

CSA Second Notice and Request for Comment

Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure

Related Proposed Consequential Amendments and Changes

February 13, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period the following materials:

- Revised version of proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Proposed Instrument**);
- Revised version of proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Proposed Companion Policy**);
- Related proposed consequential amendments or changes to:
 - Multilateral Instrument 45-108 *Crowdfunding*¹;
 - Companion Policy 45-108CP *Crowdfunding*;
 - Companion Policy 51-102CP *Continuous Disclosure Obligations*;
 - Companion Policy 51-105CP *Issuers Quoted in the U.S. Over-the-Counter Markets*²;
 - Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards*.

(collectively, the **Proposed Materials**).

The Proposed Instrument sets out disclosure requirements for non-GAAP financial measures, non-GAAP ratios, and other financial measures (i.e., capital management measures, supplementary financial measures, and total of segments measures, as defined in the Proposed Instrument).

¹ The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential amendments or the changes to the related Companion Policy because MI 45-108 does not apply in these jurisdictions.

² The Ontario Securities Commission is not proposing this consequential change as Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* and its Companion Policy do not apply in Ontario.

The original versions of the Proposed Materials (the **Original Materials**) were first published on September 6, 2018. During the 90-day comment period we conducted 38 outreach sessions across seven cities in Canada allowing us to actively engage with stakeholders. The comment period ended on December 5, 2018. We received 42 comment letters from various stakeholders, including issuers, investors, accounting firms, standard setters, industry associations and law firms. The list of commenters is attached as Annex A. We wish to thank all commenters for contributing to the consultation. A summary of the comments we received and our responses to those comments are attached as Annex B. In response to the feedback we received, we have reduced the scope of the application of the Proposed Instrument and simplified the disclosure requirements, with the aim of ensuring investors receive appropriate disclosure without an overall increase in regulatory burden.

We understand that non-GAAP financial measures, non-GAAP ratios, and other financial measures can provide valuable information to investors when supplemented with useful disclosures. Considering the substantive changes made in response to comments received on the Original Materials, we are publishing the Proposed Instrument and the Proposed Companion Policy for a second comment period. We are also publishing for information the related proposed consequential amendments or changes in their original form.

The text of the Proposed Materials is contained in Annexes D through J of this Notice. Local amendments, if any, are in Annex K of this Notice. This Notice will also be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

Summary of Changes to the Original Materials

Many comment letters expressed support for the objectives of the Original Materials. Commenters agreed with the analysis that non-GAAP financial measures and other financial measures disclosures lack standardized meaning under financial reporting frameworks, lack context when disclosed outside of the issuer's financial statements, and lack transparency as to their calculation or vary significantly by issuer and industry. However, concerns were expressed on the application and scope of the Proposed Instrument, definitions proposed, and perception of increased regulatory burden that the Proposed Instrument would have in comparison to current CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures (SN 52-306)*, and SEC rules.

Following our extensive review and analysis of the comment letters, through the substantive changes to the Original Materials, we have aimed to:

- reduce the scope of application to certain issuers,
- exempt certain disclosures, financial measures, and types of documents,
- narrow and clarify various definitions,

- simplify the disclosure for non-GAAP financial measures that are forward-looking information and non-GAAP ratios,
- limit disclosures for capital management measures and total of segments measures,
- permit cross-referencing in certain circumstances,
- better align disclosure requirements with those adopted by other securities regulators,
- enhance readability, and
- reduce uncertainty regarding disclosure obligations by clarifying disclosure requirements and including significant guidance.

More information on the changes made in the Proposed Instrument is included in Annex C.

A second publication for comment will allow for stakeholder input on these changes.

Substance and Purpose

The Proposed Instrument addresses the disclosure surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures.

In some cases, non-GAAP financial measures, non-GAAP ratios, and other financial measures are helpful to investors to assess an issuer's financial performance. The Proposed Instrument does not contain specific limitations or industry-specific requirements; rather, it provides clarity and consistency with respect to an issuer's disclosure obligations and improve the quality of information provided to investors.

We acknowledge that some stakeholders continue to prefer that we

- limit, in specific circumstances, the disclosure of certain financial measures, and
- develop industry-specific requirements for certain financial measures.

However, due to the numerous types of ever-evolving financial measures disclosed across a range of industries, we continue to believe that disclosure requirements are best suited to respond to investor needs for quality information without being overly prescriptive. These requirements would allow investors to better analyze different financial measures within an industry or among different industries.

Although the definition of a non-GAAP financial measure has been clarified, the Proposed Materials have substantially incorporated the disclosure guidance in SN 52-306 for non-GAAP financial measures.

To ensure investors appreciate the context of capital management measures and total of segments measures, the Proposed Instrument introduces disclosure requirements if such financial measures are disclosed outside of the financial statements.

Background

Non-GAAP Financial Measures

Various activities have contributed to the development of the Proposed Materials, which are intended to replace the guidance provided in SN 52-306.

Many issuers, in all industries, disclose a range of financial measures that may lack standardized meanings under the financial reporting framework used in the preparation of the issuer's financial statements and lack transparency as to their calculation or vary significantly by issuer and industry.

Common terms used to label non-GAAP financial measures may include "adjusted earnings", "adjusted EBITDA", "free cash flow", "pro forma earnings", "cash earnings", "distributable cash", "cost per ounce", "adjusted funds from operations" and "earnings before non-recurring items".

In Canada, the guidance in SN 52-306 is intended to help ensure that non-GAAP financial measures (including ratios that include non-GAAP financial measures) do not mislead investors. Although we have updated SN 52-306 several times to respond to changing circumstances and published various staff notices and reports that comment on the topic, we continue to find that disclosure practices surrounding non-GAAP financial measures vary. Our findings are consistent with those of other stakeholders (particularly investors) who share our desire for quality disclosure.

The use of non-GAAP financial measures is a topic raised frequently by the financial reporting community, locally and abroad. In Canada, several organizations have undertaken research and issued guidance on how to disclose non-GAAP financial measures. Stakeholders generally have expressed the view that regulating the use of non-GAAP financial measures as primarily a task of the CSA.

We are aware the International Accounting Standards Board (IASB) has recently issued an exposure draft, as part of its Primary Financial Statements project, on General Presentation and Disclosures. This exposure draft could, among other things, change the structure and content of the income statement and result in some traditional non-GAAP financial measures being included in a note to the financial statements with accompanying disclosure. As the IASB proposals are at an early stage, it is difficult to determine what changes, if any, will be made to International Financial Reporting Standards (IFRS) requirements. We will monitor the progress of the exposure draft and the overall project in order to consider whether any changes to securities legislation will be appropriate.

Internationally, securities regulators are strengthening their efforts to regulate non-GAAP financial measure disclosure, including the International Organization of Securities Commissions (IOSCO) and the European Securities Markets Authority (ESMA). In addition, the U.S. Securities and Exchange Commission (SEC), which has formalized requirements for disclosure of non-GAAP financial measures in its rules, continues to provide further guidance on how to comply with applicable requirements.

Other Financial Measures

Over the years, we have also found that other financial measures that do not meet the definition of a non-GAAP financial measure in the Proposed Instrument present similar issues if not accompanied by appropriate disclosure. Such financial measures include certain measures disclosed in the notes to the financial statements that lack context when disclosed outside of the financial statements.

For example, IFRS permits disclosure of a broad range of capital management or segment measures but do not specify how such measures must be calculated in most circumstances. As a result, such measures can differ materially from amounts presented in the primary financial statements and may not be prepared in accordance with the recognition and measurement accounting policies used to prepare the issuer's primary financial statements.

To ensure investors were not confused or misled, such measures were frequently identified as "non-GAAP" and issuers provided disclosures consistent with our expectations in SN 52-306. To ensure investors continue to appreciate the context of such measures, the Proposed Instrument includes disclosure requirements for such measures when disclosed outside of the financial statements. Consistent with the Original Materials, these disclosures are tailored for each measure and would require substantially less disclosure than expected under SN 52-306.

Anticipated Costs and Benefits of the Proposed Instrument

Overview

Cost benefit considerations have been informed by comments received in response to the Original Materials, as well as feedback received during related stakeholder outreach sessions. In addition, the Proposed Instrument has been developed in the context of various initiatives to reduce regulatory burden which, among other things, aim to ensure that regulatory costs are proportionate to the regulatory objectives sought.

We believe the Proposed Instrument results in a cost-effective and proportionate regulatory framework that supports innovation and competition while maintaining appropriate investor protections.

Although the Proposed Instrument codifies disclosures for non-GAAP financial measures and introduces targeted disclosure requirements for other financial measures, on balance, we believe, the Proposed Instrument and the Proposed Companion Policy result in an overall net reduction in regulatory burden, particularly in the long-term, because compared to current regulatory expectations as outlined in SN 52-306, the Proposed Instrument and the Proposed Companion Policy aim to:

- limit the application to certain issuers,
- exempt certain disclosures, financial measures, and documents,
- remove categorization of certain measures as non-GAAP financial measures,
- reduce and simplify disclosures for certain non-GAAP financial measures,
- eliminate duplication, in certain areas, through targeted provisions of incorporating information by reference,

- reduce uncertainty regarding disclosure obligations, and
- diminish the time and effort investors spend on understanding certain financial information.

We considered costs and benefits in limiting the application of the Proposed Instrument to certain issuers and in the process of identifying and disclosing non-GAAP and other financial measures.

Affected Stakeholders

Issuers

The Proposed Instrument only applies if an issuer that is within the scope of the Proposed Instrument discloses non-GAAP or other financial measures. If such an issuer does not disclose such measures, there is no effect.

Currently, disclosure expectations in SN 52-306 apply to all issuers that disclose non-GAAP financial measures. In contrast, the Proposed Instrument limits the application to certain issuers, such as reporting issuers. Investment funds, SEC foreign issuers, and designated foreign issuers are exempted – a significant reduction in scope.

Investors

We expect investors (institutional and retail) to be the primary beneficiaries of the Proposed Instrument because the Proposed Instrument:

- addresses many of the identified investor concerns,
- enhances the consistency, comparability and transparency of disclosure,
- reduces information-asymmetry, and
- diminishes the time and effort historically required to understand certain financial information (i.e., investor regulatory burden will be reduced).

Investors are not expected to incur additional costs.

Local Matters – Ontario

Authority for the Proposed Instrument

In Ontario, the rule-making authority for the Proposed Instrument is in paragraphs 13, 16, 22, 22.1, 25 and 39 of subsection 143(1) of the *Securities Act* (Ontario).

Alternatives Considered

We considered adopting the Original Materials in their original form as well as the alternatives suggested by the commenters as detailed in Annex B.

Reliance on Unpublished Studies

In developing the Proposed Instrument, we are not relying on any significant unpublished study, report or other written material.

Request for Comments

We welcome your comments on the Proposed Materials.

Please submit your comments in writing on or before May 13, 2020. If you are not sending your comments by email, please send us an electronic file containing submissions provided (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto ON M5H 3S8
Fax: 416-593-2318
comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: (514) 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

Please refer your questions to any of the following:

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604-899-6579 | acyr@bcsc.bc.ca

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Anne Marie Landry, Senior Securities Analyst, Alberta Securities Commission
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Ontario Securities Commission

Mark Pinch, Associate Chief Accountant, Ontario Securities Commission
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Alex Fisher, Senior Accountant, Ontario Securities Commission
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Autorité des marchés financiers

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514 395-0337 Ext: 4466 | michel.bourque@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

ANNEX A

List of Commenters

We received comment letters on the Original Materials from the following:

- Auditing and Assurance Standards Board
- Bennett Jones LLP
- Blakes, Cassels & Graydon LLP
- British Columbia Investment Management Corporation
- Burnet, Duckworth & Palmer LLP
- Canadian Accounting Standards Board
- Canadian Bankers Association
- Canadian Coalition for Good Governance
- Canadian Natural Resources Ltd.
- Canadian Public Accountability Board
- Cassels Brock & Blackwell LLP
- Cenovus Energy Inc.
- CPA Canada
- Davies Ward Phillips & Vineberg LLP
- Deloitte
- Ernst & Young LLP
- Financial Executives International Canada
- Freehold Royalties Ltd.
- Goodmans LLP
- Great-West Lifeco Inc.
- InPlay Oil Corp.
- Institute of Corporate Directors
- Intact Financial Corporation
- Inter Pipeline Ltd.
- Keyera Corp.
- KPMG
- Lynessa Dias
- Manulife Financial Corporation
- Norton Rose Fulbright Canada LLP
- Ontario Power Generation
- OSC Investor Advisory Panel
- Pembina Pipeline Corporation
- PricewaterhouseCoopers LLP
- Québec Bourse Inc.
- Seven Generations Energy
- Stikeman Elliott LLP
- Suncor Energy Inc.
- The Canadian Advocacy Council for Canadian CFA Institute Societies

- The Investment Funds Institute of Canada
- The Real Property Association of Canada
- Torys LLP
- Veritas Investment Research Corporation

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

ANNEX B

Summary of Comments and CSA Responses

This annex summarizes the comment letters and our responses to these comments.

This annex contains the following sections:

1. Introduction
2. Responses to comments received on the Proposed Instrument and the Proposed Companion Policy

1. Introduction

Drafting Suggestions

We received a number of drafting suggestions and comments. While we incorporated many of these suggestions, this annex does not include a summary of all the drafting changes we made.

Categories of comments and single responses

In this annex, we consolidated and summarized the comments and our responses by the general themes of the comments. We have included section references to the Proposed Instrument for convenience.

2. Responses to Comments Received on the Proposed Instrument and the Proposed Companion Policy

General Comments on the Original Materials		
Subject	Comment	Response
General comments	There was widespread support for the general objective of the proposals, with commenters noting that this will enhance investor confidence and improve financial reporting in Canada.	We thank the commenters for their submissions.
General comments	Commenters agreed with the CSA decision to not limit the issuers' ability to disclose different types of measures and to not prescribe industry-specific non-GAAP financial measures.	No change. Fundamental to the CSA's approach to regulating non-GAAP financial measures, non-GAAP ratios, and other financial measures is a disclosure-based regime with an overall goal to improve the

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

		<p>quality of information provided to investors. Due to the numerous types of ever-evolving financial measures disclosed across a range of industries, we believe that disclosure requirements are better suited to respond to investor needs for quality information. In our view, the requirements in the Proposed Materials allow investors to better analyze different financial measures within an industry or among different industries without the CSA limiting or prescribing certain measures.</p>
General comments	<p>A number of commenters raised concerns with a lack of consistency with international regulators, specifically the U.S. Securities and Exchange Commission (SEC), and perception that there may be a competitive disadvantage.</p>	<p>The Proposed Materials have been revised for better alignment with the SEC.</p>
General comments	<p>Commenters expressed the need for a long transition period leading up to the effective date, and that the instrument should be effective for the beginning of an annual financial reporting period to ensure consistent and comparable reporting over periods.</p>	<p>We agree with the comment and will consider this in determining the effective date before a final instrument is published.</p>
General comments	<p>A few commenters suggested that the CSA could stagger adoption dates to reduce implementation burden with different documents. For example, the CSA could replace CSA Staff Notice 52-306 (Revised) <i>Non-GAAP Financial Measures</i> (SN 52-306) with a rule for non-GAAP financial measures only, and delay disclosure requirements for other financial measures.</p>	<p>No change in the fundamental approach to regulate both non-GAAP financial measures, non-GAAP ratios, and other financial measures. Based on the CSA's experience, other financial measures may be equally problematic if not accompanied by appropriate disclosure. This approach is consistent with other international regulators, including the SEC.</p>

		Refer to above comment regarding the need for a long transition period.
General comments	A few commenters expressed the emphasis on the CSA reducing regulatory burden strategic initiative and that the CSA should consider whether there is an alternative approach to achieve the CSA’s objective.	<p>As part of developing the Proposed Materials, we considered a number of alternatives to address stakeholder concerns regarding the quality of disclosures surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures, including careful consideration of updating SN 52-306 instead or developing other forms of staff guidance to supplement. Based on this work, we concluded that development of the Proposed Materials would be more effective in addressing the significant stakeholder concerns regarding quality disclosures. We also considered and agree with certain commenter responses who expressed that the Proposed Materials provide more guidance and less uncertainty regarding an issuer’s disclosure obligations.</p> <p>To address concerns regarding regulatory burden, we have significantly revised the Proposed Materials, reducing the application of the Proposed Materials and disclosure requirements.</p>
General comments	A few commenters expressed the need for the CSA to clarify that disclosures of non-GAAP financial measures and other financial measures are within the scope of National Instrument 52-109 <i>Certification of Disclosure in</i>	Companion Policy 52-109CP to <i>National Instrument 52-109 Certification of Disclosure in Issuers’ Annual and Interim Filings (52-109CP)</i> states that the forms included in NI 52-109 require each certifying officer

