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VIA E-MAIL

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Re: Proposed amendments to the *Securities Act*, *Commodity Futures Act*, and the *Financial Services Regulatory Authority of Ontario Act, 2016*

OVERVIEW

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to provide feedback to the Ministry of Red Tape Reduction and the Ministry of Finance (collectively, the **Ministries**) on the proposed amendments to the *Securities Act*, *Commodity Futures Act*, and the *Financial Services Regulatory Authority of Ontario Act, 2016 under the Less Red Tape, More Common Sense Act, 2023,* 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; collectively, the **Amendments** or the **Consultation**.

PMAC represents over 320 asset management firms registered to do business in Canada as portfolio managers (**PMs**) with the members of the Canadian Securities Administrators (**CSA**). PMAC's members encompass both large and small firms and manage total assets in excess of $3 trillion of assets as fiduciaries for institutional and private client portfolios. PMAC's mission statement is "advancing standards". We are consistently supportive of measures that elevate standards in the industry, enhance transparency, improve investor protection and benefit the capital markets as a whole.

KEY RECOMMENDATIONS

1. **Maintain the 90-day comment period and develop specific criteria to provide flexibility to shorten the comment period for simple, straightforward rules.**

2. **Evaluate the policy-making process as a whole to determine how to respond to market changes and sector developments in a timely manner, and provide earlier opportunities for industry consultation.**

DISCUSSION

PMAC supports the goal of streamlining the rule development process for the OSC and FSRA. We agree that these regulatory bodies should be able to respond quickly to developments in the industry and effectively pursue their regulatory mandates.

It is not clear to us that reducing the legislated minimum comment period from 90 to 60 days will significantly contribute to achieving this goal. Rather than focusing on the length of the comment period, the policy-making process as a whole should be examined, and data should be provided to support any recommended changes.

We believe that reducing the minimum comment period to 60 days could have negative consequences. The legislation should maintain the 90-day consultation period, with added flexibility to shorten the comment period for simple, straightforward rules. Specific criteria should be developed to justify a shorter comment period.

Regulators should create more opportunities for engagement with stakeholders during the policy development process. Providing more notice of contemplated changes and engaging in dialogue with industry prior to the publication of proposed rules will be more efficient and will lead to better regulatory outcomes.

Shorter comment periods result in added burden

An insufficient comment period represents a significant regulatory burden, and could impact the quantity and quality of stakeholder feedback. Some voices, in particular consumers, retail investors and smaller registrants, could be left out.

Regulation of the financial markets is extremely complex and multi-faceted. Analyzing and responding to the numerous and frequent consultations from the CSA, the OSC and other local CSA jurisdictions, provincial and federal governments and international bodies is both an important and time and resource-intensive process.

These stakeholders need ample time to fully analyze, consider, and comment on regulatory proposals, including the time that it takes to study and evaluate the market and any economic implications of proposed changes. It may take a significant amount of time and resources to gather the information required to provide meaningful comments on proposed regulations.[1]

Even seemingly minor changes can have a material and significant impact on firms' policies and procedures, and may require significant investment of resources, time and capital to implement. For example, rules necessitating operational or technological process changes may require firms to consult internally to determine what systems and resources are required, how the changes will be implemented, what the impacts and costs will be. One example of such a change is the ban on trailing commissions for order-execution-only dealers[2]; although this may have seemed like a simple change, and was one which we fully supported, its implementation was very complex for firms.

Firms may also need to consult with external resources, such as legal, accounting, IT and tax experts, to determine what the impacts of regulatory changes will be. Firms consider not only the impact of regulatory change on the business, but also potential impacts on clients.

Develop specific criteria to provide flexibility to shorten the comment period

While PMAC generally supports the intention to streamline the OSC and FSRA rule development process, we believe market participants should have an adequate opportunity to provide full and complete comments on proposed regulatory actions. We support providing the OSC and FSRA with some flexibility to adjust the length of the rule development process, depending on the level of complexity of the regulatory projects under consideration.

Specific criteria should be developed to determine when the comment period may be shortened to less than 90 days. For example, this could include immaterial changes with no compliance or cost consequences, such as codifying into rules commonly granted exemptive relief, or alignment of definitions across rules where comments have already been provided. Comment periods of at least 90 days should be maintained where there are material compliance, complexity or cost implications, such as where new systems are required to comply with new reporting obligations (for example, the Total Cost Reporting obligations,[3] which will require new systems to be implemented across various industry participants), or where new compliance policies and procedures will need to be created.

