

November 30, 2023

Submitted via email to:

Hon. Peter Bethlenfalvy
Minister of Finance
7th floor, Frost Building South
7 Queen's Park Crescent
Toronto ON M7A 1Y7
Minister.fin@ontario.ca

Hon. Parm Gill
Minister of Red Tape Reduction
7th floor, 56 Wellesley St W
Toronto ON M5S 2S3
Minister.mrtr@ontario.ca

Re: Proposed amendments to the Securities Act, Commodity Futures Act, and the Financial Services Regulatory Authority of Ontario Act, 2016, that would reduce the minimum consultation period for proposed rules made by the Financial Services Regulatory Authority of Ontario (FSRA) and the Ontario Securities Commission (OSC) from 90 days to 60 days.

Dear Ministers:

The Investment Industry Association of Canada (IIAC) is the national association comprising investment firms that provide products and services to Canadian investors.

Our members manufacture and distribute a variety of securities and provide a diverse array of portfolio management and advisory services.

The IIAC is an independent, constructive, and informed voice seeking to ensure healthy, growing, and compliant markets for investors.

Recommendation:

The regulatory and legislative goal of responding more quickly to market changes is praiseworthy. The goal is not met by giving the market 30 days less time to assess regulatory proposals meant to reflect market changes.

The focus of effective policy making should be on getting things right. Regulators cannot risk pushing through, or being perceived as pushing through, a regulatory agenda quickly.

The minimum consultation period should be set at 90 days and only reduced in the event swift and deliberate actions are needed to improve the stability of the financial system due to a significant disruption in market conditions, such as in periods of acute crisis.

Reasons:

i. Generally

The time allocated to the consultation process should be seen as an investment in better rules and regulations.

Adequate time must be available for consultation and participation to be effective.

Also, additional consultation on proposed rules is necessary where the response to the first consultation revealed significant concerns, or revised proposals are substantially different from those originally proposed.

i) Public Engagement Brings Better Results

Effective and meaningful public engagement has been a core principle of regulatory development. Public engagement improves the information provided to regulators by those “on the ground”. Shorter deadlines hamper the quality of the process. Stakeholders may not be able to fully address the issue or may opt not to comment at all so that regulators lose out on the awareness, understanding and detailed knowledge of market participants that are essential ingredients to good regulation.

ii) Accountability Must be Sincere

The requirement to:

- publish for public comment proposed rules which include a meaningful cost benefit analysis and a full analysis of alternatives
- allow the public sufficient time to consider
- genuinely consider and apply the comments received, including engaging in additional rounds of consultation

is at the heart of the public accountability needed to give regulatory rulemaking credence.

More than ‘lip praise’ must be given to real accountability for policy development or stakeholders become less motivated to provide considered input. The result is a rule making process that lacks believability and rules that don’t help investors or grow markets.

A reduced minimum consultation period moves away from the spirit of accountability and threatens the already lagging public confidence in the integrity regulatory rule making practices. These practices have been subject to criticism for a rush to implementation without due regard to market research, cost benefit analysis or consideration of less intrusive alternatives, in efforts to advance an unwieldy process

of co-ordination between provincial and territorial securities regulators. A practice of issuing guidance rather than subjecting a policy initiative to the discipline of meaningful public input has also emerged.

Stakeholders need to see that their views count.

iii) A shorter consultation period does not translate into “Less Red Tape, More Common Sense”. Better analysis does.

The first step to cutting red tape and reducing the regulatory burden is to base regulatory proposals and decisions on robust cost-benefit analysis and a meaningful, informed assessment of risk, that is open to public scrutiny.

To reduce red tape, regulation:

- should be proposed and adopted only upon a reasoned determination that its benefits justify its costs
- is tailored to impose the least burden
- will work as intended to achieve the desired policy objectives, and
- is meaningfully compared and assessed against reasonable alternatives.

According to s. 143.2(2) (7) of the *Ontario Securities Act*, the Commission must publish in its Bulletin notice of every rule that it proposes to make “a qualitative and quantitative analysis of the anticipated costs and benefits of the proposed rule”. Section 2.1 of the *Ontario Securities Act* outlines the principles to consider in pursuing the purposes of this Act. 2.1(6) states, “Business and regulatory costs and other restrictions on the business and investment activities of market participants should be proportionate to the significance of the regulatory objectives sought to be realized”.