	<p><i>Issuers' Annual and Interim Filings (NI 52-109)</i>, and that the CSA should encourage issuers to establish a written disclosure policy in consideration of National Policy 51-201 <i>Disclosure Standards (NP 51-201)</i>. One commenter recommended adding specific disclosure requirements regarding internal controls over non-GAAP financial measures.</p>	<p>to certify that an issuer's financial statements and other financial information (which includes non-GAAP financial measures, capital management measures, total of segments measures and supplementary financial measures) included in the annual or interim filings fairly present, in all material respects, the financial condition, financial performance and cash flows of the issuer, as of the date and for the periods presented. In addition, both section 6.8 of 52-109CP and part 6 of NP 51-201 provide guidance to assist an issuer with the adoption of good disclosure practices.</p>
General comments	<p>A number of commenters expressed the need for application guidance.</p>	<p>We agree with the comment and have provided more application guidance in the Proposed Companion Policy.</p>
General comments	<p>Some commenters expressed that specific regulation on non-financial measures or operational measures should be considered.</p>	<p>Non-financial measures and financial measures that do not meet one of the defined terms are excluded from the scope of the Proposed Materials, although disclosures are subject to provisions in applicable securities legislation which, among other things, prohibits misleading statements.</p> <p>We caution against the general statement that operating measures are not within the scope of the Proposed Instrument, as certain measures may meet one of the defined terms within the Proposed Instrument.</p>
General comments	<p>Some commenters expressed the view that the CSA should monitor the use of information outside the</p>	<p>We thank the commenters for their submissions. The use of non-GAAP financial measures</p>

	financial statements and whether it is in the public interest for the credibility of this information to be enhanced by independent assurance.	continues to evolve, and we are actively monitoring developments in this area.
General comments	One commenter expressed that disclosure requirements should be the same for all financial measures.	No change. Disclosure requirements have been scaled to address specifically identified concerns.
General comments	Some commenters suggested delaying the Proposed Materials to allow the CSA to consider how the proposals interact with other initiatives, including the International Accounting Standards Board’s (IASB) various projects under its headline theme “Better Communication in Financial Reporting”.	We note that IASB project is still in the early stages of development. We are aware of the project and are monitoring developments. If necessary in the future, we may update the Proposed Materials (or other securities legislative requirements) to respond to these and other marketplace changes (if any).
General comments	A few commenters suggested that requiring additional disclosures of GAAP measures when disclosed outside the financial statements (total of segments measures and capital management measures) may create confusion or a perception that the CSA considers these measures non-GAAP. One commenter encouraged the CSA to be more explicit by indicating that the Proposed Materials are not intended to suggest that segment and capital management measures are non-GAAP.	The Proposed Materials explicitly exclude the financial measures that are presented or disclosed in the financial statements, such as total of segments measures or capital management measures, from the definition of a non-GAAP financial measure. Disclosure requirements under the Proposed Materials are intended to ensure that when these measures are disclosed outside the financial statements, that investors and other users appreciate the context.
General comments	Many commenters expressed desire to cross-reference between documents for compliance with the Proposed Materials.	Change made. We thank commenters for the suggestions on how to implement a cross-referencing framework. We agree that a form of cross-referencing would be a beneficial feature of the Proposed Materials. Refer to section 5 of Proposed Materials.

Part 1 – Definitions		
s. 1	We received a significant number of comments regarding the proposed definitions, and how those definitions in the Original Materials may capture more financial measures than desired.	Changes made. Defined terms have been revised. We have also expanded examples provided within the Proposed Companion Policy.
Part 1 – Application		
General comments	Commenters generally noted that the Original Materials are overly broad, and it was unclear on the policy rationale for why new disclosure-related requirements should be applied to issuers who are not otherwise subject to obligations of continuous disclosure. One commenter recommended that the Proposed Materials should apply to reporting issuers, and non-reporting issuers that disseminate non-GAAP financial measures in the context of securities distribution.	Change made. Part 1 has been revised.
s. 2	Several commenters submitted that investment funds subject to National Instrument 81-106 <i>Investment Fund Continuous Disclosure (NI 81-106)</i> should be excluded on the basis that there are no specific concerns raised on non-GAAP financial measures used by investment funds, and investors understand and are accustomed to disclosures currently provided under NI 81-106.	Change made. See s. 4(a)
s. 2(1)	<p>Commenters generally expressed that the SEC foreign issuer exemption is appropriate.</p> <p>A number of commenters also recommended that the same exemption should apply to Canadian SEC issuers.</p> <p>A few commenters also questioned the appropriateness of exempting SEC foreign issuers on the basis that different information presented for</p>	No change made. The exemption for SEC foreign issuers is consistent, and based on similar rationale, to other exemptions provided to these issuers under current Canadian securities legislation.

	Canadian issuers and SEC foreign issuers will reduce comparability of information provided.	
s. 2(1)	Some commenters expressed confusion as to what constitutes an SEC foreign issuer, and whether it applies to Canadian “foreign private issuers” as that term is defined under SEC rules and regulations.	Refer to s. 4(b) in the Proposed Companion Policy. Clarification regarding application made.
s. 2(1)	A few commenters recommended that the exemption for SEC foreign issuers be expanded to also include designated foreign issuers.	Change made.
Application to executive compensation	A number of commenters requested for clarification on how the Proposed Materials relate to executive compensation disclosure. While some commenters provided a strong recommendation that executive compensation disclosure be added to the explicit list of documents included in the Proposed Materials and we should increase disclosure requirements for these specific measures, we heard contrary views that executive compensation should be excluded.	We thank commenters for their views. Non-GAAP financial measures are used for a variety of purposes and we did not see the policy rationale specific to executive compensation that should be different than other uses of non-GAAP financial measures.
Application to documents	Commenters provided mixed views on the application to documents made available to the public in the local jurisdiction. While we received support for this, we also received comments that the Proposed Materials should be more limited to documents that are intended to be used by the investment and/or analyst community.	Change made. We are limiting the scope of the Proposed Materials for non-reporting issuers to specific documents. However, we have retained the scope for reporting issuers and instead excluded certain disclosures required under specific securities legislation as well as disclosures in certain filings.
Application to documents	Commenters requested clarity in defining what constitutes a “document”.	Change made.
Application to documents	Commenters requested clarity in the term “made available to the public”. They questioned whether the concept noted in NP 51-201 regarding dissemination broadly to	We note that “made available to the public” is a common concept used in securities legislation. For example, a document filed electronically in

	<p>the investing public (s. 1.1(1)) may be a more appropriate standard.</p>	<p>accordance with National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval (SEDAR)</i> may be accessible to the public. National Instrument 43-101 <i>Standards of Disclosure for Mineral Projects (NI 43-101)</i> uses “made available to the public” in the definition of “disclosure”. Another example is in National Instrument 51-102 <i>Continuous Disclosure Obligations (NI 51-102)</i> where the term “public” is used in relation to proxy solicitation. In addition, the term “public” is used throughout NP 51-201.</p>
<p>Application to non-reporting issuers</p>	<p>Three commenters suggested that offering memorandums whose form is not prescribed by regulation should be excluded from the Proposed Materials on the policy basis that these offering memorandums are prepared on a voluntary basis, and the prospectus exemption upon which issuers rely is not based on the information the investors received, but on the investors’ sophistication. Issuers are already careful to ensure offering memorandums do not contain a misrepresentation.</p>	<p>Change not made. The Proposed Materials will apply to disclosures made by an issuer in a document that is filed with a securities regulatory authority in reliance on the offering memorandum exemption. There is a policy decision that non-GAAP financial measures, non-GAAP ratios, and other financial measures contained in documents being used to raise capital are included within the scope of the Proposed Materials.</p>
<p>Application to an issuer’s own financial results</p>	<p>One commenter suggested that the Proposed Materials should be limited in scope to disclosure of the issuer’s own financial results. The commenter raised the concern that an issuer may have difficulties in complying with the Proposed Materials, for example, when disclosing financial measures of an acquisition target’s financial results.</p>	<p>Change not made. The Proposed Materials are applicable to all disclosure of non-GAAP financial measures, non-GAAP ratios and other financial measures within documents as set out in the Application section. The concern is noted. However, disclosure of non-GAAP financial measures, non-GAAP ratios, and other financial measures is voluntary, and we</p>

		did not see sufficient policy rationale to exclude these types of financial measures provided by an issuer in their documents.
Application to oil and gas activities	One commenter expressed concern for how disclosures of measures within National Instrument 51-101 <i>Standards of Disclosure for Oil and Gas Activities</i> will be in scope of the Proposed Materials.	Change made.
s. 2(2)	A few commenters requested clarity on the term “specific financial measures”, and provided recommendations to expand the types of specific financial measures that are excluded from the scope of the Proposed Materials.	The term “specific financial measures” has been removed and replaced with a broader category of financial measures that are excluded from the scope of the Proposed Materials.
s. 2(2)	The majority of commenters expressed that oral statements should be excluded from the scope, including transcripts of oral statements. We also received one conflicting comment that oral statements should be covered when these are relied upon for investment or voting decisions.	We thank the commenters for their submissions. We agree with our initial policy decision to exclude oral statements from scope, and have explicitly excluded transcripts of oral statements from scope. We remind issuers of the securities legislation requirements not to disclose misleading information.
s. 2	One commenter suggested that third-party valuation reports prepared by a third party firm excluded from the Proposed Materials.	Change made.
Part 2 – Disclosure Requirements for Non-GAAP Financial Measures		
General comments	A few commenters suggested additional disclosure requirements for non-GAAP financial measures, including specific labelling requirements (e.g. requiring the use of specific descriptors or terminology), and more explicit cautionary statements.	We thank commenters for their submissions. We agree with our initial policy decision to not prescribe specific labelling requirements, and consider that the cautionary language in s. 6(e)(ii) provides sufficient information to investors that non-GAAP financial measures do not have standardized meaning.

s. 3(b)	Commenters provided mixed views on the prominence requirements. While a few noted that the Proposed Materials should be consistent with the SEC rules and regulations on non-GAAP financial measures, other commenters expressed that the Proposed Materials are too prescriptive.	Change not made. We thank commenters for their submissions. Prominence is a concern of regulators.
s. 3(c)	A few commenters requested clarity on disclosure of comparative period financial measures. A few commenters requested that the Proposed Materials should contain language exempting this requirement when it is impracticable to present a comparative period.	Change made, including additional clarifying language in the Proposed Companion Policy.
s.3(d)(iii), 3(d)(iv)	Some commenters expressed concerns over the term “reasonable person”, and questioned how this standard will affect expectations on issuers’ compliance with disclosure obligations.	We thank commenters for their submissions. The term “reasonable person” has been removed in relation to providing useful information and has been changed to investor, although it has been retained in relation to providing a quantitative reconciliation in s. 6(e)(v). Clarifying language has been included in the Proposed Companion Policy.
s. 3(d)(iv)	Two commenters suggested there was overlap in the requirements to provide a quantitative reconciliation that is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items, and explained in such a way that it provides a reasonable person an understanding of each reconciling item.	Change made. We clarified that s. 6(e)(v)(A) is in regards to the quantitative reconciliation, and (B) is in regards to the narrative accompanying the reconciling items.
s. 3(d)(iv)	One commenter suggested that the most directly comparable financial measure for the purposes of providing a quantitative reconciliation could be to a financial measure within the notes to the financial statements, instead of only	Change not made. We thank the commenter for the suggestion, but confirm the policy decision that the most comparable financial measure is to a financial measure within the primary financial statements.

	to a measure presented in the primary financial statements.	The notes to the financial statements are intended to provide further information regarding financial measures in the primary financial statements, and we do not consider this requirement difficult to comply with.
s. 3	One commenter recommended to include further disclosure requirements if a non-GAAP measure reported by an issuer ceases to be reported, and that the issuer provide disclosure allowing users to understand why the basis for reporting a non-GAAP financial measure has changed.	Change not made. We thank the commenter for the suggestion. The disclosure requirements within section 6 should provide sufficient information when there are new or changed non-GAAP financial measures.
Part 2 – Disclosure Requirements for Non-GAAP Financial Measures that are Ratios		
General comments	A number of commenters highlighted the inconsistency with the SEC.	Change made. We have revised the framework for ratios which will typically be either a non-GAAP ratio or supplementary financial measure, and we have reduced the disclosure requirements for both.
Part 2 – Disclosures Requirements for Non-GAAP Financial Measures that are Financial Outlooks		
General comments	A number of commenters suggested that the proposed disclosure requirements for non-GAAP financial measures that are forward-looking information are complex and questioned the usefulness of certain disclosure requirements.	Changes made. We thank commenters for their suggestions. We have made changes to the disclosure requirements under section 7, including a reduction in disclosure requirements.
Part 2 – Disclosure Requirements for Segment Measures		
General comments	One commenter noted that “total of segment measures” are considered non-GAAP financial measures under SEC rules and regulations for non-GAAP financial measures (Regulation G and Item 10(e) of Regulation S-K) but are defined as “total of segments measure” under the Proposed Materials. Given the different classification under the two	We have added guidance in the Companion Policy that SEC issuers may refer to such measures as non-GAAP financial measures and provide, at minimum, the associated disclosures required in section 9.

	jurisdictions, the commenter was concerned about compliance of dual-listed reporting issuers.	
General comments	Some commenters suggested that if information on total of segments measures are provided within the financial statements, this disclosure need not be repeated in documents outside the financial statements.	We thank commenters for their suggestion. The proposed disclosures ensure readers appreciate the context of total of segments measures when these measures are disclosed outside the financial statements.
General comments	Some commenters requested clarity on the what constitutes a “segment” in comparison to a “reportable segment”.	Change made.
General comments	One commenter suggested that the requirement to disclose a comparative measure should be removed.	We thank the commenter for their suggestion. The disclosure requirement provides that if the total of segments measure has been previously disclosed in the comparative period, then in the current period, both must be disclosed for comparability.
Part 2 – Disclosure Requirements for Capital Management Measures		
General comments	Some commenters suggested that if information on capital management measures is provided within the financial statements, this disclosure need not be repeated in documents outside the financial statements.	Change made. We thank commenters for their suggestion. Issuers may include disclosure requirements under the Proposed Materials within the notes to the financial statements for compliance.
s. 7(2)(b)(iv)	Two commenters suggested that more guidance be provided on the level of detail expected for the quantitative reconciliation requirement.	Change made. Additional clarifying language has been included within the Proposed Companion Policy.
s. 7(2)(b)(iv)	One commenter suggested eliminating the quantitative reconciliation requirement for capital management measures that are ratios, as generally it is difficult to identify the most directly comparable financial measure presented in the primary financial statements.	Change made.

Part 2 – Disclosure Requirements for Supplementary Financial Measures		
General comments	Commenters provided mixed views on disclosure requirements. Some commenters were of the view that there should be additional disclosure requirements, while other commenters disagreed with including disclosure requirements for supplementary financial measures.	We thank commenters for their suggestions. We maintain the policy decision to require certain disclosures when supplementary financial measures are disclosed. However, the disclosure requirements have been scaled to address specific risks. Transparency around the composition of these measures is the primary concern we identified, which is addressed in the Proposed Materials.
General comments	One commenter raised questions on the requirement within the Original Materials to explain the reason for the change in label, composition and calculation and whether this is useful information.	Change made. The disclosure requirement has been removed.
General comments	One commenter recommended disclosure requirements for additional subtotals and totals within the financial statements.	Change not made. It is outside the scope of the project to set requirements for financial statement disclosures.

ANNEX C

Summary of Changes Made in the Proposed Instrument

This annex summarizes the substantive changes made in the Proposed Instrument.

Definitions

- The defined term “non-GAAP financial measure” has been changed in response to comments received. The new definition is more consistent with CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* and with rules and guidance of other securities regulators, including the U.S. Securities and Exchange Commission (SEC). This revised definition reduces the scope of financial measures captured compared to the Original Materials. Ratios are specifically excluded from the defined term. The scope of what is captured as a “non-GAAP ratio” has also been substantially reduced. Only ratios where a non-GAAP financial measure is used in the numerator or the denominator, or both, are captured. This is dealt with in a separate section within the Proposed Instrument.
- The defined term “segment measure” has been changed to “total of segments measure”, and the definition has been clarified in response to comments received. This revised term captures only a subtotal or total of two or more reportable segments. This clarifies that not all segment measures are captured within the defined term, for example, measures of a discrete reportable segment.
- The defined term “supplementary financial measure” has been changed to reflect the changes in the defined term “non-GAAP financial measure”.
- Transcripts of an oral statement are specifically excluded. Only oral statements were excluded in the Original Materials.

Application

- In addition to excluding SEC foreign issuers, we have reduced the scope of application of the Proposed Instrument by:
 - only capturing disclosures by reporting issuers and issuers that are not reporting issuers in a document that is subject to prospectus requirements, filed in connection with reliance on the offering memorandum exemption, and other similar documents submitted to a recognized exchange,
 - excluding issuers that are investment funds as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure* and designated foreign issuers as defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, and
 - excluding disclosures that are required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects* and National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities (NI 51-101)*, except for voluntary disclosures using oil and gas metrics under section 5.14 of NI 51-101.

