



Financial Services Regulatory
Authority of Ontario

Rule-Making Overview

Industry Advisory Groups
August 16, 2018



Introduction to Rule-making

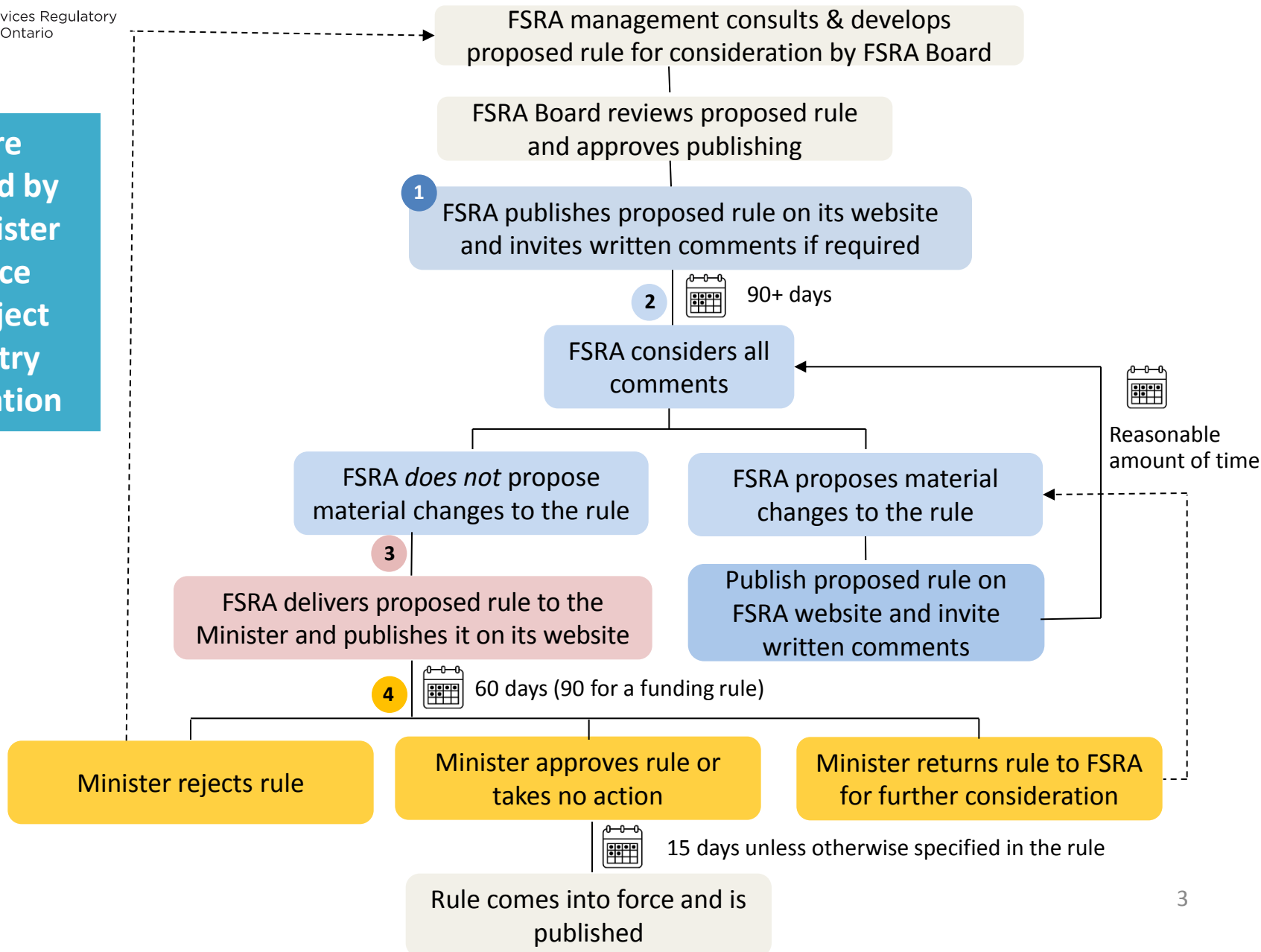
- Rule-making is the process by which an independent agency, such as FSRA, develops rules which can, when authorized by legislation, do the work of regulations – e.g. such rules will have the force of law
- The same process – rule-making – may be used to make a change to an existing rule or, if authorized, regulation
- Authority to make rules is provided to an agency by legislation
- The legislative process to create regulations is less flexible and more time consuming than rule-making, and does not benefit from the specialized expertise of an expert rule-making body
- By delegating rule-making authority to FSRA, the Legislature empowers FSRA to use its expertise to create and implement principles-based rules – e.g. giving additional flexibility to respond to market/product changes

Introduction to Rule-making (cont'd)

- Embedded in the rule-making process is a mandatory consultation process during which industry stakeholders are encouraged to comment and provide feedback on the proposed new rule or change, i.e. 90 day consultation period
- The Minister of Finance then has up to 90 days to review a proposed fee rule, at which point he can approve or reject the rule, return it for further consideration or take no action.
- If approved, or no action is taken by the Minister, the rule comes into force in 15 days.

