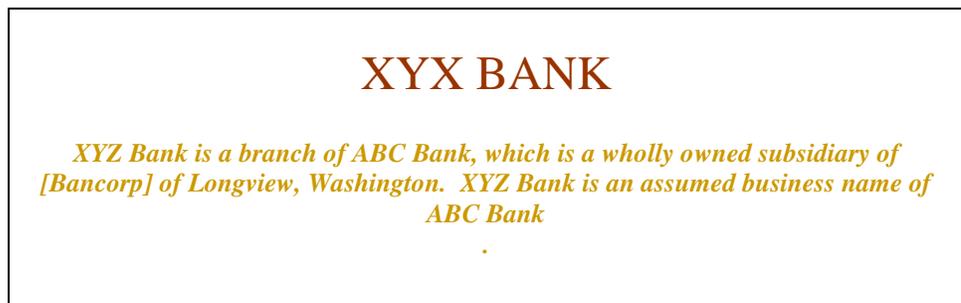
2.4 No Reasonable Probability of Trademark Infringement of Misappropriation of Trade Name. ABC Bank must continue to take steps to limit or prevent potential exposure to a suit, either under federal or state law, for trademark infringement or misappropriation, in the use of “XYZ Bank.”

2.5 Signage and Advertising. With respect to signage and advertising:

- No Prior DFI Approval. ABC Bank will be subject to examination authority with respect to the general standards set forth in this letter but need not maintain prior approval of specific signage or advertising.
- Primary Use of Official Charter Name. If the primary name used is “ABC Bank,” the signage or advertising need not include “XYZ Bank.” If, however, it does include “XYZ Bank,” the signage or advertising (1) must indicate that ABC Bank uses an assumed business or trade name and (2) must display “ABC Bank” more prominently than “XYZ Bank.” The following example, or one which is substantially similar or equivalent, is acceptable for purposes of *signage and advertising*, and should have approximately the same *proportionality* as to relative font size:



- Primary Use of Assumed Business or Trade Name. If the primary name used is “XYZ Bank,” the signage or advertising *must always* include “ABC Bank.” It must indicate that ABC Bank uses an assumed business or trade name and (2) must display “ABC Bank” and the relationship between “XYZ Bank” and ABC Bank. The following examples, or those which are substantially similar or equivalent, are acceptable for purposes of *signage and advertising*, and should have approximately the same *proportionality* as to relative font size:



- or -

## XYX BANK

*XYZ Bank is an assumed business name of  
ABC Bank, an FDIC-insured Washington state-chartered bank.*

- Radio Advertising. In radio advertising, if “ABC Bank” is the brand being primarily identified, there should be an audio disclosure at the end of the radio announcement disclosing the existence of branches and/or other facilities doing business as “XYZ Bank.” If, on the other hand, the “XYZ Bank” is the brand being primarily identified, there should be an audio disclosure at the end of the radio announcement disclosing (1) the identity of ABC Bank and (2) the use of “XYZ Bank” as an assumed business or trade name.
- Television Advertising. Since television advertising contains both visual and audio elements, a television advertisement may use audio or visual elements, or both, to identify and disclose the relationship between ABC Bank and “XYZ Bank,” consistent with the above. Unless visual disclosures alone are so prominent as to be reasonably visible, both as to size, proportionality and duration of screen presence, audio disclosures should be employed as the primary means of providing the necessary disclosures.
- Internet Presence. You may continue to maintain both <http://www.xxxxxbank.com> and <http://www.xxxxxbank.com> as registered domains. However, the domain <http://www.bay-bank.com> must be an *alias* address, and Internet traffic must be re-directed to <http://www.xxxxxbank.com>. You may maintain only one actual Web site for the activity of ABC Bank, i.e., you may host a single Web site on the domain <http://www.abcbank.com> and *must* cease to operate the “XYZ Bank” site, <http://www.xyz-bank.com>, as publicly viewable Web pages. In addition, the ABC Bank site, <http://www.abcbank.com>, must be re-designed so as to properly represent and disclose the varied use and co-branding of ABC Bank and “XYZ Bank” by respective branches and non-branch facilities.
- Contracts, Disclosures and Official Documents. All of your contracts, disclosures and official documents, including all legal documents, certificates of deposit, signature cards, loan agreements and promissory notes, account statements, checks, drafts and similar documents, must use the official charter name of “ABC Bank,” and not the assumed business

