May 26, 2000

Mr. Purdy Crawford
Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Box 50, 1 First Canadian Place
Toronto M5X 1B8

Dear Mr. Crawford:

Thank you for your letter of April 20, 2000 concerning the next five-year review of the *Ontario Securities Act*. Although this does not constitute, and OSFI does not intend to make, a formal submission in response to the request for comments, I would like to provide you with a few thoughts on some of the elements to be considered in the legislative review process.

Under the heading "Focus and Scope of Legislation", two important questions are raised. The first is whether, in recognition of capital markets developments, financial institutions regulation should continue to be by institution, as opposed to by function. In particular it is queried whether the current institution-based exemptions from the securities legislation remain appropriate. As you are aware, amendments to securities legislation alone cannot create a move to functional regulation in Canada. Issues around functional versus institutional regulation have been under discussion for many years but have been difficult to bring to ground particularly in a country with both federal and provincial regulation of financial services markets. As I understand it, the current institution-based exemptions provided in securities law, stem largely from the fact that there is a fundamental difference between a deposit and a security and that many types of institutions (e.g. banks) are otherwise subject to a comprehensive regulatory and supervisory regime as regards their business activities. Any move away from the current approach would, in my view, have to be carefully thought through and be the subject of extensive consultation.

The second question relates to whether there should be statutory or formalised co-ordination between financial services regulators. While much would depend on the details of any proposal, my reaction is that a move toward formalised co-ordination may inadvertently have the unintended effect of getting in the way of the practical, informal co-operation that now exists. This would be the case, for example, where a formal protocol caused a move away from what should be a natural readiness of securities and other financial institutions supervisors to interact on a variety of levels to support regulatory and supervisory processes. Again, any movement in this area would have to be carefully thought through and the subject of extensive consultation.

The material raises the issue of the desirability of consumer complaints being handled through an ombudsman. As you know, the federal government intends to establish a new federal financial services ombudsman, and I trust that the Department of Finance would be pleased to elaborate on the manner in which this new entity is intended to operate and the merits thereof. This is not an area in which OSFI has a direct interest, other than to ensure that complaints received by OSFI that result from issues outside of our mandate are properly re-directed.

Under the heading "Registration of Registrants", the importance of the Internet to financial services delivery is raised. This is clearly a very important area and we await with interest the results of the legislative review process to see if models or approaches emerge, which may be helpful at the federal level.

Also under this subject heading, it is queried whether the SRO regulatory oversight function should be more comprehensively dealt with in legislation and whether the necessary tools should exist to ensure that such oversight remains effective. While I would not be in a position to answer the question fully, I would point out that a key element of prudential supervision of securities dealers – the establishment and monitoring of capital rules – falls within the SRO system. In that regard, I would suggest that ensuring the ongoing effectiveness of the SRO system is critical to expectations around solvency and financial supervision in the Canadian securities industry.

Finally, I refer to the question concerning whether legislation should move away from the material fact/material changes concepts that underpin the continuous disclosure requirement to the required reporting of "specified events". As you may know, and the Canadian Securities Administrators are aware of this in some detail, OSFI has strong views concerning the disclosure of supervisory information by federally regulated financial institutions. Although as a practical matter, such information is not disclosed now, within the parameters of the interpretations of " materiality", we are seeking means to further protect against the disclosure of such information in the interests of financial system stability. These developments, which are well advanced, hinge on the basic premise that the market already has access to the financial condition information that gives rise to a supervisory judgement. The supervisory judgement, therefore, adds little to the disclosure mix and may inadvertently create a crisis of confidence where one should not exist, thereby potentially thwarting the viability of the institution. Again, the CSA is well aware of these developments. Therefore, in my view any move towards requiring reporting of specific events, and indeed any list of specific events which would be required to be disclosed, should take account of these realities and, again, be the subject of extensive consultation.

I hope these comments have been helpful as you proceed to complete your important legislative review process.

Yours very truly,

John Palmer
Superintendent