

## CHAPTER 5

### Regulatory Oversight, Self-Dealing and Corporate Governance

#### A. Introduction

Perhaps because of the wording of our mandate and in particular its focus on ownership and on the impact of globalization or perhaps because the financial-sector problems of the early and mid 1980s are now viewed as being behind us, the general area of regulatory oversight received scant attention from most of the witnesses that appeared before the Committee. Obviously, the testimony of the various regulators was an important exception to this statement. So, too, were the contributions by Professors Chant and McFetridge which focussed on new approaches to deposit insurance. Nonetheless, there is precious little in the way of testimony and new evidence for the Committee to embark on a comprehensive rethinking of our 1986 recommendations with respect to the powers of, and interaction between, primary regulators, auditors, the CDIC and corporate governance. Accordingly, we refer readers to our 1986 recommendations in Appendix A in this general area, even though we recognize that the march of events may have overtaken the relevance of some of these recommendations. However, their thrust still rings true.

In glossing over these areas, the message from the Committee is not that all is well here. No doubt the system of regulatory oversight is functioning far better than it was earlier in the 1980s. However, some important concerns remain. This is particularly the case with respect to deposit insurance. Novel approaches to deposit insurance have surfaced recently and these approaches (some of which were presented to the Committee) merit further consideration and assessment. The Committee takes this opportunity to register the following observation:

#### RECOMMENDATIONS AND OBSERVATIONS

38. **The Committee will not frame any recommendations relating to deposit insurance. This does not reflect a view on our part that all is well with deposit insurance. On the contrary, this is an area that deserves further attention, particularly since novel approaches are beginning to surface. If appropriate agencies do not take up this challenge, the Committee may well revisit the general area of deposit insurance in the near future.**

Two areas that did attract considerable attention, from members of the Committee and witnesses alike, were those relating to corporate governance and self dealing. These are important in their own right, but they acquire greater significance in light of the fact that the Committee has already opted for a flexible ownership structure as well as expanded powers for financial institutions. Indeed, as will be detailed below, the Committee adopts a much tougher stance with respect to self-dealing and non-arms-length transactions (NALTs) than it did in 1986. Prior to focussing on our approach to NALTs, however, we direct attention to the composition and role of boards of directors.