

250 Yonge Street
30th Floor
Toronto, Ontario M5B 2N7

Phone:(416) 325-2316
Fax: (416) 212-6452
E-Mail:dermot.muir@osifa.on.ca



Ontario Strategic Infrastructure Financing Authority

March 16, 2005

Blaine Young
Alberta Securities Commission
400 - 300 - 5th Avenue S.W.
Calgary, Alberta
T2P 3C4
Fax: (403) 297-3679
e-mail: blaine.young@seccom.ab.ca

RE: Proposed National Instrument 45-106

Dear Mr. Young:

Thank you for the opportunity to comment on Proposed National Instrument 45-106. We would like to comment on s. 2.35(2) in particular. In reviewing that section of the Proposed National Instrument, we have noted that corporations incorporated under the *Education Act* (Ontario) for the purpose of providing financing for school boards are granted exempt status as are municipal corporations. We would like to respectfully suggest that OSIFA be added to this category.

OSIFA is an Ontario Crown Corporation and Crown Agent incorporated pursuant to the *Ontario Strategic Infrastructure Financing Authority Act, 2002* (the "OSIFA Act"). It is exempt from prospectus and registration requirements in Ontario pursuant to O. Reg. 106/03.

OSIFA was created for the purpose of providing financing for Ontario municipalities and other Ontario public bodies (to be specified by regulation) by way of issuing bonds, debentures and other evidences of indebtedness to the public as well as through other sources of funding such as contributions of equity or subordinated loans from the Province of Ontario and lending the proceeds thereof to such entities. At the present time, OSIFA's mandate is solely to provide financing to municipalities and no other public bodies have been specified by regulation.

OSIFA was initially funded in 2003 through a \$1 billion 50 year subordinated loan from the Province of Ontario and a \$120 million 20 year subordinated loan from the Ontario Clean Water Agency ("OCWA"). This \$1.12 billion is held as a debt service reserve fund by OSIFA.

OSIFA has received credit ratings of AA+ from Standard & Poor's, AA from Dominion Bond Rating Service and Aa2 from Moody's Investors Service; ratings equal to (and in the case of Standard & Poor's superior to) the credit ratings of the Province of Ontario.

Pursuant to the OSIFA Act, OSIFA is required to submit an annual report and audited financial statements each year to the Ontario Minister of Finance and it is audited each year by the Provincial Auditor.

Pursuant to section 18 of the OSIFA Act, as security for the payment by a municipality or other public body of amounts borrowed from OSIFA, such entity may agree in writing with OSIFA that the Ontario Minister of Finance is entitled to deduct from money appropriated for payment to such entity amounts not exceeding the amounts that the municipality fails to pay to OSIFA and to pay such deducted amounts to OSIFA. This is a mandatory provision in all OSIFA loan agreements and debentures purchased from municipalities by OSIFA.

OSIFA acts as a financing vehicle for municipalities and other public bodies by offering for sale Infrastructure Renewal Bonds and potentially other evidences of indebtedness, the proceeds of which will be lent by OSIFA to participating municipalities and other public bodies to fund capital infrastructure projects such as water works, sewer works, roads and bridges. OSIFA does not expect that loans to public bodies other than municipalities will exceed 20% of its total loan portfolio at any given time.

A municipality or other public body that receives financing from OSIFA will issue a debenture to, or enter into a loan agreement with, OSIFA pursuant to which it will agree to repay the monies borrowed from OSIFA. The loans will be funded by OSIFA through the sale of Infrastructure Renewal Bonds and possibly other evidences of indebtedness. The loans will be direct, unsecured obligations of the municipality or other public body, ranking *pari passu* with all other unsecured indebtedness of such entity. Each municipality or other public body will remain severally liable for its own loans and will incur no liability for the loans of any other participating entity except with respect to regional municipalities as permitted pursuant to the *Municipal Act, 2001*.