- We have expanded the list of specific documents and financial measures that the Proposed Instrument does not apply to including valuations reports and pro forma financial statements.
- We have also excluded financial measures disclosed in compliance with a requirement under law or by an SRO to which the issuer is a member. This includes any system of regulation of a government or governmental authority or SRO that is applicable to the issuer, not just limited to the laws of a jurisdiction of Canada as originally included in the Original Materials.

Incorporating Information by Reference

- We have introduced a form of cross-referencing in certain discrete documents back to an issuer's MD&A through incorporating information by reference.

Disclosure Requirements

- Subparagraph 6(b), disclosure requirements for non-GAAP financial measures that are historical information, has been added to clarify that disclosure of a non-GAAP financial measure must be accompanied by the disclosure of the most comparable financial measure presented in the primary financial statements.
- Subparagraph 6(e)(iii), disclosure requirements for non-GAAP financial measures that are historical information, has been added to clarify that disclosure of a non-GAAP financial measure must provide an explanation of the composition of the measure.
- Section 7, disclosure requirements for non-GAAP financial measures that are forward-looking information, has been substantially revised to reduce the disclosure requirements and enhance readability. The requirement for a quantitative reconciliation has been removed and replaced with a requirement to describe each reconciling item between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure. SEC Issuers, as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*, may instead comply with Regulation G under the 1934 Act to comply with this disclosure requirement.
- Disclosures of non-GAAP financial measures used in ratios has been separated, with reduced disclosure requirements from the Original Materials.
- Subparagraph 10(a)(ii) allows issuers to make certain disclosures related to capital management measures within their financial statements to comply with the Proposed Instrument instead of directly within documents outside the financial statements.
- Section 11, disclosure for supplementary financial measures, has been revised to remove requirements to present the comparative period and explain the reason for a change, if any, from the comparative period.

Annex D

PROPOSED NATIONAL INSTRUMENT 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

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PROPOSED NATIONAL INSTRUMENT 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

**PART 1
DEFINITIONS, APPLICATION AND INCORPORATING INFORMATION BY REFERENCE**

Definitions

1. In this Instrument

“capital management measure” means a financial measure presented by an issuer that

- (a) is intended to enable a person to evaluate an entity’s objectives, policies and processes for managing the entity’s capital, and
- (b) is presented in the notes to the financial statements of the entity but is not presented in the primary financial statements of the entity;

“forward-looking information” has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

“MD&A” has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

“non-GAAP financial measure” means a financial measure presented by an issuer that

- (a) depicts the historical or expected future financial performance, financial position or cash flow of an entity,
- (b) with respect to its composition, excludes an amount that is included in, or includes an amount that is excluded from, the composition of the most comparable financial measure presented in the primary financial statements of the entity,
- (c) is not presented in the financial statements of the entity, and
- (d) is not a ratio;

“non-GAAP ratio” means a financial measure presented by an issuer in the form of a ratio, fraction, percentage or similar representation and that has a non-GAAP financial measure as one of its components;

“primary financial statements” means, with respect to an entity, any of the following:

- (a) the statement of financial position;
- (b) the statement of profit or loss and other comprehensive income;
- (c) the statement of changes in equity;
- (d) the statement of cash flows;

“reportable segment” means a reportable segment as described in the accounting principles used to prepare an entity’s financial statements;

“specified financial measure” means any of the following:

- (a) a non-GAAP financial measure;
- (b) a non-GAAP ratio;
- (c) a total of segments measure;
- (d) a capital management measure;
- (e) a supplementary financial measure;

“supplementary financial measure” means a financial measure presented by an issuer that

- (a) is, or is intended to be, disclosed on a periodic basis to depict the historical or expected future financial performance, financial position or cash flow of an entity,
- (b) is not presented in the financial statements of the entity,
- (c) is not a non-GAAP financial measure, and
- (d) is not a non-GAAP ratio;

“total of segments measure” means a financial measure presented by an issuer that

- (a) is a subtotal or total of financial measures of two or more reportable segments of an entity, and
- (b) is presented in the notes to the financial statements of the entity but is not presented in the primary financial statements of the entity.

Application – reporting issuers

2. This Instrument applies to a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is intended to be, or reasonably likely to be, made available to the public.

Application – issuers that are not reporting issuers

3. This Instrument applies to an issuer that is not a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is
 - (a) subject to National Instrument 41-101 *General Prospectus Requirements*,
 - (b) filed with a regulator or a securities regulatory authority in connection with a distribution made in reliance on the offering memorandum exemption under National Instrument 45-106 *Prospectus Exemptions*, or
 - (c) submitted to a recognized exchange in connection with a qualifying transaction, reverse takeover, change of business, listing application, significant acquisition or similar transaction.

Application – exceptions

4. Despite section 2 or 3, this Instrument does not apply to the following:
 - (a) an investment fund as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure*;
 - (b) a designated foreign issuer, or an SEC foreign issuer, as defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;
 - (c) an issuer in respect of disclosure required under any of the following:
 - (i) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;
 - (ii) section 5.4 of Form 51-102F2 *Annual Information Form*;
 - (iii) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, other than section 5.14 of that Instrument;
 - (d) an issuer in respect of disclosure in any of the following:
 - (i) a filing required under subparagraph 9.1(1)(a)(vi) or 9.2(a)(v) of National Instrument 41-101 *General Prospectus Requirements* or section 2.5 of Form 51-102F4 *Business Acquisition Report*;

- (ii) pro forma financial statements required to be filed under securities legislation;
- (iii) a filing required under section 12.1 or 12.2 of National Instrument 51-102 *Continuous Disclosure Obligations*;
- (iv) a transcript of an oral statement;
- (e) an issuer in respect of disclosure of a financial measure if
 - (i) disclosure of the financial measure is required under law or by an SRO of which the issuer is a member,
 - (ii) the law or the SRO's requirement specifies the composition of the financial measure and the financial measure was determined in compliance with that law or requirement, and
 - (iii) in proximity to the financial measure, the issuer discloses the law or the SRO's requirement under which the financial measure is disclosed.

Incorporating information by reference

5. (1) Subject to subsection (3), an issuer may incorporate by reference the information required under any of the following provisions, if the reference is to the MD&A of the issuer:
- (a) subparagraphs 6(e)(iv), (v) and (vi);
 - (b) paragraph 7(2)(d);
 - (c) subparagraphs 8(d)(iii) and (iv);
 - (d) paragraph 9(c);
 - (e) subparagraph 10(a)(ii).
- (2) If, as permitted under subsection (1), an issuer incorporates any information by reference into a document, the issuer must include all of the following in the document:
- (a) a statement indicating that the required information is incorporated by reference;
 - (b) a statement that specifies the location of the required information in the MD&A;
 - (c) a statement that the MD&A is available on SEDAR at www.sedar.com.
- (3) Subsection (1) does not apply if the document that contains the specified financial measure is
- (a) the MD&A filed by the issuer, or

- (b) a news release issued or filed by the issuer.

PART 2 DISCLOSURE REQUIREMENTS

Non-GAAP financial measures that are historical information

- 6. An issuer must not disclose a non-GAAP financial measure that is historical information in a document unless all of the following apply:
 - (a) the non-GAAP financial measure is labelled using a term that,
 - (i) given the measure's composition, describes the measure, and
 - (ii) distinguishes the measure from totals, subtotals and line items presented in the primary financial statements of the entity to which the measure relates;
 - (b) the document presents the most comparable financial measure that is presented in the primary financial statements of the entity to which the measure relates;
 - (c) the non-GAAP financial measure is presented with no more prominence in the document than that of the most comparable financial measure referred to in paragraph (b);
 - (d) the document presents the non-GAAP financial measure, determined using the same composition, for a comparative period, unless it is impracticable to present the measure for the comparative period;
 - (e) in proximity to the first instance of the non-GAAP financial measure in the document, the document
 - (i) identifies the measure as a non-GAAP financial measure,
 - (ii) explains that the non-GAAP financial measure is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the measure relates and might not be comparable to similar financial measures presented by other issuers,
 - (iii) explains the composition of the non-GAAP financial measure,
 - (iv) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of how the non-GAAP financial measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the non-GAAP financial measure,

- (v) provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation, to the most comparable financial measure referred to in paragraph (b), that
 - (A) is disaggregated quantitatively in a way that would enable a reasonable person applying a reasonable effort to get an understanding of the reconciling items,
 - (B) explains each reconciling item, and
 - (C) does not describe a reconciling item as “non-recurring”, “infrequent”, “unusual”, or using a similar term, if a loss or gain of a similar nature is reasonably likely to occur within the entity’s two financial years that immediately follow the disclosure, or has occurred during the entity’s two financial years that immediately precede the disclosure, and
- (vi) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of the reason for a change from the comparative period, if any, in the label or composition of the non-GAAP financial measure.

Non-GAAP financial measures that are forward-looking information

7. (1) In this section,

“historical non-GAAP financial measure” means a non-GAAP financial measure that is historical information and has the same composition as a non-GAAP financial measure that is forward-looking information;

“SEC issuer” has the meaning ascribed to it in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

- (2) An issuer must not disclose a non-GAAP financial measure that is forward-looking information in a document unless all of the following apply:
 - (a) the non-GAAP financial measure that is forward-looking information is labelled using the same label used for the historical non-GAAP financial measure;
 - (b) the document presents the historical non-GAAP financial measure;
 - (c) the non-GAAP financial measure that is forward-looking information is presented with no more prominence in the document than that of the historical non-GAAP financial measure;
 - (d) in proximity to the first instance of the non-GAAP financial measure that is forward-looking information in the document, the document provides, directly or incorporating it by reference as permitted by section 5, a description of any

significant difference between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure.

- (3) Subsection (2) does not apply if the disclosure is made
 - (a) by an SEC issuer, and
 - (b) in compliance with Regulation G under the 1934 Act.

Non-GAAP ratios

- 8. An issuer must not disclose a non-GAAP ratio in a document unless all of the following apply:
 - (a) the non-GAAP ratio is labelled using a term that, given the non-GAAP ratio's composition, describes the non-GAAP ratio;
 - (b) the non-GAAP ratio is presented with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the entity to which the non-GAAP ratio relates;
 - (c) the document presents the non-GAAP ratio for a comparative period using the same means of calculation, unless
 - (i) the non-GAAP ratio is forward-looking information, or
 - (ii) it is impracticable to present a comparative period;
 - (d) in proximity to the first instance of the non-GAAP ratio in the document, the document
 - (i) explains the composition of the non-GAAP ratio and identifies each non-GAAP financial measure that is used as a component of the non-GAAP ratio,
 - (ii) explains that the non-GAAP ratio is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the non-GAAP ratio relates and might not be comparable to similar financial measures presented by other issuers,
 - (iii) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of how the non-GAAP ratio provides useful information to an investor and explains the additional purposes, if any, for which management uses the non-GAAP ratio, and

- (iv) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of the reason for a change from the comparative period, if any, in the label or the composition of the non-GAAP ratio.

Total of segments measures

9. An issuer must not disclose a total of segments measure in a document, other than financial statements of the entity to which the measure relates, unless all of the following apply:
- (a) the document presents the most comparable financial measure presented in the primary financial statements of the entity;
 - (b) the total of segments measure is presented with no more prominence in the document than that of the most comparable financial measure referred to in paragraph (a);
 - (c) in proximity to the first instance of the total of segments measure in the document, the document provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation of the total of segments measure to the most comparable financial measure referred to in paragraph (a);
 - (d) the document presents the total of segments measure, determined using the same composition, for a comparative period, if the total of segments measure for the comparative period has been previously disclosed.

Capital management measures

10. An issuer must not disclose a capital management measure in a document, other than financial statements of the entity to which the measure relates, unless all of the following apply:
- (a) in proximity to the first instance of the capital management measure in the document, the document
 - (i) explains the composition of the capital management measure, and
 - (ii) unless presented in the notes to the financial statements of the entity to which the measure relates,
 - (A) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of how the capital management measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the capital management measure, and
 - (B) unless the capital management measure is a ratio, fraction, percentage or similar representation, provides, directly or by

incorporating it by reference as permitted by section 5, a quantitative reconciliation of the capital management measure to the most comparable financial measure presented in the primary financial statements of the issuer;

- (b) the capital management measure is presented with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the issuer;
- (c) the document presents the capital management measure, determined using the same composition, for a comparative period, if the capital management measure for the comparative period has been previously disclosed.

Supplementary financial measures

11. An issuer must not disclose a supplementary financial measure in a document unless both of the following apply:
- (a) the supplementary financial measure is labelled using a term that,
 - (i) given the measure's composition, describes the measure, and
 - (ii) distinguishes the measure from totals, subtotals and line items presented in the primary financial statements of the issuer;
 - (b) in proximity to the first instance of the supplementary financial measure in the document, the document provides an explanation of the composition of the supplementary financial measure.

PART 3 EXEMPTION

Exemption

12. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
- (3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions*, opposite the name of the local jurisdiction.

**PART 4
EFFECTIVE DATE**

Effective date

13. This Instrument comes into force on •, 202•.

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

Annex E

PROPOSED COMPANION POLICY 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

Introduction

National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the “Instrument”) sets out specific disclosure requirements for non-GAAP financial measures, non-GAAP ratios, and other financial measures, which are capital management measures, supplementary financial measures, and total of segments measures, as defined in the Instrument (together the “specified financial measures”). The purpose of this Companion Policy (the “Policy”) is to state the view of the securities regulatory authorities on certain provisions of the Instrument.

This Policy includes explanations, discussions, and examples of various parts of the Instrument.

Interpretation of “filed” and “delivered” or “submitted”

The Instrument uses the terms “filed” and “submitted”. This Policy also uses the term “delivered”. Material that is filed in a jurisdiction will be made available to the public in that jurisdiction, subject to the provisions of securities legislation in the local jurisdiction. Material that is delivered to a regulator or securities regulatory authority, or submitted to a recognized exchange, but not filed, is not generally required under securities legislation to be made available to the public.

Document

A document is any written communication, including a communication prepared and transmitted in electronic form, e.g. a website, but does not include a transcript of an oral statement.

Specified Financial Measures Presented by an Issuer and Financial Statements of an Entity

An issuer may present a specified financial measure that is derived from its financial statements or the financial statements of another entity. The following are examples of financial statements of an entity, other than the issuer’s financial statements, that a specified financial measure may be derived from:

- Financial statements filed by or included in a document filed by an issuer, for example, financial statements of a reverse takeover acquirer, financial statements of an acquired business;
- Financial statements that are required to be filed with or delivered to a regulator or a securities regulatory authority, or made reasonably available to each holder of a security acquired, as required by a provision of National Instrument 45-106 *Prospectus Exemptions* (NI 45-106);
- Financial statements of a subsidiary, joint venture or associate for which summarized financial information is presented in the notes to the financial statements of the issuer;

- Financial statements of an investment entity’s investments, where supplemental financial information is included in the financial statements or the management’s discussion & analysis (the “MD&A”) of the investment entity; and
- Financial statements of an entity with which the issuer completed a transaction, included in a filing statement or a listing document.

Financial Measures

The Instrument applies when a specified financial measure is presented in a document. If the financial measure is only identified by label without a corresponding numerical amount or measure, a specified financial measure has not been disclosed and, thus, the disclosure requirements within the Instrument do not apply.

For clarity, the Instrument does not apply to qualitative disclosure of targets, benchmarks or covenants that are not accompanied by a financial numerical amount or measure.

Financial Reporting Framework, Accounting Principles, and Accounting Policies

In Canada, there are different financial reporting frameworks for different types of Canadian entities. Generally Accepted Accounting Principles (GAAP) is a common term used to refer to a financial reporting framework which are the accounting principles that are generally accepted in a jurisdiction. National Instrument 52-107 *Accounting and Auditing Principles* prescribes, among other things, acceptable accounting principles, such as International Financial Reporting Standards (IFRS).

The application of accounting principles often requires specific accounting policies. Accounting policies encompass all accounting policies applied in preparing and presenting financial statements, not just those which are presented in the notes to the financial statements.

Misleading

Compliance with the Instrument does not relieve an issuer from other obligations under securities legislation. Specifically, an issuer may not present a specified financial measure in a way that would be misleading.

Section 1 - Definition of a non-GAAP financial measure

Common terms used to identify non-GAAP financial measures may include “adjusted earnings”, “adjusted EBITDA”, “free cash flow”, “pro forma earnings”, “cash earnings”, “distributable cash”, “adjusted funds from operations”, “earnings before non-recurring items” and measures presented on a constant-currency basis. Many of these terms lack standard meanings and issuers across a spectrum of industries may use the same term to refer to different compositions.

The following are examples of measures that are not captured by the definition:

- Amounts that do not depict historical or future “financial performance”, “financial position” or “cash flow”, which relate to elements of the primary financial statements as defined in the Instrument, such as share price, market capitalization, or credit rating.
- Financial information that does not have the effect of providing a financial measure that is different from a financial measure presented in the primary financial statements, such as the addition or subtraction of an identical line item, subtotal or total originating from multiple periods of primary financial statements. For example, rolling 12-month results or fourth quarter revenue calculated by subtracting year-to-date third quarter revenue from the annual revenue presented in primary financial statements.

