

December 22, 2023

*Submitted via email to:*

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Minister of Red Tape Reduction  
[Minister.mrtr@ontario.ca](mailto:Minister.mrtr@ontario.ca)

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**Re: Proposed amendments to the Securities Act, Commodity Futures Act, and the Financial Services Regulatory Authority of Ontario Act, 2016, to 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 (“Proposal No. 23-MOF016”)**

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Dear Ministers and Members of the Standing Committee on Justice Policy:

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. They are directly impacted by *the Securities Act, Commodity Futures Act, and the Financial Services Regulatory Authority of Ontario Act, 2016 (the “Acts”)*.

We appreciate that Bill 139, which included Proposal No. 23-MOFO16, contained proposals from 10 ministries and included 20 schedules, with the intention of improving services for people, reducing costs for businesses, and making it easier to work with the government. Unfortunately, the Acts and the many, many impacted by them were “lost in process”.

#### **A. The Problem: A Consultation Period without Consultation**

The consultation period for those most impacted by these Acts was reduced without their consultation. The proposal proceeded to 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> reading, with vote carried, before public consultation (October 19, 2023 – December 4, 2023) was concluded and therefore without full and informed public input. It received Royal Assent on December 4, 2023, when the government should be receiving comments.

In addition, during the consultation period, the proposal was pulled from Ontario’s Regulatory Registry and therefore comments could not be submitted. On November 30, we were incorrectly advised the comment period was closed. Our further communications to the Ministers’ offices received no reply.

A full chronology of events is appended at Schedule A. Our informed but unconsidered comments are appended at Schedule B.

#### **B. The Principle: Authentic Accountability**

Accountability to the public must be real to give legislators and legislation credibility. The message from the government’s handling of this consultation is that the public’s views don’t count.

Like regulators, legislators can’t risk pushing through an agenda quickly with pre-determined results.

Authentic accountability means:

- publishing for public comment proposed rules which include a meaningful cost benefit analysis and a full analysis of alternatives
- allowing the public sufficient time to consider the proposal.
- truly considering and applying the comments received, including engaging in additional rounds.

We appreciate the statements made by MPPs, Mr. Terence Kernaghan and Ms. Catherine Fife, as Bill 139 was debated in the Legislative Assembly of Ontario, as they go to the heart of the matter:

Ms. Catherine Fife: “Consultation is actually one of the key parts of a strong democracy, sharing with stakeholders where you’re going, what you want to accomplish and getting their feedback.” **Hansard: [October 25, 2023](#)**:

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Mr. Terence Kernaghan: “Schedule 8, which is on FSRA, the Financial Services Regulatory Authority of Ontario Act, reduces the minimum period which the Financial Services Regulatory Authority of Ontario requires for feedback from 90 days to 60 days. Now, we were kind of surprised about this removing of a consultation period or taking time away, because, too often with this government, we see that there is very little concern for consultation. In fact, we’ve seen so many bills plowing forward without any real concern, any real input from stakeholders who will be directly affected.” **Hansard: [November 16, 2023](#)**

Mr. Terence Kernaghan: “Schedule 17 is the Securities Act. Again, this is very surprising to me: This government, which has often been criticized for its lack of consultation and its unwillingness to be forward-facing, to be outward-facing and to travel bills across the province, is again in a situation where they’re changing the consultation period or written feedback period from 90 days to 60 days. It’s curious to me that we are in a time where we’re thinking about a more narrow window for people to be involved. It’s strange. It’s interesting.” **Hansard: [November 16, 2023](#)**

Mr. Terence Kernaghan: “Bill 139 is one of these bills where they’ve gone—and it’s a doorstopper bill. There’s a number of technical amendments. It’s strange to me that they’re naming it the way that they are, but I also wanted to encourage anyone who might be listening at home, that they can also have their voice heard, that they can be involved in the consultation process with this. If we take a look at this, there will be a consultation period for 45 days from October 29, I believe it is, until December 4, so I encourage everyone at home to make sure that they are putting their names forward if they have any concerns that have been brought forward within this legislation and make sure that they are letting the government know.” **Hansard: [October 25, 2023](#)**

### **C. The Solution**

The IIAC respectfully asks that:

- i) A cost benefit analysis be conducted of the proposal to shorten the consultation period from 90 days to 60 days for OSC and FSRA. This accords with ss. 2.1 and 143.2(2)(7) of the *Ontario Securities Act* and s. 22(2)(6) of the *Financial Services Regulatory Authority Of Ontario Act*.
- ii) With the benefit of i), the government of Ontario reopen consultations on shortening the 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.
- iii) The Standing Committee on Justice Policy hold hearings on this proposal.
- vi) Pending i) – iii) a minimum 90-day consultation period continue.