name of “XYZ Bank.” As an alternative, they may state “ABC Bank, a Washington state bank, doing business as ‘XYZ Bank’,” or substantially similar or equivalent language. When opening a new account, you should obtain from the customer, in connection with a special disclosure, a signed statement acknowledging that the customer is aware (1) that certain branches and facilities of ABC Bank, while operating under an assumed business or trade name of “XYZ Bank,” are, indeed, part of ABC Bank, and (2) that deposits held at each facility are *not* separately insured. Your customer service personnel should call attention to disclosures that identify a particular branch or facility using “XYZ Bank” as a brand as being part of ABC Bank. We do not endorse any particular form or language to meet this requirement. We will permit flexibility in meeting this requirement (e.g., combining this requirement with other disclosures), *provided, that* the language of the disclosure is clear and obvious to the customer.

- Pending Merger-Acquisition. In the case of the pending 123 Bank merger-acquisition, existing customers of 123 Bank should be notified by special disclosure notice (1) that certain branches and facilities of the institution, while operating as “XYZ Bank,” are, indeed, part of ABC Bank, and (2) that deposits held at each facility of ABC Bank, including “XYZ Bank” branches, are not separately insured. This may be undertaken by separate mailing or in combination with a regular monthly statement. A signed acknowledgement is *not* necessary. However, customer service personnel at the former 123 Bank branch should call attention to the special disclosure and/or its contents in all face-to-face transactions with customers. If ABC Bank employs telephone banking or other telephony, we encourage pre-programmed messages or telephone conversations between customer service personnel and customers to convey the substance of the required special disclosure.
- Personnel Training. As part of a merger transition, you should train your personnel, at any branch or facility operating as “XYZ Bank,” regarding how to use the special disclosures mentioned above and how to prevent customer confusion.

#### 4.0 Authority

RCW 30.04.030 declares the delegated authority of the Director of Division of Banks, as follows:

The director shall have the *power, and broad administrative discretion*, to administer and *interpret* the provisions of [Title 30 RCW] to facilitate the delivery of financial services to the citizens of the state of Washington by the banks and trust companies subject to [Title 30 RCW].

[Emphasis added.]

With this broad authority comes the ability to reasonably interpret what is a safe and sound banking practice. Conversely, the Director of the Division of Banks has the broad administrative authority to interpret (1) what is an *unsafe* and *unsound* business practice and (2) what conduct may be accordingly enjoined pursuant to RCW 30.04.450 and RCW 30.04.550.

In declaring what is minimally safe and sound with respect to the use of an assumed business or trade name, we rely upon an Inter-Agency Statement, dated May 1, 1998, issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. See Attachment. Clearly, the DFI has the authority, in reliance upon this Inter-Agency Statement, to *prospectively* regulate and thereby condition and limit the future conduct of ABC Bank with respect to the use of “XYZ Bank” as an assumed business or trade name.

#### 5.0 Concluding Remarks

This interpretation shall have *prospective* application only. It is applicable to all other Washington state-chartered commercial banks (Title 30 RCW) similarly situated. Moreover, since substantially the same federal and state law and policy applies to state-chartered savings banks under Title 32 RCW and savings associations under Title 33 RCW, it is likewise applicable to Washington state-chartered savings banks and savings associations, similarly situated. However, persons other than ABC Bank are advised that each institution’s relevant facts and circumstances may be different; and such relevant facts, as applied to governing law and policy, may result in the Director of the Division of Banks reaching a conclusion different than the one set forth above.

Should you have any questions, please do not hesitate to call upon the Division of Banks.