[1] Please see Securities and Exchange Commission (SEC) Commissioner Hester M. Pierce's 2021 Statement on Comment Period Lengths, in response to increased rulemaking activity in the U.S.

[2] See CSA Notice of Amendments to National Instrument 81-105 *Mutual Fund Sales Practices* and Related Consequential Amendments Prohibition of Mutual Fund Trailing Commissions Where No Suitability Determination Was Required, published September 17, 2020, available at https://www.osc.ca/en/securities-law/instruments-rules-policies/8/81-105/csa-notice-amendments-national-instrument-81-105-mutual-fund-sales-practices-and-related

[3] See the amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* published April 20, 2023, available at https://www.osc.ca/en/securities-law/instruments-rules-policies/3/31-103/csa-and-ccir-notice-publication-ccir-individual-variable-insurance-contract-ongoing-disclosure

From time to time the OSC or CSA take steps to codify existing guidance contained in Staff Notices or other publications[4]. Stakeholders are not typically provided with an opportunity to comment on such guidance. It should not be assumed that matters on which the OSC or CSA and FSRA have issued guidance, on which stakeholders have not had the opportunity to comment, are suitable for a shorter comment period when regulatory amendments are proposed to codify them.

Examine the policy-making process as a whole

Rather than focusing on the comment period, we urge the government and regulators to evaluate the policy-making process as a whole to determine how to respond to market changes and sector developments in a timely manner. However, in our view, achieving the appropriate regulatory outcome is more important than the speed at which regulatory decisions are made.

Importance of stakeholder engagement

Engaging with stakeholders gives regulators the benefit of multiple perspectives and experiences and the knowledge and expertise of registrants, investors, and other relevant market participants.

The OSC, FSRA and other regulatory agencies in the financial sector need well-crafted, thought-out and tailored comment letters in order to meet their policy objectives, including protecting investors and fostering competitive capital markets. Without this public input, the OSC and FSRA risk drafting, implementing, and enforcing rules that do not achieve their intended goals, add regulatory burden to firms and prevent sound competition. There is also a risk that unintended consequences are not identified or properly considered.

Consulting with industry during the policy and rule development process, especially for complex rules, will make for better informed and more efficient rule-making. One example of more extensive consultation resulting in better outcomes for stakeholders is the consultation leading to the Derivatives Business Conduct Rules[5]; the CSA undertook extensive consultation with stakeholders before and after the proposed rules were published, giving industry the opportunity to provide feedback on the potential impact of the rules and to suggest desirable alternatives. Informing stakeholders of proposed changes and engaging in constructive dialogue with associations such as PMAC, who have access to

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[4] For example, Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* – Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms), codified existing guidance and best practices; existing guidance in CSA Staff Notice 31-326 *Outside Business Activities* was codified in Amendments to NI 33-109 and Related Instruments, Modernizing Registration Information Requirements, Clarifying Outside Activity Reporting & Updating Filing Deadlines.

[5] Multilateral Instrument 93-101 *Derivatives: Business Conduct and its Companion Policy*, published September 28, 2023, available at https://www.osc.ca/en/securities-law/instruments-rules-policies/9/93-101/csa-notice-publication-multilateral-instrument-93-101-derivatives-business-conduct-companion

relevant information and expertise, would be more efficient and improve the regulatory outcome.

Provide evidence to support the Amendments

We generally believe that legislative and regulatory changes should be based on empirical evidence that identifies a problem and supports the proposed solution. We are unaware of any data or statistics making the case to shorten the rulemaking process; while we generally acknowledge that a shorter comment period could help the OSC and FSRA to respond efficiently to market changes and sector developments in certain circumstances, we believe the focus should be on the policy-making process preceding and following the publication of proposed changes for comment.

Because the Amendments can represent a significant regulatory burden for our member firms and other stakeholders in the industry and thus have the potential to hinder competition, additional detail should be provided about the underlying research findings that led to the proposed reduction of the minimum comment period, and alternative solutions that are being considered to achieve the stated goals.

CONCLUSION

We strongly recommend that the current 90-day comment period be maintained, and that specific criteria be developed to provide flexibility to shorten the comment period for simple, straightforward changes. Policy-makers and regulators should provide opportunities for early engagement with stakeholders, before regulatory changes are proposed. This will allow for more efficient rule-making and better regulatory outcomes.

Thank you for the opportunity to provide feedback on the Consultation. We would be pleased to further discuss any of the feedback provided in this submission.

Sincerely,
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

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