



THE INVESTMENT
FUNDS INSTITUTE
OF CANADA

L'INSTITUT DES FONDS
D'INVESTISSEMENT
DU CANADA

November 22, 2023

Delivered Via email: minister.mrtr@ontario.ca

The Honorable P. Gill
Minister of Red Tape Reduction
Queen's Park, Toronto ON

Dear Sirs and Mesdames:

RE: Bill 139 *Less Red Tape, More Common Sense Act*, Schedules 4, 8 and 17 - Reduction of Minimum Comment Periods in the *Commodity Futures Act*, *Financial Services Regulatory Authority of Ontario Act* and the *Securities Act*

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on certain proposals in Bill 139 *Less Red Tape, More Common Sense Act* (**Bill**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

In this letter, we provide our comments on the proposals in Schedules 4, 8 and 17 of the Bill to reduce the minimum comment period in the *Commodity Futures Act* (**CFA**), the *Financial Services Regulatory Authority of Ontario Act* (**FSRAOA**) and the *Securities Act* (**SA**) (collectively, the **Acts**), respectively, from 90 days to 60 days.

The draft *Capital Markets Act*, which was published for consultation at the end of 2021, contained a similar proposal 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. At that time, IFIC wrote to the Ministry of Finance and to the Ontario Securities Commission (**OSC**) to express our serious concern with this recommendation.¹ We share the same concerns with the proposed amendments to Schedules 4, 8 and 17 of the Bill.

Our concerns are founded in the importance of public input to the rule-making process and the difficulty for industry organizations, such as IFIC, to provide comments reflecting the consensus views of our members in a reduced time frame. IFIC gathers its members' comments through a committee process; the comments are then reflected in a draft comment letter, which is circulated to members of the committee struck for the purposes of reviewing the draft rule, as well as to appropriate working groups and committees before the letter is sent to the Board of Directors for their approval.

¹https://www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=27018&lang=en_CA



The time required to have meaningful committee discussions, gather comments and obtain consensus from our members, who are doing this work in addition to their regular work commitments, is exacerbated by (i) the diverse size of our members and their different current and evolving business models and, (ii) the need for members to canvass and receive comments from multiple parts of their firms, such as operations, systems, behavioral economics, finance, compliance, legal and tax divisions. Further, rule consultations have become longer and more complicated to assess and implement, with greater need to obtain operational and systems perspectives at the comment stage than was once required. The time challenges are further complicated when there are several overlapping rules published for consultation at the same time or when a consultation is published for comment over the summer, over holiday periods, or during particularly busy times for our members, such as year end and RRSP season.

The December 2021 *Value-for-Money Audit: Ontario Securities Commission*² notes that the then recently-codified requirement for Ministry of Finance pre-clearance of rules and other regulatory initiatives of the OSC “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, and 54 days for staff notices” for rule-making. We respectfully submit that removing 30 days from the current 90-day requirement, will not make the rule-making process more effective. There are many other parts of the rule-making process, such as the recent Ministry of Finance pre-clearance requirements, that could be streamlined without impacting the ability of capital markets participants to participate meaningfully in rule-making.

As Securities and Exchange Commission Commissioner Hester Peirce observed recently:

Essential to facilitating substantive input from a wide variety of interested parties is giving people enough time to comment.

The notice and comment process is intended to be a dialogue. The regulatory conversation flows only when the Commission affords the commenting public sufficient time both to review and analyze proposals thoroughly and to formulate fully articulated opinions and suggestions....

Public commenters help the Commission to look at rules in light of their unique experiences. They bring a broad range of perspectives, technical expertise, and deep, personal experience to their comments. In so doing, they help us to see things we otherwise would not. Sometimes they identify better ways to tackle a problem or point out flaws with rules that we might not have found on our own.³

We note that a stated policy intention for reducing the proposed 90-day minimum comment period is to reduce regulatory burden for businesses. However, shortening the time for our members to review and assess proposed legislation will, in many cases, increase the burden on, and have negative implications to our members who must do so on a truncated deadline. It is only after careful analysis that our members can assess the full import of potential rule changes. 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. If a 60-day comment period proves to be an insufficient amount of time for adequate analysis of a proposed rule, important implications may be missed such that, when it comes time to implement the new rule, there may be significant negative consequences or costs. This outcome would defeat the Bill’s major goals of reducing costs and reducing regulatory burden.

² Office of the Auditor General of Ontario *Value-for-Money Audit: Ontario Securities Commission* (December 2021): https://auditor.on.ca/en/content/annualreports/arreports/en21/AR_OSC_en21.pdf

³ Rat Farms and Rule Comments - *Statement on Comment Period Lengths* (Dec. 10, 2021): https://www.sec.gov/news/statement/peirce-rat-farms-and-rule-comments-121021?utm_medium=email&utm_source=govdelivery

The Honorable P. Gill

RE: Bill 139 Less Red Tape, More Common Sense Act, Schedules 4, 8 and 17 - Reduction of Minimum Comment Periods in the Commodity Futures Act, Financial Services Regulatory Authority of Ontario Act and the Securities Act
November 22, 2023

IFIC therefore strongly urges that the current 90-day minimum comment period for all rule-making initiatives be maintained in the current Acts. While other provinces have a 60-day minimum comment period in their comparable legislation, the fact that the CFA and the SA have a 90-day minimum comment period means the de facto minimum comment period across Canada for rule-making under comparable statutes is 90 days. 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.

Conclusion

IFIC is pleased to have had this opportunity to provide our comments on the Bill. Please feel free to contact me by email at jsalter@ific.ca. I would be pleased to provide further information or answer any questions you may have.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Janet Salter, M.A., LL.B
Senior Policy Advisor | Conseillère principale en politiques
jsalter@ific.ca | 416-309-2328