Component Information

When an issuer presents a financial statement line item in a more granular way outside the financial statements, it may be a component of a line item for which the component has been calculated in accordance with the accounting policies used to prepare the line item presented in the financial statements. Such a measure would not be a non-GAAP financial measure. However, in such a situation, the issuer should consider whether such a measure meets the definition of a supplementary financial measure.

For example, an issuer may disclose sales per square foot on a periodic basis to depict its financial performance. When the sales figure, included in sales per square foot, is extracted directly from the primary financial statements or is a component of such line item (where the component is calculated in accordance with the issuer’s accounting policies used to prepare the line item presented in the financial statements), the “sales per square foot” measure would not meet the definition of a non-GAAP ratio but would meet the definition of a supplementary financial measure. However, if the sales figure is adjusted in any way, the “sales per square foot” measure in this example would meet the definition of a non-GAAP ratio.

Conversely, when the measure is not calculated in accordance with the issuer’s accounting policies, such measure would meet the definition of a non-GAAP financial measure. For example, if the sales figure in “sales per square foot” is sales presented on a constant-dollar basis, this constant-dollar sales figure meets the definition of a non-GAAP financial measure since it excludes amounts (i.e. the effect of foreign exchange differences) that are included in the most comparable measure presented in the primary financial statements (i.e. sales). As a result, the “constant dollar sales per square foot” measure in this example would meet the definition of a non-GAAP ratio.

Combinations of Line Items

A financial measure calculated by combining financial information that originates from different line items from the primary financial statements would meet the definition of a non-GAAP financial measure if the measure depicts financial performance, financial position or cash flow, unless that resulting measure is separately presented in the notes to the financial statements.

Non-GAAP Financial Measures that are Forward-looking Information

Forward-looking information for which there is an equivalent historical financial measure presented in the financial statements does not meet the definition of a non-GAAP financial measure. Therefore, section 7 of the Instrument does not apply to such measures as future capital management measures and future total of segments measures. Issuers are reminded that such forward-looking information is subject to the disclosure requirements in parts 4A and 4B and section 5.8 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).

For example, if revenue is presented on a forward-looking basis using the accounting policies applied by the issuer in its latest set of financial statements (i.e. revenue as presented in the primary financial statements adjusted only for assumptions about future economic conditions and courses of action), it is not a non-GAAP financial measure. Conversely, if an issuer discloses EBITDA on forward-looking basis, and does not present or disclose this financial measure in the financial statements, it does meet the definition of a non-GAAP financial measure.

Non-Financial Information

For clarity, the definition of a non-GAAP financial measure does not include non-financial information such as the following:

- number of units;
- number of subscribers;
- volumetric information;
- number of employees or workforce by type of contract or geographical location;
- environmental measures such as greenhouse gas emissions;
- information on major shareholdings;
- acquisition or disposal of the issuer's own shares; and
- total number of voting rights.

The above list is not exhaustive.

We remind issuers that while non-financial information is not subject to the requirements of the Instrument, non-financial information is subject to various disclosure requirements under applicable securities legislation, including the requirement not to disclose misleading information.

Section 1 – Definition of primary financial statements

The Instrument uses the terms “statement of financial position”, “statement of profit or loss and other comprehensive income”, “statement of changes in equity”, and “statement of cash flows”, to describe the primary financial statements. Issuers may use titles for the statements other than those terms if the titles comply with the accounting policies used in the preparation of the financial statements. For example, an issuer may use the title of “balance sheet” instead of “statement of financial position”.

Section 1 - Definition of a supplementary financial measure

Component Information

An issuer that operates in the retail industry may disclose financial results for “same-store sales” each reporting period. Where same-store sales, a component of overall sales, is calculated in accordance with the accounting policies used to prepare the sales line item presented in the primary financial statements, it would not meet the definition of a non-GAAP financial measure. However, since in this example “same-store sales” is used by the issuer to report sales performance from period to period, it would meet the definition of a supplementary financial measure.

For clarity, if an issuer discloses a financial measure that is a component of a financial statement line item to explain how the financial statement line item changed from period to period, such a measure would not meet the definition of a supplementary financial measure if the measure is not intended to be disclosed on a periodic basis. For example, if an issuer experienced an unexpected increase in administrative expenses, it may analyze the reasons for changes in administrative expenses by, among other things, disclosing information about its insurance expense, a component of overall administrative expenses. In this example, insurance expense would not meet the definition of a supplementary financial measure where the insurance expense was calculated in accordance with the accounting policies used to prepare the administrative expenses line item presented in the primary financial statements.

Periodic Basis

An element of the definition of a supplementary financial measure is that it is disclosed or is intended to be disclosed on a periodic basis. A measure will not be precluded from being considered a supplementary financial measure the first time it is disclosed if the measure is intended to be disclosed on an ongoing basis (e.g., in future quarterly and/or annual disclosures).

Financial Ratios

A financial ratio that is not a non-GAAP ratio would typically meet the definition of supplementary financial measure because such ratio is often disclosed on a periodic basis to depict historical or future financial performance, financial position or cash flow.

Financial ratios contain at least one financial component (either the numerator or the denominator).

Examples include, but are not limited to the following ratios:

- liquidity ratios such as the current ratio;
- solvency ratios such as the debt-to-equity ratio;
- profitability ratios such as the return on equity ratio or revenue per user; and
- activity ratios such as the inventory turnover ratio.

Section 2 – Application to reporting issuers

Websites and Social Media

The Instrument applies to a reporting issuer in respect of its disclosure, on a website and social media, of a specified financial measure.

A reporting issuer should not disclose a specified financial measure using social media, if it is unable to include all the relevant disclosure.

If a reporting issuer uses social media to provide links to publications (e.g., analyst reports), such publications are within the scope of the Instrument.

Statement of Executive Compensation

For clarity, the Instrument applies to Form 51-102F6 *Statement of Executive Compensation* (Form 51-102F6). Form 51-102F6 requires, among other things, an issuer that discloses performance goals or similar conditions that are non-GAAP financial measures, to explain how the issuer calculates these performance goals or similar conditions.

In the context of Form 51-102F6, if a financial measure is identified (e.g., adjusted net income) and the calculation is described (e.g., net income adjusted for foreign exchange gains or losses) but no financial amount is presented (i.e., no dollar amount), it would not be within the scope of the Instrument because a financial measure has not been presented – only identified and described.

If a non-GAAP financial measure amount or other specified financial measure amount that is in scope of the Instrument is disclosed in Form 51-102F6 (e.g., adjusted net income of \$X), part 2 of the Instrument applies.

Section 3 – Application to issuers that are not reporting issuers

The Instrument applies to an issuer that is not a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is filed with a regulator or a securities regulatory authority in connection with a distribution made in reliance on the offering memorandum exemption under NI 45-106. The following are examples of document that are within the scope of the Instrument:

- the offering memorandum filed; and
- the offering memorandum marketing materials filed with a regulator or a securities regulatory authority.

Subparagraphs 4(c)(i) and (ii) – Mineral projects

The Instrument does not apply to disclosure required under *National Instrument 43-101 Standards of Disclosure for Mineral Projects* (NI 43-101) related to an issuer's material mineral project. For example, item 22 of Form 43-101F1 *Technical Report* requires an issuer to disclose an economic

analysis that includes certain financial measures. Item 5.4 of Form 51-102F2 *Annual Information Form* requires an issuer to disclose certain measures such as capital and operating costs, and annual cash flow, net present value, internal rate of return, and payback period disclosed in an economic analysis.

The Instrument does not apply to these measures because they are specifically required to be disclosed under NI 43-101. However, if an issuer discloses a financial measure that is not specifically required to be disclosed under NI 43-101, for example, EBITDA, it may be considered a non-GAAP financial measure or other specified financial measure and, thus, is within the scope of the Instrument.

Subparagraph 4(c)(iii) – Oil and gas metrics

The Instrument does not apply to disclosure required under National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101). However, disclosures of oil and gas metrics that are made under section 5.14 of NI 51-101 are subject to the requirements of the Instrument because such disclosure is made on a voluntary basis.

Subparagraph 4(d)(ii) – Pro forma financial statements

The Instrument does not apply to pro-forma financial statements included in a filing required under securities legislation, such as pro-forma financial statements required to be included in a business acquisition report under NI 51-102.

The Instrument does apply to pro-forma financial statements included in a filing made on a voluntary basis (i.e., it is not explicitly required under securities legislation).

Paragraph 4(e) – Financial measures required under law or by an SRO

Financial measures that are required to be disclosed by a law or SRO of which the issuer is a member and which composition is determined in compliance with the law or the requirement of the SRO are not subject to the Instrument. This includes financial measures disclosed in accordance with prescribed requirements under applicable securities legislation. For example, disclosure of earnings coverage ratios prescribed by item 9 of Form 41-101F1 *Information Required in a Prospectus* are not subject to the Instrument.

While disclosure of a financial measure in order to comply with other securities legislation is not subject to the requirements of the Instrument, the disclosure is subject to the provisions of that legislation. Voluntary disclosure that is permitted but is not required by other securities legislation is subject to the requirements of the Instrument.

The Instrument also does not apply to a financial measure that is disclosed in accordance with the laws of a jurisdiction of Canada, or jurisdiction outside Canada, including governments, governmental authorities and SROs. This exclusion is, however, only applicable in situations where a financial measure is required to be disclosed and the law specifically specifies its composition; for example, a government payment calculated and disclosed in accordance with the *Extractive Sector Transparency Measures Act* (Canada).

If an issuer discloses a financial measure that is prepared in accordance with voluntary guidance published by a government, governmental authority or SRO that is applicable to the issuer then the financial measure is subject to the requirements of this Instrument.

Section 5 – Incorporation by reference

The Instrument allows an issuer to incorporate by reference certain required disclosure, if the reference is to the issuer’s MD&A. For clarity, the MD&A must be filed on SEDAR before it can be incorporated by reference under the Instrument. For example, if an issuer is filing an annual information form that includes non-GAAP financial measure information and the issuer is incorporating certain information in the MD&A by reference to satisfy the disclosure requirements of the Instrument, that MD&A would have to be filed on SEDAR prior to filing the annual information form.

Paragraph 5(2)(b) requires the identification of the specific location of the required information in the MD&A. Issuers would not satisfy this requirement with a general hyperlink to the relevant MD&A. To comply with the requirement the issuer would need to hyperlink or identify (e.g., identify the specific section) where the required information is specifically located within the MD&A.

Section 6 – Non-GAAP financial measures that are historical information

Paragraph 6(a) – Labelling non-GAAP financial measures that are historical information

Any label or term used to describe a non-GAAP financial measure or adjustments in a reconciliation must be appropriate given the nature of information.

For example, the following are not in compliance with the labelling requirement in paragraph 6(a) of the Instrument:

- Labels that are the same as, or confusingly similar to, those normally used under the accounting policies used to prepare the financial statements. For example, a measure labelled as “cash flows from operations” calculated as cash flows from operating activities before changes in non-cash working capital items, is confusingly similar to the term “cash flows from operating activities” specified in IAS 7 *Statement of Cash Flows*;
- Labels that purport to represent “results from operating activities” or a similar title but exclude items of an operating nature, such as inventory write-downs, restructuring costs, impairment of assets used for operations and stock-based compensation;
- Labels that are overly optimistic (e.g., guaranteed profit or protected returns); and
- Labels that may cause confusion based on the financial measure’s composition. For example, in presenting EBITDA as a non-GAAP financial measure, it would be inappropriate to exclude amounts for items other than interest, taxes, depreciation and amortization.

The above list is not exhaustive.

The label used for a non-GAAP financial measure that is historical information may arise from a written agreement, such as a credit agreement containing a material covenant regarding a non-GAAP financial measure. If the label in the written agreement is inconsistent with the requirements of paragraph 6(a) of the Instrument, the issuer will be expected to clarify that the label is from a written agreement so that a reader does not confuse it with an amount prepared in accordance with the accounting policies used in the preparation of the financial statements.

Paragraph 6(c) – Prominence of a non-GAAP financial measure that is historical information

Determining the relative prominence of a non-GAAP financial measure is a matter of judgment, considering the overall disclosure and the facts and circumstances in which the disclosure is made.

The presentation of a non-GAAP financial measure should not in any way confuse or obscure the presentation of financial measures presented in accordance with the accounting policies used in the preparation of the financial statements.

The following are examples that would cause a non-GAAP financial measure to be more prominent than the most comparable measure presented in the financial statements:

- Presenting a non-GAAP financial measure in the form of a statement of profit or loss and other comprehensive income without presenting it in the form of a reconciliation to the most comparable measure, sometimes referred to as a “single column approach”;
- Omitting the most comparable measure from a news release headline or caption that includes a non-GAAP financial measure;
- Presenting a non-GAAP financial measure using a style of presentation (for example, bold, underlined, italicized, or larger font) that emphasizes the non-GAAP financial measure over the most comparable measure;
- Multiple non-GAAP financial measures being used for the same purpose thereby obscuring disclosure of the most comparable measure;
- Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most comparable measures or without including the most comparable measures in the same table or graph; and
- Providing a discussion and analysis of a non-GAAP financial measure in a more prominent location than a similar discussion and analysis of the most comparable measure. For greater certainty, we take the view that a location is not more prominent if it allows an investor who reads the document, or other material containing the non-GAAP financial measure, to be able to view the discussion and analysis of both the non-GAAP financial measure and the most comparable measure contemporaneously. For example, within the previous, same or next page of the document.

The above list is not exhaustive.

The Instrument requires that the non-GAAP financial measure be presented with “no more prominence in the document than that of the most comparable financial measure” presented in the primary financial statements. If the most comparable measure is presented with “equal or greater prominence” than the non-GAAP financial measure, the requirement under paragraph 6(c) of the Instrument has been met.

The purpose of Form 51-102F6 is to provide information about executive compensation within the context of the overall stewardship and governance of the issuer, in contrast to disclosure explaining an issuer’s financial performance, financial position, or cash flow. Therefore, for purposes of Form 51-102F6 only, a reference to the specific location where disclosures are made in the MD&A as required by section 5 of the Instrument would provide sufficient prominence of the most comparable GAAP measure.

Paragraph 6(d) – Comparative information

Impracticable

Understandably, it is impracticable for an issuer to provide the comparative disclosure required by paragraph 6(d) of the Instrument when the current period is the first period of operations and no comparative period exists. We do not consider the cost or the time involved in preparing the comparative information to be sufficient rationale for an issuer to assert that it is impracticable to present such information.

Changes in Accounting Standards

We would not consider adoption of a new accounting standard, which would include adoption of amendments to current accounting standards, or a change in accounting policy, a basis for not presenting comparative period disclosure, as the composition of the non-GAAP financial measure should continue to be the same.

Adoption of new accounting standards, or changes in accounting policy, may modify measurement and recognition of transactions which will have an impact on line items, subtotals and totals over different financial periods. However, the composition of the non-GAAP financial measure itself should not change. For example, an issuer discloses EBITDA as its non-GAAP financial measure. In the current year it adopts a new accounting standard which modifies the classification of certain expenditures from administrative expense to interest expense. While the resulting EBITDA measure will no longer include those transactions, EBITDA will continue to have the same composition, as it will be comprised of earnings before interest, taxes, depreciation and amortization. Therefore, the issuer would not be subject to subparagraph 6(e)(vi).

The accounting policies used to prepare an entity’s financial statements would determine whether comparative information is restated with adoption of a new accounting standard or change in accounting policy. For example, we expect comparative non-GAAP financial measures to be restated when a new accounting standard or policy is applied retrospectively to each prior reporting period presented. Conversely, if a new accounting standard is applied prospectively or retrospectively without restatement of a prior reporting period presented, the non-GAAP financial

measures would also not be restated. In such circumstances, the issuer communicates that the comparative non-GAAP financial measures are presented under the previous accounting policies used to prepare the entity's financial statements.

In both cases, the composition of the non-GAAP financial measure has not changed, and disclosure under subparagraph 6(e)(vi) would not be required.

Paragraph 6(e) – Proximity to the first instance

The information required by paragraph 6(e) of the Instrument should be presented in the same document as the non-GAAP financial measure. To satisfy these requirements, an issuer may identify the non-GAAP financial measure as such when it first appears in the document and then reference a separate section within the same document that contains the disclosure required under subparagraphs 6(e)(ii), (iii), (iv), (v) and (vi) of the Instrument.

There may be types of documents where it is not clear when the non-GAAP financial measure first occurs or appears, for example, websites and social media. In these instances, the “first instance” disclosure requirements are satisfied by clearly identifying the financial measure as being a non-GAAP financial measure on each webpage where the financial measure appears and providing a website hyperlink to where the disclosures required by subparagraphs 6(e)(ii), (iii), (iv), (v) and (vi) are found (e.g., on another section of the website) with minimal to no scrolling or navigation.