We look forward to the fair and reasonable resolution.

Respectfully submitted by:

**The Investment Industry Association of Canada**

*Laura Paglia*

Per. Laura Paglia, President, and CEO

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**APPENDIX A**  
**CHRONOLOGY OF EVENTS**

October 19, 2023: Proposal number 23-MOF016 was posted on Ontario’s Regulatory Registry, with comments due **December 4, 2023**.

October 20, 2023: The launch of the consultation was also reported by [Investment Executive](#) in an article which stated “The proposed legislative change is now out for comment until Dec. 4”.

While the proposal was to be open to public comment and without the benefit of full public comment:

October 19, 2023: On the same day that the proposal is posted, it proceeded to first reading and the vote was carried.

October 25, 2023: Second Reading debated.

October 26, 2023: Second Reading vote carried. Order referred to Standing Committee on Justice Policy.

November 8, 9, 2023: Consideration of Bill by Standing Committee on Justice Policy

November 14, 2023: Standing Committee on Justice Policy reported without amendment. Ordered for Third Reading.

November 16, 21 2023: Third Reading debated.

November 21, 2023: Third Reading vote carried.

December 4, 2023: Royal Assent Received.

Meanwhile:

November 29, 2023: The Investment Industry Association of Canada (IIAC) attempted to access the proposal on the Ontario’s Regulatory Registry to submit comments via the “Comment on this proposal via email” button. We noticed that the consultation had been removed from the site and the link to the consultation was disabled. On the assumption that a good faith error had occurred, we wrote to [registryfeedback@ontario.ca](mailto:registryfeedback@ontario.ca):

Hello,

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The following consultation (comments due December 4) has been removed from Ontario's Regulatory Registry.

[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. \(ontariocanada.com\)](#)

Can you please re-add it to the registry so the public can submit comments on this proposal via the portal.

Thank you!

On November 30, 2023: The IIAC received the following reply from the Registry Feedback Team:

This item formed part of Bill 139. The comment period has now closed. Should you have any comments or feedback to the responsible ministry however (Ministry of Finance), please send to us and we will forward to the ministry for their consideration.

On November 30, 2023: The IIAC emailed our comment letter directly to Ministers Bethlenfalvy and Gill.

Please see our enclosed submission to the proposed amendments to the aforementioned Acts that would reduce the minimum consultation period for proposed rules by the OSC and FSRA to 60 days.

We have brought this to the attention of Ontario's Regulatory Registry and asked that the consultation be re-instated so that the public may see it and submit comments. We were mistakenly advised that the comment period was closed and asked to forward the Registry Feedback Team our submission for the Ministry's consideration. We have advised the Registry Feedback Team of the misunderstanding. Our further correspondence to them is undeliverable (attached).

We therefore ask that your office please re-instate this consultation for public review and comment. Kindly also re-instate the IIAC's access to: [RegistryFeedback@ontario.ca](mailto:RegistryFeedback@ontario.ca), copied above.

The IIAC received no reply from the Ministers' offices.

After Royal Assent was received:

December 7, 2023 : The link to Proposal Number: 23-MOF16 is [reactivated](#) showing the Royal Assent date, but there was/is no indication of the consultation under "[past proposals](#)" on Ontario's Regulatory Registry.



November 30, 2023

*Submitted via email to:*

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Hon. Parm Gill  
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[Minister.mrtr@ontario.ca](mailto: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.

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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

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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.



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**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.”<sup>1</sup>

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.”<sup>2</sup>

**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.

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

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

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**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