

December 4, 2023

Submitted via email to:

Hon. Peter Bethlenfalvy
Minister of Finance
Minister.fin@ontario.ca

Hon. Parm Gill
Minister of Red Tape Reduction
Minister.mrtr@ontario.ca

Re: Bill 139 *Less Red Tape, More Common Sense Act, 2023*. 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.

FAIR Canada is providing comments in response to the above-referenced Consultation, which was scheduled to close on December 4, 2023. We note in dismay and with great disappointment, however, that the Government of Ontario rushed the amendments forward and completed third reading of Bill 139 on November 21, 2023 - almost a full two weeks before the public consultation on Bill 139 was scheduled to close. Please find below the comments we nonetheless took the time to consider and carefully prepare in response to your request for public feedback.

FAIR Canada is a national, independent, non-profit organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. We advance our mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. As part of our commitment to be a trusted, independent voice on issues that affect retail investors, we conduct research to hear directly from investors about their experiences and concerns. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.¹

A. General Comments

The Ontario government proposes, among other things, to reduce the minimum consultation period for rules proposed by the OSC and FSRA pursuant to various statutes from 90 days to 60 days (the Proposal). In so doing, the government is proceeding with a recommendation from the Capital Markets

¹ Visit www.faircanada.ca for more information.

Modernization Taskforce (Modernization Taskforce).² However, the Modernization Taskforce did not consult on this question in its Consultation Report.³ Therefore, we question whether the Modernization Taskforce had sufficient information to conclude that the additional 30 days available in Ontario somehow “results in **unnecessary** policymaking delays.”⁴ (emphasis added)

We also note the government of Ontario adopted a pre-clearance process that, according to the Auditor General of Ontario, “has required additional time, averaging 93 days for rules before public consultation, 91 days for rules after public consultation but before sending the rules to the Minister for final approval...”⁵ This pre-clearance process adds considerably more delay than the Proposal seeks to eliminate.

Suffice it to say FAIR Canada supports a fully transparent and robust consultation process that provides all concerned stakeholders with sufficient time to produce and submit informed commentary on proposed rules and guidance. The quality of these submissions and stakeholder input is an important ingredient in developing smart regulations. Our chief concern is that, if the minimum period were to become the norm, it would disproportionately disadvantage consumer advocates. This result would further weaken the voice of investors on important matters of public policy, and ultimately diminish the quality of our regulatory framework.

Our comments below focus on three key considerations:

- The importance of effective public consultation given the complex nature of many regulatory proposals and the existing financial system,
- The OSC’s and FSRA’s open-ended discretion to set consultation periods at 60 days, and
- The time needed to consider, develop, and draft thoughtful public commentary, both for under-resourced investor advocate groups, as well as for industry groups.

B. Our Concerns with the Government’s Proposal

1. Public Consultation and Financial Sector Complexity

Ontario’s financial services sector is advanced and expansive, offering consumers a wide array of products and services. It also includes broad and highly diverse types and sizes of market participants and intermediaries. In addition, the regulatory system overseeing financial services is fragmented within the province, as well as between different levels of government and other jurisdictions. These factors make providing informed submissions on proposed rules a complex undertaking, with many competing perspectives and divergent stakeholder interests. Developing smart and thoughtful rules that strike the right balance requires considered feedback from all stakeholders.

² [Capital Markets Modernization Taskforce: Final Report](#) (January 2021), at 24.

³ [Capital Markets Modernization Taskforce: Consultation Report](#) (July 2020).

⁴ [Capital Markets Modernization Taskforce: Final Report](#) (January 2021), at 24.

⁵ [Value-for-Money Audit: Ontario Securities Commission](#) (Office of the Auditor General of Ontario: December 2021), at 23.

In 1993, Ontario’s Minister of Finance formed a joint Ministry of Finance and OSC Task Force on Securities Regulation (Daniels Task Force) to review Ontario’s legislative framework for developing securities law policy.⁶ As part of that review, the complexity of securities regulation and the importance of public consultation were identified as foundational policy considerations when the OSC was first granted statutory power to make rules.