To prevent duplicate disclosure, an issuer may provide all the required disclosures for all non-GAAP financial measures in one section of the document that contains the non-GAAP financial measures, and cross-reference that section each time a non-GAAP financial measure is presented in that document.

If there is a discrete document within a larger document (e.g., a pull-out glossy page in an annual report), both will be treated as separate documents.

Subparagraph 6(e)(i) – Identification of a non-GAAP financial measure

Non-GAAP financial measures do not have standardized meanings under the financial reporting framework used to prepare the financial statements of entity to which the measure relates. Therefore, it is important that non-GAAP financial measures are appropriately identified. This also signals to an investor that additional information about the measure should be considered as it may not be comparable to similar measures presented by other issuers.

An issuer may satisfy the subparagraph 6(e)(i) identification requirement by inserting a footnote to the non-GAAP financial measure with a statement or language similar to the following: “This is a non-GAAP financial measure. Refer to the Non-GAAP Financial Measures section of this document for more information on each non-GAAP financial measure”.

Subparagraph 6(e)(iv) – Usefulness of non-GAAP financial measure disclosure

The Instrument does not define the term “useful”. The term “useful” is intended to reflect how management believes that presentation of the non-GAAP financial measure provides incremental information to investors regarding the issuer’s financial position, financial performance or cash flows. The term “useful” should be considered in the context of what a person making an investment decision would consider useful.

A statement made to satisfy the requirement of subparagraph 6(d)(iv) of the Instrument should

- be clear and understandable,
- be specific to the non-GAAP financial measure used, the issuer, the nature of the business and the industry (i.e., not boilerplate), and
- specifically explain how the non-GAAP financial measure is assessed and applied to decisions made by management and explain the reasons why the non-GAAP financial measure is useful to an investor.

Issuers should avoid making inappropriate or potentially misleading statements about the usefulness of a measure. The Instrument does not explicitly prohibit certain adjustments. However, if adjustments are not consistent with the usefulness explanation provided to address subparagraph 6(e)(iv) of the Instrument, this may result in a non-GAAP financial measure that is inappropriate or misleading.

A non-GAAP financial measure may be misleading if it

- includes positive components of the most comparable measure but omits negative components (e.g., presenting a non-GAAP financial measure that excludes unrealized losses on financial instruments but not unrealized gains), or
- excludes operating expenses necessary to operate an issuer’s business from an operating performance measure.

Subparagraph 6(e)(v) – Reconciliation of a non-GAAP financial measure

Subparagraph 6(e)(v) of the Instrument requires a quantitative reconciliation between the non-GAAP financial measure and the most comparable financial measure presented in the primary financial statements. An issuer may satisfy this requirement by providing a reconciliation in a clearly understandable way, such as a table. For purposes of presenting the reconciliation, an issuer may begin with the non-GAAP financial measure or the most comparable financial measure presented in the primary financial statements, provided the reconciliation is presented in a comprehensible and consistent manner.

Most Comparable Measure

The Instrument does not define the “most comparable financial measure” and therefore the issuer needs to apply judgment in determining the most comparable financial measure. In applying judgment, it is important for an issuer to consider the context of how the non-GAAP financial measure is used. For example, where the non-GAAP financial measure is discussed primarily as a

performance measure used in determining cash generated by the issuer or its distribution-paying capacity, its most comparable GAAP measure will be from the statement of cash flows. In practice, earnings-based measures and cash flow-based measures are used to disclose operational performance. If it is not clear from the way the non-GAAP financial measure is used what the most comparable measure is, consideration can be given to the nature, number and materiality of the reconciling items.

Reconciling Items

The reconciliation must be quantitative, separately itemizing and explaining each significant reconciling item.

Source of Reconciling Items

Where a reconciling item is taken directly from the entity's financial statements, it should be named such that an investor is able to identify the item in those financial statements, and no further explanation of that reconciling item is required.

Where a reconciling item is not extracted directly from the entity's financial statements, but is, for example, a component of a line item in the entity's primary financial statements or originates from outside the primary financial statements, disclosure must be provided to satisfy subparagraph 6(e)(v) of the Instrument. Such disclosure should identify the financial statement line item that is the source of the reconciling item, if not obvious, and explain how the amount is calculated, including a discussion of any significant judgments or estimates management has made in developing the reconciling items used in the reconciliation.

Entity-Specific Inputs

Reconciling items should be calculated using entity-specific inputs. An entity may make adjustments that are accepted within an industry; however, the quantum of these adjustments should be calculated using entity-specific information. For example, an entity may make an adjustment for operating capital expenditures, which is a standard adjustment in certain industries, but the amount of the adjustment should be calculated based on the entity's operating capital expenditures, and not by using only an 'industry average' amount as the sole factor.

Level of Detail

The level of detail expected in the reconciliation depends on the nature and complexity of the reconciling items. The adjustments made from the most comparable financial measure should be consistent with the explanation required by subparagraph 6(e)(iv) of the Instrument regarding why the information is useful to investors and if applicable, how it is used by management. Explanations should be more detailed than merely stating what the reconciling item represents and should also cover the circumstances that give rise to the particular adjustment if it is not obvious.

An "other" or "adjusting items" category to describe numerous insignificant reconciling items should not be used without further explanation as to the nature of items that comprise the category.

Gross Basis

Issuers should consider significant reconciling items on a gross basis. For example, an issuer is expected to separately itemize positive and negative adjustments unless netting is permitted under the accounting policies used in the preparation of the financial statements.

Tax

Reconciling items are commonly presented on a pre-tax basis to ensure that investors understand the gross amount of each reconciling item. If an issuer chooses to present reconciling items on a post-tax basis then the tax effect for each reconciling item should also be disclosed.

Comparatives

For comparative non-GAAP financial measures presented for a previous period, a reconciliation to the corresponding most comparable measure is required for that previous period.

Presentation in the Form of a Primary Financial Statement

An issuer may present adjusted financial information outside the entity's financial statements using a format that is similar to one or more of the primary financial statements, but that is not in accordance with the accounting policies used to prepare the entity's financial statements. In this case, the adjusted financial information would contain non-GAAP financial measures. Specifically, this would arise if an issuer presents such financial measures in a form that is similar to the following financial statements:

- a statement of financial position;
- a statement of profit or loss and other comprehensive income;
- a statement of changes in equity; or
- a statement of cash flows.

Presentation of this information as a single column that excludes the most comparable GAAP financial measures in a separate column would not satisfy paragraph 6(e)(v) of the Instrument. However, this information may be presented in the form of a reconciliation of the non-GAAP financial measure to the most comparable financial measure if such presentation shows in separate columns each of the most comparable measures, the reconciling items, and the non-GAAP financial measures.

When the adjusted presentation is used as a basis for the qualitative discussions and analysis of an entity's financial performance, financial position or cash flows with greater prominence than financial measures presented in the primary financial statements, this would not be considered to be in compliance with the requirement in paragraph 6(c) of the Instrument.

Subparagraph 6(e)(vi) – Changes in a non-GAAP financial measure

If the comparative non-GAAP measure presented in accordance with paragraph 6(d) of the Instrument is not presented on the same basis as that previously presented, the requirement of subparagraph 6(e)(vi) of the Instrument would apply. This would be the case when the composition of the comparative non-GAAP financial measure is not the same as previously presented.

Including additional reconciling items or excluding previously included reconciling items between the non-GAAP financial measure and the most comparable measure constitutes a change in composition. A clear explanation of the reason for this change is required under subparagraph 6(e)(vi) of the Instrument.

A change in magnitude of an individual item would not constitute a change in composition. For example, an issuer may define adjusted earnings as earnings before impairment losses and transaction costs. Transaction costs may only be incurred every three years, such that there may be no adjustment in year two to reflect transaction costs, but there should be an explanation noting that the issuer expects that it will incur transaction costs in the future. In this example, the issuer should continue to include transaction costs in the explanation of the composition under subparagraph 6(e)(iii) to maintain consistency of the non-GAAP financial measure.

Given that the disclosure of non-GAAP financial measures is optional, disclosing a particular non-GAAP financial measure does not generate a requirement to continue disclosing that measure in future periods. If, however, an issuer replaces a non-GAAP financial measure with another measure that achieves the same objectives (that is, the information provided to comply with subparagraph 6(e)(iv) of the Instrument was consistent for both measures), the requirement of subparagraph 6(e)(vi) of the Instrument would apply.

If the label of a non-GAAP financial measure has changed, while the explanation for the change may be incorporated by reference, we expect that the issuer make it clear in the document that the label has changed in the current period from that disclosed in the prior period.

Section 7 – Non-GAAP financial measures that are forward-looking Information

Paragraph 7(2) – Historical non-GAAP financial measure

An issuer needs to apply judgment in determining the historical non-GAAP financial measure. In applying judgment, it is important for an issuer to consider the context of how the non-GAAP financial measure that is forward-looking information is used. For example, adjusted EBITDA could be the historical non-GAAP financial measure of forward-looking adjusted EBITDA. We remind issuers that the historical non-GAAP financial measure disclosed is subject to the provisions of the Instrument. For example, the Instrument requires a non-GAAP financial measure that is forward-looking to be presented with no more prominence in the document than that of the historical non-GAAP financial measure presented. This means that the non-GAAP financial measure that is forward looking information must be presented with no more prominence than that of the most comparable measure that is presented in the primary financial statements, as required by paragraph 6(b) of the Instrument.

Determining the relevant historical period to satisfy the requirement in subparagraph 7(2)(b) of the Instrument is also a matter of judgment, considering the time period covered by the forward-looking information and the extent to which the business of the issuer is cyclical or seasonal. For example, where an issuer presents forward-looking information for the three months ending June 30, 20X2, the relevant period for the historical non-GAAP financial measure may be:

- in the case where the business of the issuer is not seasonal, the issuer's most recent interim period ended for which annual financial statements or an interim financial report has been filed (e.g., the three months ended March 31, 20X2), or
- in the case where the business of the issuer is seasonal, the comparable historical interim period to that of the financial outlook presented (e.g., the three months ended June 30, 20X1).

Section 8 – Non-GAAP ratios

Financial ratios may be useful in communicating aspects of an issuer's financial performance, financial position or cash flow. A ratio where a non-GAAP financial measure is used as one of its components is a non-GAAP ratio and subject to the disclosure requirements of section 8. For clarity, ratios may also meet the definition of forward-looking information. Examples of non-GAAP ratios include "adjusted EBITDA per share", "free cash flow per ounce", "funds flow per barrel of oil equivalent", and the equivalent future measures "forecasted adjusted EBITDA per share", "forecasted free cash flow per ounce" and "forecasted funds flow per barrel of oil equivalent".

Ratios that are calculated using exclusively:

- financial measures that are presented in the primary financial statements; or
- operating measures or other measures that are not non-GAAP financial measures

would not meet the definition of a non-GAAP ratio. For example, working-capital ratio would not meet the definition if the ratio is calculated as total current assets divided by total current liabilities as both total current assets and total current liabilities are presented in the primary financial statements. A percentage increase or decrease year over year with respect to a line item presented in the primary financial statements (or a component of such line item) for the purpose of variance analysis would not meet the definition of a non-GAAP ratio.

Subparagraphs 8(b) and 10(b) – Prominence of similar financial measures

The prominence requirements in paragraphs 8(b) and 10(b) of the Instrument for non-GAAP ratios and capital management measures differ from the requirements for non-GAAP financial measures in paragraph 6(c) and the requirements for total of segments measures in paragraph 9(b). However, the principle that the non-GAAP ratios and capital management measures should be presented with no more prominence than that of measures from the primary financial statements remains the same.

Many non-GAAP ratios and capital management measures do not have a most comparable financial measure. As such, issuers should consider the disclosure of the non-GAAP ratio and capital management measure in relation to the overall disclosure of similar financial measures presented in the primary financial statements to which the non-GAAP ratio or the capital management measure relates. For example, the prominence requirement in paragraph 8(b) of the Instrument is not met if the issuer focused its disclosure on an increased gross margin percentage without giving at least equally prominent disclosure to the fact sales have significantly decreased over the same period of time, resulting in a reduction in total profit period over period. In this example, it is assumed that the financial measure of “gross margin” is not presented in the primary financial statements and therefore meets the definition of a non-GAAP financial measure. As another example, an issuer that discloses a capital management measure such as “adjusted debt” will meet the requirement in paragraph 10(b) by giving at least equally prominent disclosure to similar financial measures presented in the primary financial statements such as short-term and long-term debt.

For a non-GAAP ratio or a capital management measure which has a most comparable financial measure presented in the primary financial statements, the guidance on prominence contained in this Policy for paragraph 6(b) or 10(b) should be referred to. For example, the most comparable measure of “adjusted earnings per share” is “earnings per share” and we expect that the discussion of “adjusted earnings per share” should not be more prominent than the discussion of “earnings per share”.

Section 9 – Disclosure of total of segments measures

An entity’s accounting policies used in the preparation of the financial statements may permit disclosure of a broad range of segment measures, but not necessarily specify how such financial measures should be calculated or require that these financial measures comply with the recognition and measurement requirements of the accounting policies used to prepare the financial statements of the entity.

When disclosed outside the financial statements, to the extent a total of segments measures is not also presented as a line item in the primary financial statements, the disclosures made under section 9 of the Instrument should allow a reader to understand how the measure is calculated and how it relates to the primary financial statements.

For example, in the notes to the financial statements, an issuer discloses adjusted EBITDA for each of its reportable segments: segment A, segment B, and segment C. The issuer then sums the adjusted EBITDA for each segment and discloses total “entity-adjusted EBITDA”. “Entity-adjusted EBITDA” is a total of segments measures and is not presented in the primary financial statements. When this financial measure is disclosed in a document other than the financial statements, the issuer must comply with section 9 of the Instrument.

If an issuer discloses a financial measure of a reportable segment and such financial measure is not presented in the financial statements to which the financial measure relates, the issuer should consider whether this financial measure meets the definition of a non-GAAP financial measure.

An SEC issuer may characterize a total of segments measure as a non-GAAP financial measure in compliance with SEC rules on non-GAAP financial measures.

Section 10 – Disclosure of capital management measures

Disclosure of information that enables a person to evaluate an entity’s objectives, policies and processes for managing capital may be required by the accounting policies used in the preparation of the financial statements; for example, requirements in IFRS under IAS 1 *Presentation of Financial Statements*.

How an entity manages its capital is entity-specific and the accounting policies used to prepare the financial statements might not prescribe a specific calculation. The accompanying disclosure required by section 10 of the Instrument allows a reader to understand how an entity calculates these measures and how they relate to measures presented in the entity’s primary financial statements when these measures are disclosed in documents other than the financial statements.

Subparagraph 10(a)(i) of the Instrument requires a clear explanation of the composition of the capital management measure. For example, if the capital management measure was calculated in accordance with an agreement, a description of the agreement (e.g. the measure was calculated in accordance with lending agreements) together with a description of the composition, or details of the calculations, would satisfy the requirement.

The level of detail expected in the reconciliation required under subparagraph 10(a)(ii)(B) is a matter of judgment and depends on the nature and complexity of the reconciling items required to provide the necessary context. In situations where the capital management measure is an aggregation of individual line items presented on the primary financial statements, the requirements of subparagraph 10(a)(ii)(B) of the Instrument can be met by detailing quantitatively how the measure has been calculated.

If the capital management measure was calculated using one or more non-GAAP financial measures, the issuer must comply with section 6 of the Instrument, in respect of each non-GAAP financial measure used.

Annex F

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT
45-108 CROWDFUNDING

The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential amendments because Multilateral Instrument 45-108 Crowdfunding does not apply in these jurisdictions.

1. *Multilateral Instrument 45-108 Crowdfunding is amended by this Instrument.*
2. *Form 45-108F1 Crowdfunding Offering Document is amended by replacing the heading “Non-GAAP financial measures” and the paragraph that follows this heading, in the “Instructions related to financial statement requirements and the disclosure of other financial information” of Schedule A with the following:*

Non-GAAP financial measures and other financial measures - An issuer that intends to disclose financial measures that are subject to National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure in its crowdfunding offering document should refer to the requirements set out in that Instrument..
3. This Instrument comes into force on ●.

Annex G

PROPOSED CHANGE TO COMPANION POLICY 45-108CP CROWDFUNDING

The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential changes to Companion Policy 45-108CP Crowdfunding because Multilateral Instrument 45-108 Crowdfunding does not apply in these jurisdictions.

1. *Companion Policy 45-108CP Crowdfunding is changed by this Document.*
2. *Section 16 is changed by replacing the last paragraph with the following:*

Non-GAAP financial measures and other financial measures – An issuer that intends to disclose financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, including in its crowdfunding offering document, should refer to the requirements set out in that Instrument..

3. This change becomes effective on ●.

Annex H

PROPOSED CHANGES TO COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. ***Companion Policy 51-102CP Continuous Disclosure Obligations is changed by this Document.***
2. ***Section 4.2 is changed by replacing the heading “Non-GAAP Financial Measures” with “Non-GAAP Financial Measures and Other Financial Measures” and by replacing the paragraph with the following:***

Reporting issuers that intend to publish financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* should refer to the requirements set out in that Instrument..
3. These changes become effective on ●.