Section 22 (2) (6) of the *Financial Services Regulatory Authority of Ontario Act, 2016* states that the notice of every rule must include “a qualitative and quantitative analysis of the anticipated costs and benefits of the proposed rule”.

Stakeholders should have all the information they need during the consultation process, including the supporting rationales for the proposed rules and regulations, the analyses performed (including quantitative and qualitative assessment of the costs and benefits), the trade-offs considered, a risk assessment, and alternatives examined.

To achieve credibility, the consultation process needs to allow sufficient time to meaningfully assess regulatory impact.

Less red tape and more common sense also comes with ongoing reviews of current regulatory programs. Are they achieving their goals? Should any be revised or taken away?

These review plans should:

- be published online, through the regulator’s webpage, on an annual basis.
- include a list of the regulations that will undergo a review and a time frame for the review(s).
- include a minimum 90-day public comment period, with comments taken into consideration to achieve the laudable goal of decreasing red tape and bringing in common sense.

iv) Supposedly “simple, straightforward rules” need to be deliberated in a complex system.

Investment services are highly regulated through a maze of provincial legislation, national instruments, guidance, and policies issued by provincial regulators and rules, guidance and policies issued by CIRO. There are unnecessary, overlapping jurisdictions between regulators (“red tape”) and a web (“red tape”) which can give rise to unfortunate challenge and confusion.

Negative unintended consequences often emerge when a seemingly simple regulation is imposed on a complex system. “Regulations are relatively simple because regulators cannot possess all of the relevant knowledge regarding the workings of the complex institutions that underpin economic and social interaction.”¹

Rules that may appear to be simple cannot be looked at in isolation. “Cumulative effects of interconnected proposals that were issued in a piecemeal fashion, or some combination thereof, further increase the potential for negative outcomes for our capital markets and, importantly, investors and issuers.”²

v) A shortening of the minimum consultation period needs a Regulatory Impact Analysis

A shortening of the minimum consultation period should be subject to a Regulatory Impact Analysis. A Regulatory Impact Analysis typically considers:

- compliance costs: both in-house personnel time and resources, and use of external consultants/service providers
- direct costs : those arising from intended change to the behaviour of firms and persons
- indirect costs: costs arising from changes to the behaviour of regulated firms or persons beyond those that the rule was intended to target.

A 60-day consultation period gives little time for the public to analyze and respond to proposals that regulators, and their many staff, have taken a much longer time to put together without the benefit of full public input. It gives the appearance of an unlevel playing field with a pre-determined result.

It is also important to stress that regulators often launch several consultations simultaneously, some with substantial mandates, and often batched up at year-end. More time, not less time, is needed to evaluate each and their cumulative impacts.

On its face, the proposal to shorten the consultation period brings regulatory burden, compliance costs, direct and indirect costs, and no benefit. Rules and regulations that are rushed, without thorough cost-benefit analysis, consideration of alternatives and clear public accountability risk negative outcomes for investors and markets.

¹ <https://www.fraserinstitute.org/sites/default/files/unintended-consequences-csr-spring-2014.pdf>

² <https://www.sifma.org/resources/news/sifma-testimony-at-house-subcommittee-highlights-negative-consequences-of-sec-rulemaking/>

vi) Healthy Ways Regulators May Respond to Evolving Sector Developments

The regulatory and legislative goal of responding more quickly to rapidly evolving sector developments is commendable. Rather than giving the public less time to consider their proposals, regulators are encouraged to:

- Interpret and apply current regulation with flexibility and regard to current day market realities, wherever possible.
- Actively identify outdated regulations for public comment and flexible interpretation.

In Conclusion

In conclusion, a focus on getting things right, as opposed to getting things done quickly, brings real paybacks in terms of improving the quality of rules and regulations and boosting the lagging confidence in the regulatory rule making process.

Ministers, we encourage your offices to continue to consult broadly with stakeholders and to thoroughly review regulatory proposals.

We'd be pleased to discuss these issues further with you.

Respectfully submitted by:

The Investment Industry Association of Canada

Laura Paglia

Per: Laura Paglia, President & CEO