With respect to the complexity of securities regulation, the Daniels Task Force stated:

Securities regulations address an extremely wide range of activities — from registration and prospectus requirements, to mutual funds, to take-over bids. As such, they require a high degree of specialized expertise by persons familiar not only with the framework and philosophy of securities regulation, but also market practice.⁷

Thirty years later, these considerations are even more relevant because the complexity has only increased. Ontario’s securities framework now reflects a proliferation in the types of services provided, the way those services are offered, and the types of complex globally traded financial products, like derivatives and crypto assets, which are available. Market conduct requirements and the approach to oversight have also evolved tremendously, as has the degree of oversight of different types of recognized entities.

Changes in the financial services industry and how investors and financial consumers interact with it are also eroding the traditional boundaries between different financial sector regulatory frameworks. For those advocating on behalf of consumers, this erosion in the traditional product-focused approach to buying and selling products necessitates a better understanding of diverse regulatory regimes beyond just securities regulation.

As the Daniels Task Force noted, public consultation is of central importance:

The magnitude of the rule-making power recommended for the Commission requires considerable attention to the checks and balances that will accompany its exercise. We regard an effective notice and comment procedure as the central mechanism for ensuring the accountability and transparency of Commission rule-making.⁸

It was because of the crucial importance of public consultation that the Daniels Task Force recommended a minimum period of 90 days for the initial consultation on rules proposed by the OSC.⁹ If the Proposal results in interested parties being less able to provide thoughtful commentary to the OSC and FSRA regarding proposed rules, there is a substantial risk that the accountability of such bodies to the public could be undermined.

2. Discretion to Set Comment Periods

⁶ [Responsibility and Responsiveness: Final Report of the Ontario Task Force on Securities Regulation](#) (June 1994) (Daniels Report), at 1.

⁷ [Daniels Report](#), at 28.

⁸ [Daniels Report](#), at 35.

⁹ [Daniels Report](#), at 36.

In its consultation, the government makes it clear that the proposed amendments would:

- “...allow reduced consultation time and more timely enactment of simple, straightforward rules to respond to market changes and sector developments.”¹⁰
- “...provide the OSC and FSRA with the flexibility to streamline the rule development process and reduce regulatory burden, while having the ability to set out longer consultation periods for stakeholder consideration of more complex rules.”¹¹

We acknowledge there should be some flexibility to deal with simple and straightforward rules (including simple or straightforward amendments to existing rules) where there is a pressing need.

Unfortunately, the Proposal is not limited to “simple, straightforward rules,” nor does it identify what would qualify as such. In the absence of guidance, we are concerned that regulators may be pressured to reduce the consultation period, either for the sake of harmonizing with other jurisdictions, or because their experts consider a proposed rule or policy to be simple or straightforward.

Moreover, what is simple and straightforward is often in the eye of the beholder. For most groups and individuals that comment on regulatory proposals, the vast majority involve complicated issues that require time to understand and consider. As noted by industry commenters:

- “In the recent past there have been very few proposed rule changes in Ontario that did not require careful substantive and implementation reviews – even when certain proposed rule changes initially looked straightforward.”¹²
- “Negative unintended consequences often emerge when a seemingly simple regulation is imposed on a complex system...Rules that may appear to be simple cannot be looked at in isolation.”¹³

As the proposed amendments are currently drafted, there is a real risk that 60 days could become the de facto standard for OSC and FSRA consultations.

3. Thoughtful Commentary Requires Time

The risks associated with shortened comment periods are not just theoretical. If a 60-day comment period becomes the de facto standard for OSC and FSRA consultations regarding proposed rules, investor and consumer advocates would be disproportionately impacted. Organizations such as ours have few employees and resources as compared to industry associations and their proxies (i.e., large law firms and accounting firms).

¹⁰ See the [Consultation](#).

¹¹ See the [Consultation](#).

¹² [The Investment Funds Institute of Canada](#) (November 22, 2023), at 2.

¹³ [Investment Industry Association of Canada](#) (November 30, 2023), at 4.