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

Annex I

PROPOSED CHANGE TO COMPANION POLICY 51-105CP MULTILATERAL INSTRUMENT 51-105 ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS

The Ontario Securities Commission is not proposing this consequential change as Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets and its Companion Policy do not apply in Ontario.

1. *Companion Policy 51-105CP Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is changed by this Document.*
2. *Section 5 is changed by adding the following paragraph under the heading “National Instruments”:*
 - (e) National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* which sets out disclosure requirements for non-GAAP financial measures and certain other financial measures.
3. This change becomes effective on ●.

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

Annex J

**PROPOSED CHANGE TO COMPANION POLICY 52-107CP ACCEPTABLE
ACCOUNTING PRINCIPLES AND AUDITING STANDARDS**

1. ***Companion Policy 52-107CP Acceptable Accounting Principles and Auditing Standards is changed by this Document.***
2. ***Section 2.10 is replaced with the following:***

2.10 Acceptable Accounting Principles — Readers are likely to assume that financial information disclosed in a news release is prepared on a basis consistent with the accounting principles used to prepare the issuer's most recently filed financial statements. To avoid misleading readers, an issuer should alert readers if financial information in a news release is prepared using accounting principles that differ from those used to prepare an issuer's most recently filed financial statements or includes financial measures that are subject to National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*.

3. This change becomes effective on ●.

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

AASB



Auditing and Assurance
Standards Board

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T. 416 204.3240 F. 416 204.3412
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June 29, 2020

The Secretary
Ontario Securities Commission
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Toronto ON M5H 3S8
comment@osc.gov.on.ca

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage C.P. 246, tour de la Bourse
Montréal QC H4Z 1G3
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Dear:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

**Re: CSA Second Notice and Request for Comment – Proposed National Instrument 52-112
Non-GAAP and Other Financial Measure Disclosure – Proposed Companion Policy 52-112
Non-GAAP and Other Financial Measures Disclosure – Related Proposed Consequential
Amendments and Changes**

The Canadian Auditing and Assurance Standards Board (AASB) is pleased to provide its comments on the Canadian Securities Administrators' (CSA) Second Notice and Request for Comment on the:

- Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure;
 - Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure; and
 - Related Proposed Consequential Amendments and Changes;
- collectively referred to as "Rule 52-112" throughout this letter.

Overall comments

Consistent with our 2018 response to the CSA proposals on Rule 52-112, we continue to support the Canadian Securities Administrators' (CSA) efforts to strengthen the disclosure requirements surrounding non-GAAP financial measures and other financial measures. This topic is one of increasing importance to a variety of stakeholders.

Conflict between proposed Rule 52-112 and the IASB ED

Proposed Rule 52-112 defines a non-GAAP financial measure as one that depicts historical or expected future financial performance that is not presented in the financial statements. The International Accounting Standards Board (IASB) Exposure Draft (ED), *General Presentation and Disclosures* (IASB ED) uses a different term, Management Performance Measures (MPMs). The IASB is proposing to require that information about any MPMs included in public communications outside the financial statements be disclosed in a single note in the financial statements.

Some non-GAAP financial measures as defined in proposed Rule 52-112 would also meet the definition of MPMs in the IASB ED. For example, adjusted EBITDA that is not presented in the financial statements would be a non-GAAP financial measure as defined in proposed Rule 52-112 and the disclosure requirements relating to non-GAAP financial measures would presumably apply. However, under the IASB ED, the same adjusted EBITDA would be required to be disclosed in a single note in the financial statements. Because of the required financial statement disclosure under the IASB ED, this would serve to exclude the adjusted EBITDA from being a non-GAAP financial measure as defined in proposed Rule 52-112.

The above example demonstrates that there is a conflict between the proposed Rule 52-112 and the IASB ED. This conflict, if unresolved, will likely result in challenges for auditors and management and confusion for users of financial information. We are therefore pleased that the CSA is monitoring the progress of the IASB ED and the overall project in order to consider whether changes to securities legislation will be appropriate.

Confusion about the categories of specified financial measures

Our outreach on proposed Rule 52-112 indicates that stakeholders find the proposed rule hard to understand. The proposed rule segregates specified financial measures into different categories with different disclosure requirements. Stakeholders found it unclear which category

would apply to certain financial measures and consequently, which set of disclosure requirements would apply. For example, a financial measure comprising of a capital management ratio that includes non-GAAP numbers may fall into one of the following two categories:

- a non-GAAP ratio, which has disclosure requirements relating to labelling as required by paragraph 8(a) of the proposed Rule and cautionary language that the non-GAAP ratio is not a standardized financial measure as required by paragraph 8(d)(ii) of the proposed Rule; or
- a capital management measure, which has no disclosure requirements relating to labelling and cautionary language.

The lack of clarity as to whether the financial measure in the above example is a non-GAAP ratio or a capital measure raises a question as to which set of disclosure requirements apply.

We encourage the CSA to consider further clarifying the proposed Rule 52-112 and to develop guidance to help stakeholders navigate the proposed rule. For example, the CSA may wish to consider whether the number of categories (i.e., sets of disclosure requirements) may be reduced without compromising investor protection and developing guidance when a financial measure falls into more than one defined category. The CSA may also wish to consider the corresponding SEC Rule on non-GAAP financial measures.¹ Our stakeholders have informed us that they found the SEC Rule to be clearly drafted and we understand that the SEC Rule is substantially aligned with proposed Rule 52-112.

Distinction between the primary financial statements and notes to the financial statements

The definitions of some of the specified financial measures make a distinction as to whether the measure appears in the primary financial statements or the notes to the financial statements. In our view, this distinction is unnecessary and may result in the unintended consequence of users misinterpreting the notes to the financial statements as being less important than the other parts of the financial statements. We suggest that the CSA consider basing the definitions of the specified financial measures on whether the measures appear in the financial statements, regardless of whether they are in the primary financial statements or the notes to the financial statements.

Other assurance implications

The AASB recognizes the increasing importance stakeholders ascribe to information beyond the audited financial statements. CAS 720, *The Auditor's Responsibilities Relating to Other Information*, enhances the auditor's responsibilities to read the other information and consider whether there is a material inconsistency between the other information and the financial statements or the auditor's knowledge obtained in the audit. CAS 720 does not impose an obligation on the auditor to obtain assurance about the other information. We encourage the CSA to continue to monitor the use of, and reliance on, such information by users and consider whether it is in the public interest for the credibility of that information to be enhanced by independent assurance.

¹ Regulation G, *Conditions for Use of Non-GAAP Financial Measures*

Non-financial measures

We note that proposed Rule 52-112 does not address disclosures of non-financial measures or operational measures. As indicated in our 2018 response to the CSA proposals on Rule 52-112, we continue to believe there is significant scope for improvements to the quality of such measures. Accordingly, we recommend that the CSA explore whether there is a role it can play in enhancing the disclosures of all performance measures through regulatory changes.

We hope that these comments will be useful to the CSA in determining the appropriate next steps relating to this key project. We also note the helpful comments set out in the Canadian Accounting Standards Board's response to proposed Rule 52-112. If you have any questions or require additional information, please contact Eric Turner at (416) 204-3240 or eturner@asbcanada.ca.

Yours very truly,



Ken Charbonneau FCPA, CPA, ICD.D, Chair, Auditing and Assurance Standards Board (Canada)
c.c. Canadian Auditing and Assurance Standards Board members



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June 29, 2020

Submitted by e-mail to comment@osc.gov.on.ca and consultation-en-cours@lautorite.qc.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Dear Sirs,

Re: CSA Second Notice and Request for Comment: Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

This letter is the response of the [Canadian Accounting Standards Board](http://www.frascanada.ca) (AcSB) to the Canadian Securities Administrator's (CSA) Second Notice and Request for Comment, "Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure", issued in February 2020.

Our process

As part of developing our response for these proposals, we consulted with Canadian stakeholders as well as our [IFRS® Discussion Group](#) and [User Advisory Committee](#). We considered the results of these discussions when developing this letter.

Our view

The AcSB appreciates the opportunity to comment on the revised version of the Proposed National Instrument as we support all efforts to improve the quality of financial information that Canadian investors rely on to make decisions. We commend the CSA for taking into consideration the comments received on the first version of the Proposed National Instrument to improve the application of these proposals. We continue to support the CSA's objective of ensuring investors receive appropriate disclosure without unduly increasing regulatory burden on issuers.

Interaction of these proposals with the IASB's Primary Financial Statement project

The IASB released its Exposure Draft, *General Presentation and Disclosures* (ED) in December 2019. Overall, we support the IASB's initiatives to introduce the proposals in its ED to improve global financial reporting. Furthermore, we understand that not all jurisdictions have robust non-GAAP guidance. The proposals in the IASB's ED, if approved, will change the structure and content of income statements and result in some financial performance measures being included in the notes to the financial statements. The IASB's proposal to include management performance measures (MPMs) in the financial statements is expected to give rise to uncertainty about whether such measures should be treated as a specified financial measure as defined in the CSA's Proposed National Instrument. The current definitions of MPMs in the IASB's ED and non-GAAP financial measures in the Proposed National Instrument are different. Based on our outreach with both financial statement preparers and users, the distinction between these definitions and their interaction is not clear.

The AcSB appreciates the concerns raised by Canadian stakeholders about the interaction of the CSA's and IASB's proposals and stands ready to work with stakeholders and the CSA to help clarify application challenges that may arise. We think that collaboration between the AcSB and CSA may focus on helping issuers better understand how to apply both the CSA's and IASB's proposals by clarifying the interaction between them. The AcSB will also continue to raise awareness with the IASB and encourage them to consider the interaction of their proposals with securities regulations on non-GAAP measures in jurisdictions around the world. Overall, we think that clarifying the interaction between these documents will ensure they complement each other and will enhance the quality and consistency of information provided to users.

As such, we look forward to ongoing conversations with the CSA as we work together to deliver clear guidance to Canadian stakeholders on how the Proposed National Instrument and the finalized *General Presentation and Disclosures* Standard will interact when both are effective. We think this work should start as soon as the IASB moves to finalize its proposals under the Primary Financial Statements project to ensure that we are able to respond in a timely manner to issues that Canadian stakeholders may encounter.

Effective date

We commend the CSA for taking into consideration the need for a long transition period leading up to the effective date to ease the transition burden on issuers. We agree that the CSA should consider making the instrument effective for the beginning of an annual financial reporting period to ensure consistent and comparable reporting over periods.



Linda F. Mezon, FCPA, FCA, CPA (MI), CGMA
Chair, Canadian Accounting Standards Board

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About the Canadian Accounting Standards Board

We are an independent body with the legal authority to establish accounting standards for use by all Canadian publicly accountable enterprises, private enterprises, not-for-profit organizations and pension plans in the private sector. We are comprised of a full-time Chair and volunteer members from a variety of backgrounds, including financial statement users, preparers, auditors and academics; a full-time staff complement supports our work.

Our standards

We have adopted IFRS® Standards as issued by the IASB for publicly accountable enterprises. Canadian securities legislation permits the use of U.S. GAAP in place of IFRS Standards in certain circumstances. We support a shared goal among global standard setters of high-quality accounting standards that result in comparable financial reporting outcomes regardless of the GAAP framework applied.

We developed separate sets of accounting standards for private enterprises, not-for-profit organizations and pension plans. Pension plans are required to use the applicable set of standards. Private enterprises and not-for-profit organizations can elect to apply either the set of standards developed for them, or IFRS Standards as applied by publicly accountable enterprises.

Our role vis-à-vis IFRS Standards

Our responsibility to establish Canadian GAAP necessitates an endorsement process for IFRS Standards. We evaluate and rely on the integrity of the IASB's due process as a whole, and monitor its application in practice. In addition, we perform our own due process activities for each new or amended IFRS Standard to ensure that the standard is appropriate for application in Canada. We reach out to Canadians on the IASB's proposals to understand and consider their views before deciding whether to endorse a final IFRS Standard. A final standard is available for use in Canada only after we have endorsed it as Canadian GAAP.

APPENDIX**AcSB Comments on the revised Proposed National Instrument 52-112***Interaction of these proposals with the IASB's Primary Financial Statement project*

1. The IASB issued the Exposure Draft, *General Presentation and Disclosures* (ED) in December 2019 relating to its Primary Financial Statements project. The project aims to improve the relevance of information in the financial statements and is part of the IASB's plan to promote better communication in financial reporting. The proposals in the ED, if approved, will change the structure and content of income statements and result in some financial performance measures being included in the notes to the financial statements.
2. The IASB's proposal to include management performance measures (MPMs) in the financial statements is expected to give rise to uncertainty about whether such measures should be treated as a specified financial measure as defined in the CSA's Proposed National Instrument. The current definitions of MPMs in the IASB's ED and non-GAAP financial measures in the Proposed National Instrument are different. Based on our outreach with both financial statement preparers and users, the distinction between these definitions and their interaction is not clear. For example, adjusted EBITDA, which currently meets the definition of a non-GAAP financial measure, may also meet the criteria for an MPM and be included in the financial statements. Thus, this measure may no longer continue to be non-GAAP as a result of it being included in an issuer's financial statements as an MPM. We think the CSA should explicitly state whether financial performance measures included in an issuer's financial statements would be subject to the Proposed National Instrument. This could reduce the need for future revisions to the CSA's Proposed National Instrument should the IASB make further amendments to IFRS® Standards that affect financial performance measures reported in an issuer's financial statements.
3. Further, the lack of consistency in the definition of unusual items under both the IASB's and CSA's proposals may lead to some financial measures being calculated differently under each of the respective proposals. We are concerned that these challenges would unintentionally increase the overall regulatory burden placed on issuers.
4. The AcSB appreciates the concerns raised by Canadian stakeholders about the interaction of the CSA's and IASB's proposals and stands ready to work with the CSA to help clarify application challenges that may arise. We think that collaboration between the AcSB and the CSA, as the AcSB continues its outreach on the IASB proposals, may focus on helping issuers better understand how to apply both the CSA's and IASB's proposals by clarifying the interaction between them. Therefore, the AcSB will continue to raise awareness with the IASB and encourage them to consider the interaction of their proposals with securities regulations on non-GAAP measures in local jurisdictions around the world. Overall, we think that clarifying the interaction between these documents will ensure they complement each other and will enhance the quality and consistency of information provided to users.
5. As such, we look forward to an ongoing conversation with the CSA as we work together to deliver clear guidance to Canadian stakeholders on how the Proposed National Instrument and the finalized *General Presentation and Disclosures* Standard will interact when both are effective. We think this work should start as soon as the IASB moves to finalize its proposals under the Primary Financial Statements project to

ensure that we are able to respond in a timely manner to issues that Canadian stakeholders may encounter.

Illustrative examples

6. We encourage the CSA to develop illustrative examples to reflect the disclosures required by the Proposed National Instrument. These illustrative examples will help facilitate the application and comparability of disclosures provided by issuers under the Proposed National Instrument. These examples may include:
 - a. disclosures required for each of the specified financial measures as defined in the Proposed National Instrument;
 - b. disclosures where a non-GAAP financial measure is presented with no more prominence in the document than that of the most comparable financial measure; and
 - c. illustrating how an issuer may incorporate by reference the information required under provisions 5.1(a)-(e) and the disclosures that should accompany such information.

Incorporating information by reference

7. We welcome the CSA's proposal to permit the incorporation of information required under the provisions of the Proposed National Instrument by reference to the MD&A of the issuer. We agree that this will help reduce the disclosure burden on issuers and that it will be a beneficial feature of the Proposed National Instrument.
8. However, several stakeholders whom we consulted expressed concern that the CSA's Proposed National Instrument does not appear to permit information to be incorporated by reference in news releases issued or filed by the issuer. In order to avoid duplication of information already provided outside the news release, we think that the CSA should consider permitting information to be incorporated by reference in news releases issued or filed by the issuer to help further reduce the disclosure burden on all stakeholders either preparing or using financial information.



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June 29, 2020

VIA E-MAIL

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 Alberta Securities Commission
 Financial and Consumer Affairs Authority of
 Saskatchewan
 Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 Financial and Consumer Services Commission (New
 Brunswick)
 Superintendent of Securities, Department of Justice
 and Public Safety, Prince Edward Island
 Nova Scotia Securities Commission
 Securities Commission of Newfoundland and
 Labrador
 Registrar of Securities, Northwest Territories
 Registrar of Securities, Yukon Territory
 Superintendent of Securities, Nunavut
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Re: CSA Second Notice and Request for Comment - Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

Dear Sirs/Mesdames:

This letter is submitted in response to the Canadian Securities Administrators ("CSA") second notice and request for comment on the revised version of proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the "Proposed Instrument") and the revised version of proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the "Proposed Companion Policy" and together with the Proposed Instrument, the "revised proposal").