Rule-Making Overview

Rules are
reviewed by
the Minister
of Finance
and subject
to industry
consultation



Publication of Proposed Rule

- FSRA must publish notice of every proposed rule on its website
- FSRA must invite interested persons to make written comments on the proposed rule within at least 90 days of its publication
- Notices must include:

- ✓ Proposed rule
- ✓ A reference to the authority under which the rule is proposed
- ✓ Substance and purpose of the proposed rule
- ✓ Summary of the proposed rule
- ✓ All alternatives to the proposed rule that FSRA considered and the reasons why those alternatives are not being proposed for adoption
- ✓ Reference to any significant unpublished study, report or other written materials that FSRA is relying on to propose the rule
- ✓ Anticipated costs and benefits of the proposed rule
- ✓ Any recommendations FSRA proposes to make to the Minister* for the amendment or revocation of a regulation or provision in a regulation relating to the implementation of the proposed rule



Exception: FSRA does not have to reference written material that it feels should be held in confidence because:

- it discloses sensitive financial, personal or other information; and
- avoiding disclosure of that information in the interests of any person affected outweighs disclosure to the public

Publication of Proposed Rule



Exception: Publication of a notice is not required if:

- The information required for the notice (see previous slide) is sent to everyone subject to the proposed rule and they, and anyone else likely to be substantially affected, are given an opportunity to make written comments on the proposed rule
- The proposed rule grants an exemption or removes a restriction and is unlikely to have substantial effect on anyone other than those who would benefit from it
- The proposal is an amendment and does not materially change an existing rule
- FSRA:
 - Believes that there is an urgent need for the proposed rule and without it there is substantial risk of material harm to consumers, investors, pension plan beneficiaries, persons who establish pension plans or the integrity of a regulated sector
AND
 - Has Minister's approval to make the rule without publishing a notice

In this case, when the rule comes into force, FSRA must publish a statement on its website explaining:

- Substance and purpose of the rule
- Nature of the urgency and the risk

Review of Comments and Potential Changes

Notice of Changes to Proposal

- If FSRA proposes material changes to the proposed rule after publishing it and considering the comments, FSRA must publish notice of the proposed changes on its website
- The notice must include:

- ✓ Proposed rule with the changes incorporated
- ✓ A concise statement of the purpose of the changes
- ✓ Reasons for the changes

Comments

Once notice of the changes is published, FSRA must invite interested persons to make written comments on the changes to the proposed rule within a time period that FSRA considers appropriate

FSRA must make all written comments made as part of the rule making process available for public inspection during FSRA's normal business hours



Exception: FSRA can keep written comments confidential as long as it believes that:

- the comments would disclose sensitive financial, personal or other information; and
- avoiding disclosure of the comments in the interests of any person affected outweighs disclosure to the public

Making the Rule

When a notice and comment period is required, FSRA can only make the rule at the end of the notice and comment process and after considering all comments made as a result of that process

Ministerial Review and Publication

Delivery of Rules to the Minister

- FSRA must deliver a copy of every rule it has made to the Minister together with:

- ✓ A copy of the notices published (unless publication of the notice was not required) along with copies of all documents referred to in the notices
- ✓ A summary of the comments made and other documents submitted with respect to the rule being proposed
- ✓ All other information that FSRA considered in connection with making the rule

Publishing Rules

- FSRA must publish every rule it makes on its website as soon as possible after the rule is made, together with:

- ✓ The date on which the rule and required accompanying materials were delivered to the Minister
- ✓ The date the rule would come into force if the Minister does not take any action
- ✓ Statement of the substance and purpose of the rule
- ✓ Summary of the written comments received during the comment period(s), if notice and comment were required
- ✓ FSRA's statement responding to significant issues and concerns raised during the comment period(s)

Minister Approves the Rule:

- A rule that is approved by the Minister comes into force 15 days after it is approved
- If there is a later day specified in the rule, it will come into force on that later day

Minister Rejects the Rule:

- A rule that is rejected by the Minister does not come into force

Minister Returns the Rule:

- A rule that is returned to FSRA for further consideration cannot come into force until FSRA returns it to the Minister, at which point it is treated as though it were being delivered for the first time
- The Minister may specify what is to be considered, the conditions that apply and the process to be followed
- Subject to any instruction from the Minister, FSRA can consider any rule returned to it in the manner and following the process that it feels is appropriate

Any decision by the Minister to approve, reject or return the rule and any conditions specified by the Minister if the rule is returned must be posted on FSRA's website



Exception: For urgent rules that were made without publishing a notice:

- If the rule is approved by the Minister, it comes into force the day it is published on FSRA's website
- The rule is revoked on the 275th day after it comes into force

Minister Does not Take Any Action:

Rules will come into force if the Minister does not take any action (i.e. either approve, reject or return the rule) within 60 days (90 days for a funding rule).

- FSRA must publish every rule that comes into force in *The Ontario Gazette* and on its website
- Everyone affected by a rule shall be deemed to have notice of it when it is published on FSRA's website

Minister May Require Studies

The Minister may in writing require FSRA to:

- Make recommendations regarding any general matter relating to a statute, regulation or rule governing a regulated sector
- Consider making a related rule

FSRA must publish notice of every such requirement from the Minister on its website, including:

- ✓ A statement of the substance of the requirement
- ✓ A reference to every unpublished study, report or other written materials provided to FSRA by the Minister, other than materials that the Minister has asked FSRA to keep confidential