It is already a challenge to respond to multiple consultations on 90-day deadlines. If more consultations move to a 60-day comment period, organizations such as FAIR Canada would be forced to comment on fewer proposals than we currently are able to manage. This could have the effect of reducing the investor perspective in the OSC's and FSRA's policy-making processes. This would be a poor outcome for both the investors FAIR Canada represents, and regulators that have a legal mandate to serve the public interest.

It is not just consumer advocates like FAIR Canada, however, that are concerned with reducing the minimum consultation period to 60 days. Significant industry associations have also expressed concern with the Proposal. In its comment letter regarding the Proposal, The Investment Funds Institute of Canada (IFIC) states:

IFIC therefore strongly urges that the current 90-day minimum comment period for all rule-making initiatives be maintained in the current Acts...Reducing it to 60 days will not meaningfully increase the efficiency of the rule-making process, but it will significantly impair the ability of capital markets participants to provide important input on regulatory initiatives.¹⁴

In addition, the Investment Industry Association of Canada (IIAC) comment letter regarding the Proposal states:

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.¹⁵

Furthermore, industry reservations regarding reducing the minimum comment period for proposed rules are not new. Numerous industry associations expressed reservations at the time of the government's consultation regarding the proposed *Capital Markets Act*. The Portfolio Management Association of Canada (PMAC) stated:

We are very concerned with the proposed reduction of the minimum consultation period from 90 days to 60 days. We strongly believe that meaningful public input is essential to effective regulation. A 60-day comment period is not sufficient to obtain meaningful stakeholder feedback, especially with respect to complex, multi-jurisdictional issues.¹⁶

IFIC submitted:

¹⁴ [IFIC](#) (November 22, 2023), at 3.

¹⁵ [IIAC](#) (November 30, 2023), at 4.

¹⁶ [PMAC](#) (February 18, 2022), at 3.

Without consultation, the Capital Markets Modernization Task Force (CMMTF) recommended, in its final report, that the minimum consultation period for rule-making be reduced from 90 days to 60 days, reportedly to reduce delays in the rule-making process. IFIC wrote to the Ministry of Finance and to the OSC to express our serious concern with this recommendation. A copy of the letter is attached as Appendix B.¹⁷

IFIC's then President and CEO, Mr. Paul Bourque, publicly stated:

Stakeholder input can improve the scope and effectiveness of a proposal. Allowing 90 days for investors and registrants to provide comments through advisory panels, associations and advocates is adequate and certainly not excessive when compared to the years of regulatory development that precede the call for comment.

Ninety days becomes completely inadequate, however, if stakeholders are trying to respond to multiple requests for comment on a variety of rule proposals simultaneously.¹⁸

The International Swaps and Derivatives Association, Inc. (ISDA) stated:

ISDA is concerned this shortened comment period may not provide it, and its members, with sufficient time to review and provide detailed comments on proposed rules or rule amendments. This is particularly a concern in the OTC derivatives market where any proposed rule changes need to be considered on a global basis with the proposed rule compared against the rules in other foreign jurisdictions for consistency and conflicts.¹⁹

Finally, IIAC noted:

Reasoned and constructive feedback to draft legislative and regulatory proposals help to achieve informed, proportionate, and effective legislation and regulation. A minimum consultation period of 60 days may provide insufficient time to meaningfully consider a proposal.²⁰

Based on the industry comments summarized above, the interests of investor advocates and industry appear to be substantially aligned against the Proposal. Accordingly, we strongly recommend that the government reconsider reducing the comment period for rules proposed by the OSC and FSRA.

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for investors and financial consumers. We intend to post our submission on the FAIR Canada website and have no concerns with the Ministry of Finance publishing it on

¹⁷ [IFIC](#) (February 18, 2022), at 3.

¹⁸ "The regulatory treadmill: An industry perspective", [Investment Executive](#) (January 31, 2022).

¹⁹ [ISDA](#) (February 17, 2022), at 6.

²⁰ [IIAC](#) (February 17, 2022), at 4.

its website. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at jp.bureaud@faircanada.ca or Bruce McPherson, Policy Counsel, at bruce.mcpherson@faircanada.ca.

Sincerely,



Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for Advancement of Investor Rights