This letter is submitted by Blake, Cassels & Graydon LLP on behalf of a certain client, a large issuer publicly traded on the Toronto Stock Exchange and the New York Stock Exchange.

Our client's comments are as follows:



We commend the CSA for its initiative to propose requirements in connection with disclosure of non-GAAP financial measures and other financial measures, based largely on the disclosure guidance in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* ("SN 52-306"), with a goal to provide clear, authoritative Canadian securities disclosure requirements.

We consider the revised proposal an improvement from the original proposal and are encouraged by the CSA's efforts to increase alignment with the U.S. Securities and Exchange Commission's ("SEC") rules and regulations on non-GAAP financial measures. Similar to many of our peers, non-GAAP financial measures play a valuable role in our corporate communications, and provide meaningful and valuable insight into information that we consider important to stakeholders' understanding of the performance of our business.

As a Canadian foreign private issuer availing itself of the Multijurisdictional Disclosure System, we are specifically exempt from the SEC rules and regulations regarding the use and disclosure of non-GAAP financial information as long as we comply with Canadian regulations regarding the same. However, as a reporting SEC Issuer, it is important to us that the CSA align its non-GAAP disclosure rules with those of the SEC, and that such rules are applied consistently, so that we are not disadvantaged (either from the perspective of unduly cumbersome disclosure requirements or higher cost of compliance) when compared with our peers that are U.S. domestic filers. We carefully prepare our disclosure documents by following guidance issued by the Office of Investor Education and Assistance of the U.S. Securities and Exchange Commission, *A Plain English Handbook; How to create clear SEC disclosure documents* (1998). We strive to create clear and informative disclosure documents, without providing obscuring or redundant information and, in this regard, would consider some aspects of the proposed rules identified in this letter inconsistent with this objective and more onerous than requirements imposed upon our peers that are U.S. domestic filers.

With this in mind, we would like to respectfully highlight the following observations with respect to the revised proposal.

Prominence and Usefulness in Supplemental Documents

We respectfully submit that press releases (other than earnings press releases or other press releases otherwise filed on SEDAR), social media, investor relations material and other documents of similar nature ("supplemental documents") that are considered a "document" under the Proposed Instrument should be regulated on a similar basis as the SEC's rules and regulations, which differentiate these types of documents, governed solely by Regulation G, from documents containing non-GAAP financial information that are furnished (e.g. an earnings release in a Form 8-K) or filed with the SEC (e.g. in a Form 8-K, Form 10-K or Form 10-Q), which are governed by both Regulation G and Section 10(e) of the Securities Exchange Act of 1934 ("Section 10(e)"). In particular, Regulation G standing alone does not specifically require registrants to disclose the most directly comparable financial measure calculated and in accordance with GAAP with equal or greater prominence, nor does it require a registrant to include a statement disclosing the reasons why management believes that the non-GAAP measure provides useful information to investors. The SEC only requires these additional disclosures in documents furnished or filed with the SEC that are subject to Section 10(e). In comparison, the Proposed Instrument requires specified financial measures (other than supplementary financial measures) to be presented with no more prominence in all documents, and include a statement of usefulness (except in certain cases where this information can be incorporated by reference).

While we acknowledge that the prominence of non-GAAP financial measures is a concern of regulators, it is our view that these additional prominence and usefulness requirements for supplemental documents will add a significant regulatory burden to comply with in terms of adding additional length to these short documents, especially given the Proposed Companion Policy guidance on prominence. For example, requiring issuers to present dual graphs/charts to represent comparable non-GAAP and GAAP financial measures is unnecessarily repetitive and, in some cases, renders a chart or statement ineffective and confusing. We are concerned that Canadian issuers may be at a competitive disadvantage relative to U.S. counterparts because of the additional Canadian



requirements. We respectfully suggest tailoring the requirements for specific financial measures based on the type of documents made available to the public specifically in filings made on SEDAR, similar to the SEC. We believe that the SEC guidance on non-GAAP financial measures is robust and that aligning the Canadian disclosure requirements with that guidance would not be prejudicial to the public interest.

Incorporating Information by Reference in a News Release – s. 5(3)(b)

"5. (3) Subsection (1) does not apply if the document that contains the specified financial measure is (a) the MD&A filed by the issuer, or (b) a news release issued or filed by the issuer."

We respectfully submit that to avoid undue burden, an issuer that discloses a specified financial measure in a news release issued or filed by the issuer should be able to incorporate by reference the required information pursuant to section 5 of the Proposed Instrument. Accordingly, we suggest removing the requirement proposed in section 5(3)(b). We also note that the current guidance within SN 52-306 permits cross-referencing to reconciliations without a prohibition on news releases, and believe this practice, which is currently commonly used by most issuers, should be permitted to continue.

We believe that concerns that cross referencing is inadequate run contrary to the CSA's initiatives to reduce duplicative disclosures and regulatory burden for issuers where investor protections can be adequately maintained. To be able to utilize section 5 of the Proposed Instrument, the specific financial measures must already be included in the issuer's filed MD&A with full compliance of the requirements within Part 2 of the Proposed Instrument, and would be easily accessible to users. We are concerned that the proposed approach would result in undue compliance costs to issuers and add unnecessary length to news releases with little added benefit to, or protection of, users as there is no new information disclosed.

Companion Policy – s. 6(e) – Proximity to the First Instance

"6(e) To prevent duplicate disclosure, an issuer may provide all the required disclosures for all non-GAAP financial measures in one section of the document that contains the non-GAAP financial measures, and cross-reference that section each time a non-GAAP financial measure is presented in that document." [emphasis added]

The Proposed Companion Policy guidance allows cross-referencing within the document "each time" a non-GAAP financial measure is presented in that document. This suggests that each time a non-GAAP financial measure is presented within a stand-alone document, a footnote or similar notation would be required to cross-reference to the specific section where all of the required disclosures of non-GAAP financial measures are included. This could result in numerous cross-references throughout a document, adding clutter and obscuring more relevant information, and would not be consistent with the CSA initiatives relating to regulatory burden reduction. We respectfully submit that it would be sufficient to include the cross-reference the first time within a document.

Totals of Segments Measure Reconciliation – s. 9(c)

9(c) in proximity to the first instance of the total of segments measure in the document, the document provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation of the total of segments measure to the most comparable financial measure referred to in paragraph (a);

We believe that the quantitative reconciliation in the Proposed Instrument for totals of segment measures should not be required as it will result in redundant duplicative disclosure between the financial statements and documents other than financial statements. IFRS 8 *Operating Segments* paragraphs 21(c) and 28 require an entity to reconcile the totals of segment revenues, segment profit and loss, assets, liabilities, and for every other material item of information disclosed to the entity's corresponding total of these items. We respectfully suggest allowing the reconciliation requirement to be permitted to be satisfied by the disclosure presented in the notes to the financial



statements, consistent with the disclosure requirements for capital management measures in section 10(a)(ii)(B). The inclusion of the requirement to include identical reconciliations and disclosures in multiple documents within a reporting period contradicts initiatives of the CSA to reduce duplication of disclosures and regulatory burden on issuers.

Comparative Period Information – s. 6(d), 8(c), 9(d) and 10(c)

We generally agree with this requirement in the case of interim and annual MD&As, given the requirements in NI 51-102 to disclose a comparison of the company's financial performance and financial condition in the periods covered by financial statements. However, we believe that extending this requirement to supplemental documents, such as news releases, investor presentations and other similar documents, may cause documents to be unnecessarily lengthy and overly complex for users.

We submit that, in general, information about the comparative period may not be relevant or applicable to the information being disclosed in all documents, or there may be a more useful prior period to use for comparison purposes than the prior year or comparative quarter in the prior year, as the case may be. We believe that a requirement to always include a comparative period may lead to arbitrary inclusions of comparative figures without providing additional useful information. In certain instances, it may be more relevant and informative to users to compare to the company's forecasted guidance or target.

We note that the current guidance within SN 52-306, and SEC rules and regulations on non-GAAP financial measures do not explicitly require comparatives, and instead require the issuer to exercise judgment under antifraud standards as to whether disclosure of comparatives are necessary to not mislead investors. We respectfully suggest that this practice should be permitted to continue in documents other than MD&A, and professional judgment should be able to be applied to the requirements for comparative periods for all specified financial measures. In our view, the concern that non-GAAP financial measures should be prepared on a consistent basis over time is accomplished through the Proposed Instrument in section 6(e)(vi) and the Proposed Companion Policy can include the language to mirror the SEC Compliance & Disclosure Interpretation Question 100.02.¹

Supplementary Financial Measures – s. 11(b)

(b) in proximity to the first instance of the supplementary financial measure in the document, the document provides an explanation of the composition of the supplementary financial measure.

We agree with the primary concerns expressed by the CSA about transparency of composition of supplementary financial measures. However, we respectfully suggest that a scaled back approach to the disclosure requirement in section 11(b) of the Proposed Instrument could be taken for interim MD&As, news releases, investor presentations and other supplemental documents to cross reference the composition disclosure to the annual MD&A, unless there is a change in the composition during the quarters, similar to how changes in accounting policies are disclosed.

Implementation Timeframe

Given the number of measures and documents to which the Proposed Instrument would apply, we agree with the prior comments and the CSA position that a longer transition period will be appropriate to ensure the Proposed Instrument is implemented as intended. Further, we believe implementation should be consistent with how the CSA implemented IFRS in Canada - i.e., effective for financial reporting periods beginning on or after January 1 of the

¹ SEC Compliance & Disclosure Interpretation Question and Answer 100.02 indicates that a non-GAAP measure may be misleading under Rule 100(b) of Regulation G if it is presented inconsistently between periods and depending on the significance of the change, it may be necessary to recast prior measures to conform to the current presentation and place the disclosure in the appropriate context.



year following the date that the final instrument is published versus having an effective date between quarters, to ensure consistent and comparable reporting over periods within a reporting year.

Sincerely,





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June 29, 2020

VIA E-MAIL

British Columbia Securities Commission
 Alberta Securities Commission
 Financial and Consumer Affairs Authority of Saskatchewan
 Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 Financial and Consumer Services Commission (New Brunswick)
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
 Nova Scotia Securities Commission
 Securities Commission of Newfoundland and Labrador
 Registrar of Securities, Northwest Territories
 Registrar of Securities, Yukon Territory
 Superintendent of Securities, Nunavut

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M^e Philippe Lebel
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RE: Second Notice and Request for Comment on Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure, Proposed Companion Policy 52-112 and Related Proposed Consequential Amendments and Changes

Dear Sirs/Mesdames:

This letter is submitted in response to the Second Notice and Request for Comment dated February 13, 2020 (the "**Notice and Request**") by the Canadian Securities Administrators (the "**CSA**") on proposed National Instrument 52-112 – *Non-GAAP and Other Financial Measures Disclosure* (the "**Proposed Instrument**"), the proposed Companion Policy 52-112 – *Non-GAAP and Other Financial Measures Disclosure* (the "**Proposed Companion Policy**") and the related proposed consequential amendments or changes to various other instruments and companion policies of the CSA.

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The Proposed Instrument is revised from the original version of proposed National Instrument 52-112 – *Non-GAAP and Other Financial Measures Disclosure* (the “**Original Proposal**”) that was published for comment in September 2018, in response to comments received by the CSA on the Original Proposal.

These comments are those of the writers noted below and do not necessarily reflect the views of clients of or others in our firm.

Scope and Application

The reduction in scope of the application of the Proposed Instrument in sections 2 and 3 to, essentially, reporting issuers (other than those exempted under section 4) and certain other issuers making public filings in Canada with the CSA or a recognized exchange is welcome, and we thank the CSA for their consideration of our and others’ comments to the Original Proposal in this regard.

With respect to the exemptions in paragraph 4(d), we suggest the listing of particular items to which the Proposed Instrument would not apply is too narrow and should be expanded in certain cases. In particular:

- subparagraph (d)(i) refers to filings required under subparagraph 9.1(1)(a)(vi) or 9.2(a)(v) of National Instrument 41-101 – *General Prospectus Requirements* (“**NI 41-101**”) – namely, reports or valuations for which a consent is required to be filed. It should also refer to the equivalent provisions in subparagraphs 4.1(1)(a)(vi) and 4.2(a)(iv) of National Instrument 44-101 – *Short Form Prospectus Distributions* (“**NI 44-101**”).
- in addition to the above, the Proposed Instrument should similarly not apply to disclosures in (i) formal valuations or prior valuations required to be prepared, disclosed and/or filed under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions*, and (ii) fairness opinions disclosed by issuers in connection with a take-over bid or securityholder-approved transaction (such as a plan of arrangement) (which in some cases may disclose figures for non-GAAP financial measures or ratios such as EBITDA or enterprise value/EBITDA ratio).
- subparagraph (d)(iii) provides that the Proposed Instrument would not apply to disclosures in Documents Affecting the Rights of Securityholders and Material Contracts required to be filed under sections 12.1 and 12.2 of National Instrument 51-102 – *Continuous Disclosure Obligations*, but a corresponding exemption is not provided for equivalent filings required to be made in connection with a prospectus filing. We suggest subparagraph 4(d)(i) or 4(d)(iii) of the Proposed Instrument should be revised to include reference to these types of filings required to be made under subparagraphs 9.1(1)(a)(ii) and (iii) and 9.2(a)(ii) and (iii) of NI 41-101, and subparagraphs 4.1(1)(a)(iv) and (iv.1) and 4.2(a)(iii) and (iii.1) of NI 44-101.

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Exchangeable Security Issuers and Credit Support Issuers

In addition, the Proposed Instrument should not apply to an exchangeable security issuer that files required disclosures of a parent issuer, or a credit support issuer that files required disclosures of a parent credit supporter, in each case under Part 13 of National Instrument 51-102 – *Continuous Disclosure Obligations* (“**NI 51-102**”). There is no need to apply the rule to these issuers or such disclosures, since a parent issuer or parent credit supporter must be either (i) a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102), in which case it would itself generally be subject to the Proposed Instrument, once implemented, or (ii) an SEC issuer (in the case of a parent credit supporter, incorporated or formed under U.S. law) which has filed all required documents with the U.S. Securities and Exchange Commission, in which case it would be governed by the disclosure requirements of U.S. federal securities laws.

Definition of Non-GAAP Financial Measure

As we noted in our comment letter on the Original Proposal, some issuers may present EBITDA, adjusted EBITDA or other financial measures that do not have a standardized meaning under GAAP/IFRS in their financial statements, in particular in financial statement notes relating to segment disclosure and presentation of the financial measures used by the entity’s chief operating decision maker.

Paragraph (c) of the definition of “non-GAAP financial measure” in the Proposed Instrument retains the element of the definition that the measure “is not presented in the financial statements of the entity” (we note that this reference is to “financial statements”, and not the defined term “primary financial statements”, and so would include notes to the financial statements). We submit that this language in the defined term remains unclear and potentially confusing. It is not clear whether a measure without a standardized meaning under GAAP/IFRS, such as an issuer’s EBITDA, if able (or required) to be presented in the issuer’s financial statements, would not be considered a non-GAAP financial measure at all for that issuer under the Proposed Instrument wherever disclosed. If that is the case, this could result in a situation where that issuer’s EBITDA would not be a non-GAAP financial measure under the Proposed Instrument (although in fact it is a measure without a standardized meaning under GAAP/IFRS) when presented in MD&A or another document, but the same-labeled measure for another issuer that does not disclose it in financial statements but only in MD&A or another document would be a non-GAAP financial measure under the Proposed Instrument. We suggest this would be a very confusing result.

Alternatively, perhaps the intention is that the requirements of section 6 of the Proposed Instrument would not apply to disclosure of non-GAAP financial measures where that disclosure is made within an issuer’s financial statements, but would apply to such disclosures in other documents that are not financial statements. If this is the case, we suggest that the Proposed Instrument should be revised to clarify – perhaps by deleting paragraph (c) of the definition of “non-GAAP financial measure”, and revising the lead-in language of section 6 to read: “An issuer must not disclose a non-GAAP financial measure that is historical information in a document other than financial statements of the entity to which the measure relates unless all of the following apply:” [suggested change underlined]. This would align with the treatment of total of segment measures and capital management measures in sections 9 and 10, respectively, of the Proposed Instrument. To preserve the separate treatment and more limited disclosure for those measures, a replacement paragraph (c) reading “...is not a capital management

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measure or a total of segment measures” could be included in the definition of “non-GAAP financial measure”.

Section 5 – Incorporating information by reference

The Proposed Instrument would specifically permit certain of the required information for specified financial measures in a document, including quantitative reconciliation of non-GAAP financial measures, to be incorporated by reference from the issuer’s MD&A. In our view this is a positive change (subject to our comment below in relation to cross-referencing rather than incorporation by reference). However, paragraph 5(3) specifically states that incorporation by reference is not permitted in a news release issued or filed by the issuer. There seems to be no explanation or commentary as to why the CSA propose not to allow incorporation by reference in a news release.