Sincerely,

WASHINGTON STATE DEPARTMENT OF  
FINANCIAL INSTITUTIONS

By:

David G. Kroeger, Director  
Division of Banks

Attachment

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
FEDERAL DEPOSIT INSURANCE CORPORATION  
OFFICE OF THE COMPTROLLER OF THE CURRENCY  
OFFICE OF THRIFT SUPERVISION**

INTERAGENCY STATEMENT

BRANCH NAMES

May 1, 1998

The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (the "Agencies") are issuing this Interagency Statement regarding the practice of insured depository institutions operating branches under different trade names in response to requests for guidance to some of the Agencies. While there are no federal laws or regulations that specifically require that all branches of an insured depository institution operate under a single name,<sup>1</sup> the Agencies are concerned that if customers believe they are dealing with two different institutions, they may inadvertently exceed FDIC insurance limits by depositing excess amounts in different branches of the same institution. The Agencies believe it is important that customers understand the scope of FDIC insurance in these circumstances.<sup>2</sup> Accordingly, an insured depository institution that intends to use a different name for a branch or other facility should take reasonable steps to ensure that customers will not become confused and believe that its facilities are separate institutions or that deposits in the different facilities are separately insured.<sup>3</sup> Such measures may include, but are not limited to:

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<sup>1</sup>There may be state laws that need to be considered with respect to operating under a trade name. In addition, regulations applicable to insured institutions that may be promulgated by the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision (as applicable) under the Federal Trade Commission Act, 15 U.S.C. § 57a(f) et. seq., regarding the prevention of unfair or deceptive acts or practices, could apply to the use of branch names.

<sup>2</sup>Generally, each depositor at an insured depository institution is insured up to \$100,000. See 12 U.S.C. §§ 1813(m), 1817(i), and 1821(a). Insured deposit limits are determined in accordance with regulations prescribed by the FDIC at 12 C.F.R. Part 330.

<sup>3</sup>The practice of insured depository institutions using different trade names over a computer network such as the Internet raises the same concern discussed herein. Accordingly, institutions intending to use different trade names over a computer network should take reasonable steps to ensure that customers will not be confused about either the identity of the insured depository institution or the extent of FDIC insurance coverage.

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1. Disclosing, clearly and conspicuously, in signs, advertising, and similar materials that the facility is a branch, division, or other unit of the insured institution. The institution should exercise care that the signs and advertising do not create a deceptive and/or misleading impression.
  2. Using the legal name of the insured institution for legal documents, certificates of deposit, signature cards, loan agreements, account statements, checks, drafts, and other similar documents.

3. Educating the staff of the insured depository institution regarding the possibility of customer confusion with respect to deposit insurance. The Agencies recommend that the insured depository institution instruct staff at the branch and any other facilities operating under trade names to inquire of customers, prior to opening new accounts, whether they have deposits at the depository institution's other facilities or branches. In addition, during the time period soon after one institution acquires or combines with another, staff should be reminded to call customers' attention to disclosures that identify a particular branch or facility as part of an institution.
4. Obtaining from depositors opening new accounts at the branch a signed statement acknowledging that they are aware that the branch and other facilities are in fact parts of the same insured institution and that deposits held at each facility are not separately insured.

EFFECTIVE DATE: July 1, 1998

<sup>4</sup>The legal name of an insured institution is its full name as reflected in its charter, except that an insured institution may abbreviate terms that are indicators of corporate status (e.g., N.A., F.S.B., Inc., Corp.).

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Richard Spillenkothen  
Director, Division of Banking  
Supervision and Regulation  
Board of Governors of the Federal Reserve System

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Nicholas J. Ketcha, Jr.  
Director, Division of Supervision  
Federal Deposit Insurance Corporation

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Leann G. Britton  
Senior Deputy Comptroller  
Bank Supervision Operations  
Office of the Comptroller of the Currency

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John C. Price, Jr.  
Director, Supervision Policy  
Office of Thrift Supervision