OSIFA will publish on its website, and make available in hard copy upon request, its annual audited financial statements, consistent with the continuous financial disclosure of Ontario municipalities.

OSIFA's objective is to promote healthy and prosperous communities in Ontario by providing municipalities and other public bodies with efficient and affordable

financing for investing in capital infrastructure. By financing through OSIFA and its Infrastructure Renewal Bond structure, municipalities and other public bodies pool their financing requirements, thus facilitating access to the bond market, which might not otherwise be available to entities with small financing needs, and also reduce entry costs into the bond market and financing costs generally to the participating entities. The size and diversification of the pooled debt represented by the loan portfolio creates economies of scale which result in reduced financing costs and expanded access to the capital markets for all municipalities and other public bodies. The pooling of debt underlying the offering of Infrastructure Renewal Bonds will reduce the need for municipalities and other public bodies to devote resources and expertise to financing activities.

Pursuant to sections 41 and 42 of the *Securities Act* (Ontario), no prospectus is required for the distribution of a debt security issued or guaranteed by a municipality, a metropolitan corporation or a school board provided the entity in question has the power to levy a tax on landed property located in a Canadian province.

Pursuant to the equivalent legislation in jurisdictions other than Quebec, no prospectus is required for a trade of bonds, debentures or other evidences of indebtedness of any municipal corporation in Canada including debentures issued for public, separate or secondary school purposes or guaranteed by any municipal corporation in Canada or secured by or payable out of rates or taxes levied under the law of any province or territory of Canada on property in such province or territory and collectable by or through the municipality in which such property is situated.

Based on the following, we respectfully submit that OSIFA is a reasonable proxy for a municipal issuer, is substantially similar to a corporation created under s. 248(1) of the Education Act and its inclusion in s. 2.35(2) is appropriate:

- (a) OSIFA is a special purpose entity created by the Province of Ontario for the purpose of providing municipalities and other public bodies in Ontario with efficient access to the debt capital markets to fund capital infrastructure through the sale of bonds, debentures and other evidences of indebtedness.
- (b) OSIFA's assets consist primarily of the loans to municipalities and its debt service fund and its liabilities relate solely to bonds, debentures and other evidences of indebtedness incurred for the purpose of providing the loans to municipalities, debt obligations to the Province of Ontario and OCWA that are subordinated to the evidences of indebtedness issued to the public and general corporate and administrative expenses.
- (c) Currently, 100% of OSIFA's loan portfolio consists of loans to municipalities. On a going forward basis, at least 80% of OSIFA's


loan portfolio will continue to consist of loans to municipalities. The risk profile for bonds, debentures and other evidences of indebtedness of OSIFA is substantially similar to that of debt securities issued or guaranteed by municipalities but with the benefit of diversification across the loan portfolio.

- (d) Pursuant to s. 18 of the OSIFA Act, debentures issued by a municipality or other public body to OSIFA (or loan agreements entered into with OSIFA) provide for amounts payable by the Province of Ontario to the participating entity to be paid instead to OSIFA in circumstances where the participating entity is in default under its payment obligations to OSIFA.
- (e) OSIFA has and expects to maintain a rating from Rating Agencies that will be comparable or superior to that of most municipalities.
- (f) OSIFA's loans are provided on a full cost pass through basis.
- (g) S. 248(1) of the *Education Act* (Ontario) provides that the Province may create a corporation to lend funds to school boards. A corporation created under this section is included in s. 2.35(2) of the Proposed National Instrument. OSIFA is a corporation that has been created by the Province to lend funds to municipalities. It should be listed in the same manner as the s. 248(1) corporation.

We would be happy to provide you with any further details on the operations and mandate of OSIFA.

Thank you for your consideration of our request.

Yours truly,



Dermot P. Muir
General Counsel and Corporate Secretary
Ontario Strategic Infrastructure Financing Authority

CC: Bill Ralph
Chief Executive Officer, OSIFA

Gregg Smyth
Chief Financial Officer, OSIFA