If this aspect of the Proposed Instrument is adopted, reporting issuers’ earnings news releases will have to contain all of the required disclosures relating to specified financial measures, including quantitative reconciliation where required. We believe this will be a significant change from common current practice for many reporting issuers, including many very senior issuers, which currently disclose non-GAAP financial measures and identify them as such in news releases, but cross-reference to other required disclosures (including the quantitative reconciliations) in their MD&A.

We suggest this would result in unnecessarily lengthy news releases that repeat information found elsewhere in issuers’ disclosure (MD&A, specifically) and require multiple reviews by issuer personnel, every quarter, of the same disclosures in different documents to ensure they are consistent and avoid errors, with no discernible increase in investor protection. This is contrary to the CSA’s initiatives with respect to regulatory burden reduction for issuers where investor protection can be adequately maintained. We strongly submit that incorporation by reference (or, preferably, simple cross-referencing – please see our comment below) to MD&A disclosure should be permitted in news releases.

Section 5 - “Incorporation by reference” vs. cross-referencing

Where a document does not contain all of the required information relating to specified financial measures (including reconciliation of non-GAAP financial measures to GAAP measures), the current practice of many, if not most, issuers is to identify the non-GAAP financial measures as such, perhaps including some additional discussion, and to direct the reader to the issuer’s MD&A with a cross-reference, rather than including formal “incorporation by reference” language as in a prospectus. Some examples of this kind of disclosure are shown below:

- “Readers are advised to review the section entitled Non-GAAP Financial Measures in [the issuer]’s 2019 MD&A for a further discussion of such non-GAAP measures and a reconciliation of such measures to Canadian GAAP.”
- “management believes that these non-GAAP measures provide useful information to investors regarding the company’s financial condition and results of operations as they provide additional measures of its performance. Additional details for these non-GAAP measures can be found on

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pages 3 and 4 of our MD&A which is posted on [the issuer]'s website, and filed with SEDAR and EDGAR.”

- “A Non-GAAP measurement. For definitions and basis of presentation of [the issuer]'s Non-GAAP measures, refer to the Non-GAAP Measures section in [the issuer]'s Management's Discussion and Analysis (MD&A) for the year ended December 31, 2019.”

In this context, the purpose is simply to direct the reader to the issuer's MD&A where more fulsome disclosure can be found. Formal “incorporation by reference” language is not necessary in this context and does not achieve any additional investor protection objective - by definition, the more fulsome disclosure is contained in the issuer's MD&A which is a “core document” under the secondary market civil liability provisions of securities legislation and is required to be incorporated by reference in any short form prospectus of the issuer. We suggest that a simple cross-reference to the location of the required information in the MD&A is sufficient for this purpose and aligns with current common practice, rather than requiring “incorporation by reference”.

Non-GAAP financial measures that are forward-looking information

For a non-GAAP financial measure that is forward-looking information, paragraph 7(2) of the Proposed Instrument requires labeling of the measure using the same label as the historical non-GAAP financial measure, presentation of the equivalent historical measure and other disclosures relating to the equivalent historical measure. This does not accommodate a situation in which the issuer has no equivalent historical non-GAAP financial measure. We suggest that disclosure relating to a historical non-GAAP financial measure under section 7 of the Proposed Instrument should be qualified in full by reference to a concept of “if applicable” or “if such a historical non-GAAP financial measure has been previously disclosed”.

Specified Financial Measures of Other Issuers - Comparables

The CSA states in the Notice and Request that it disagreed with comments on the Original Proposal that it should only apply to an issuer's own financial results or measures, and not those of other issuers. We understand this in the context of disclosure in relation to the kinds of entities referred to on the first page of the Proposed Companion Policy (such as joint ventures, subsidiaries, reverse takeover acquirors, investee entities, etc.), or about an entity on which a reporting issuer is significantly dependent (such as the restaurant operating company for a restaurant royalty fund), or for which the reporting issuer has given an undertaking to disclose.

At a minimum, however, we submit that the Proposed Instrument should not apply to measures of other issuers that are disclosed by an issuer in a comparison format (for example, as “comparables” (as defined in Part 13 of NI 41-101, Part 7 of NI 44-101 and Part 9A of National Instrument 44-102 – *Shelf Distributions*)). These types of comparisons are expressly contemplated by the marketing material rules in the context of prospectuses, notwithstanding the acknowledgement that (in the case of non-GAAP financial measures) the measures do not have a standardized meaning and may not be comparable to similar measures presented by other issuers.

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Comparative measures or ratios that are commonly presented as comparables are generally those of unrelated issuers considered to be comparable to the issuer and typically based on publicly available information disclosed by those other issuers. Such comparable information may include specified financial measures such as EBITDA, enterprise value, enterprise value to EBITDA ratio, payout ratio, debt to EBITDA ratio, and so on. We submit that comparables in marketing materials, and such information in other documents that would be “comparables” if contained in marketing materials (for example, in an issuer’s investor presentation), should not be captured by the Proposed Instrument.

Comparative Period Information

Outside of financial statements and MD&A, issuers seem to be free to disclose GAAP/IFRS financial information in a document for only one fiscal period, without comparative period GAAP/IFRS information (for example, in an investor presentation that shows only information for the most recent fiscal year). However, the Proposed Instrument would require comparative period information to be shown in any document, where that document discloses a non-GAAP financial measure (paragraph 6(d)), a non-GAAP ratio (paragraph 8(c)), a total of segments measure (paragraph 9(d)) or a capital management measure (paragraph 10(c)), with incorporation by reference (or cross-reference) of the comparative period information seemingly not permitted.

This results in an anomalous situation where an issuer document discloses financial information for only one fiscal period, and comparative period GAAP/IFRS information is not required to be disclosed in the document, but comparative period information for specified financial measures would be required to be disclosed under the Proposed Instrument. We submit that the comparative period disclosure requirements for specified financial measures should only apply to MD&A or, alternatively, that they be part of the permitted cross-referencing or incorporation by reference to issuers’ MD&A disclosure.

Executive Compensation Disclosure

The Proposed Companion Policy contains guidance that, for Form 51-102F6 disclosure only, where a non-GAAP financial measure is disclosed, a cross-reference to MD&A will provide sufficient “prominence” of the most comparable GAAP measure (presumably, for purposes of paragraph 6(c)). While this is welcome, it does not appear to address many of the other elements of section 6 of the Proposed Instrument that are not relevant to disclosure relating to executive compensation. For example, the requirements in paragraphs 6(b) and (d) to present the most comparable GAAP measure and the non-GAAP financial measure for a comparative period, and the disclosures required under subparagraphs 6(e)(ii) and (iii), do not make sense in the context of discussing executive compensation policies and decisions that may relate to non-GAAP metrics or targets for a particular period. However, these do not technically appear to be items that are permitted to be cross-referenced or incorporated by reference under section 5 of the Proposed Instrument.

As noted in the Proposed Companion Policy, the purpose of executive compensation disclosure is “to provide information about executive compensation within the context of the overall stewardship and governance of the issuer, in contrast to disclosure explaining an issuer’s financial performance, financial position or cash flow”. Executive compensation disclosure clearly serves a different purpose than the discussion of an issuer’s financial results in its MD&A and the disclosure should not be cluttered with

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discussions and comparisons of non-GAAP financial measures and other specified financial measures that are not relevant in that context.

Accordingly we submit that, if non-GAAP financial measures or other specified financial measures are disclosed in Form 51-102F6 or Form 51-102F6V executive compensation disclosure, the Proposed Instrument should make it clear that those measures need only be identified as such, and that a cross-reference or incorporation by reference to MD&A disclosure will be sufficient for the remaining requirements relating to those measures, including presentation of comparable GAAP measures and comparative period measures.

Total of Segments Measures

As defined in the Proposed Instrument, a total of segments measure is defined as one that is presented in the notes to the financial statements. In light of such presentation in financial statement notes, we submit that paragraph 9(c) of the Proposed Instrument should not require a quantitative reconciliation in every document in which a total of segments measure appears, and/or should allow for cross-referencing (or incorporation by reference) of such reconciliation to the financial statements rather than just MD&A.

Please see above with respect to our comment relating to paragraph 9(d) with respect to inclusion of comparative period measures.

Proposed Companion Policy – Paragraph 6(e) – Proximity to the first instance

The Proposed Companion Policy suggests that an issuer disclosing a non-GAAP financial measure in a document must identify the measure as such and cross-reference to the section of the document containing the required section 6 disclosures “each time” a non-GAAP financial measure is presented in that document. This would be very cumbersome, particularly where the non-GAAP financial measure is disclosed and discussed multiple times, for different financial periods, in narrative disclosure (as opposed to a table format), and again not consistent with CSA initiatives relating to regulatory burden reduction. It is also not aligned with the actual words of paragraph 6(e) of the Proposed Instrument itself, which only requires the disclosure provided for in that paragraph to be made “in proximity to the first instance” of the non-GAAP financial measure in the document, not each time in the document where the measure appears.

We submit that an appropriately named non-GAAP financial measure should be clear enough to the reader after the first instance of disclosure with the required disclosures from paragraph 6(e) (including by way of cross-reference as permitted with respect to subparagraphs 6(e)(iv), (v) and (vi)). This part of the Proposed Companion Policy should be revised to change “each time a non-GAAP financial measure is presented” to “in proximity to the first instance of the non-GAAP financial measure presented”.

* * * * *



If you have any questions concerning these comments, please contact Brendan Reay at 416.863.5273 or brendan.reay@blakes.com, or Matthew Merkley at 416.863.3328 or matthew.merkley@blakes.com.

Sincerely,

(signed) "Brendan Reay"

(signed) "Matthew Merkley"

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June 29, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

To the attention of:

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CSA Second Notice and Request for Comment – Draft National Instrument 52-112 respecting Non-GAAP and Other Financial Measures Disclosure

BCE Inc. welcomes the opportunity to comment on the above-captioned initiative. We are part of the working group referred to in the comment letter of Norton Rose Fulbright Canada LLP dated June 26, 2020 (“NRFC Letter”). We have reviewed the proposed National Instrument 52-112 respecting Non-GAAP and Other Financial Measures Disclosure and the related proposed Companion Policy and fully support the submissions outlined in the NRFC Letter. BCE Inc. is Canada’s largest communications company, providing residential, business and wholesale customers with a wide range of solutions for all their communications needs. During 2019, BCE Inc. had annual revenues of \$23.964 billion and provided service to approximately 19 million retail subscribers at December 31, 2019. BCE Inc.’s shares are publicly traded on the Toronto Stock Exchange and on the New York Stock Exchange (TSX, NYSE:BCE).

If you have any questions regarding this letter, please do not hesitate to contact me at corporate.secretariat@bell.ca.

Yours truly,

(signed) Thierry Chaumont
Senior Vice-President, Controller and Tax, BCE Inc. and Bell Canada

c.c.: Glen LeBlanc, EVP and Chief Financial Officer, BCE Inc. and Bell Canada

Michel Lalande, Chief Legal Officer and Corporate Secretary, BCE Inc. and Bell Canada

June 29, 2020

Delivered via email

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Re: CSA Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

The Canadian Bankers Association (CBA)¹ is pleased to provide feedback to the Canadian Securities Administrators (the CSA) on their revised Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the Proposed Instrument) and the accompanying revised Proposed Companion Policy 52-112 published on February 13, 2020 (the Proposed Companion Policy, and together with the Proposed Instrument, the Proposal).

As stated in our previous correspondence, we are generally supportive of the Proposal and agree that adopting comprehensive disclosure requirements rather than limits and industry-specific requirements will improve the overall quality of disclosure and be of benefit to investors as well as general users of our reports which will be scoped in by the Proposal. We appreciate the updates and clarifications in certain areas and

¹ The CBA is the voice of more than 60 domestic and foreign banks that help drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals. www.cba.ca.

find the examples useful for financial reporting preparers to ensure that we are in alignment with the expectations of the CSA.

Improving the quality of information provided to investors can enable them to better analyze financial measures. However, this can only be achieved if communications with investors are clear and concise, avoiding complex disclosures which provide little to no benefit to readers. With this in mind, we would like to highlight the following observations with respect to the Proposal for your consideration:

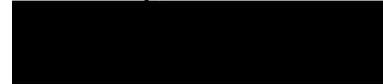
- **Cross-referencing:** We acknowledge the expansion of the cross-referencing provisions in the Proposed Instrument to permit cross-referencing to the issuer's MD&A. However, section 5(3) of the Proposed Instrument expressly prohibits the cross-referencing to the issuer's MD&A of the non-GAAP information required by the provisions of the Proposed Instrument in a news release issued or filed by the issuer. This implies the requirement to provide duplicate non-GAAP reconciliation disclosures for the same non-GAAP financial measures in multiple documents that are filed/posted concurrently. For example, reconciliations would be required for the identical non-GAAP financial measures for the same reporting period in an issuer's quarterly news release and report to shareholders which is inconsistent with the CSA's general assent to cross-referencing. We believe cross-referencing should be explicitly allowed between all documents which are filed/posted concurrently, including news releases and investor presentations, in order to avoid duplicative disclosures and to ensure that the disclosure process is practical for shorter documents. We also note that this would be consistent with other core disclosure documents such as an issuer's annual information form.
- **Scope:** Section 2 of the Proposed Instrument is overly broad. We believe that certain qualifiers presented in the first draft of the Companion Policy outlining reasonable exclusions to the Proposal, including whether or not the document is required to be filed under securities legislation, and/or whether its content would reasonably be expected to affect the market price or value of a security of the issuer should be maintained in the revised Proposal. To clarify, if a measure is intended to be made available to the public and is not disclosed in accordance with securities legislation and is also not reasonably expected to affect the market price or value of an issuer's security, then the measure should be explicitly exempted. We request that the CSA consider limiting the Proposal to documents that are intended to be used by the investment and/or analyst community as it would be inappropriate to include unrelated documents, such as marketing documents, for which the user of the information would not expect the data to be in accordance with IFRS standards.
- **Required by Law and SRO:** We acknowledge the revisions to the Proposal in section 4(e), which state that the requirements of the Proposed Instrument are not applicable to a financial measure where disclosure "is required under law or by an SRO to which the issuer is a member". As issuers in a highly regulated industry, a number of our disclosures are required or recommended by regulators other than securities regulators and other than through laws or legislation in or outside of Canada (i.e. Tier 1 capital and liquidity ratios). We would appreciate confirmation from the CSA that "a requirement under law" as stated in section 4(e) of the Proposed Instrument encompasses both required and recommended disclosure from any system of regulation or governmental authority (i.e. BoC, OSFI, CDIC, etc.). We recommend expanding the exception to include both required and recommended disclosures as well as all regulatory bodies, whether by law or otherwise. We note that this would be consistent with other securities regulators' approach to non-GAAP financial measures, including the US Securities and Exchange Commission (SEC).
- **Definitions:** The definitions of "capital management measure" and "total of segments measure" in section 1 of the Proposed Instrument implies that a financial measure under either of these definitions that is not in either the notes to the financial statements or presented in the primary

financial statements would not be required to comply with the Proposal. We would appreciate confirmation that this is the intention of the CSA or further clarification on what a “capital management measure” is intended to include for different industries. For example, financial institutions have significant regulatory capital management disclosures but few, if any, adjusted debt figures or traditional capital management measures.

- **Non-GAAP ratios:** Section 8(b) of the Proposed Instrument states “the non-GAAP ratio is presented with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the entity to which the non-GAAP ratio relates.” As a number of non-GAAP ratios would not have a similar financial measure presented in the primary financial statements of the entity (i.e. adjusted operating leverage), we would appreciate clarification that the Proposed Instrument is meant to require that a non-GAAP ratio be presented with no more prominence than that of a similar supplementary financial measure ratio presented using components that are not non-GAAP financial measures.

We would be pleased to elaborate on our comments in more detail.

Sincerely,

A black rectangular redaction box covering the signature of Darren Hannah.

Darren Hannah



June 15, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
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M^e Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
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consultation-en-cours@lautorite.qc.ca

Dear Sir/Madam,

Re: CSA Second Notice and Request for Comment Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure; Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure; Related Proposed Consequential Amendments and Changes

We have reviewed the above referenced *Second Notice and Request for Comment on Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* (the “Instrument”) and *Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure* (the “Companion Policy”) and Other Financial Measures Disclosure and related proposed consequential amendments and changes (collectively, the “Second Proposal”). We thank the Canadian Securities Administrators (CSA) for the opportunity to provide you with our comments.

CCGG’s members are Canadian institutional investors that together manage approximately \$4.5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada’s regulatory framework to strengthen the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

CCGG supports the CSA’s recognition that non-GAAP and other financial measures are helpful to investors when assessing a company’s financial performance. CCGG further supports the CSA’s goals of providing clarity and consistency with respect to disclosure obligations and improving the quality of information available to investors. CCGG’s focus is on ensuring that institutional investors have the information they need to make good investment decisions and to monitor those investments.

GENERAL COMMENTS

In December 2018, CCGG submitted a [response](#) to the CSA’s first proposal with respect to a proposed National Instrument and Companion Policy for Non-GAAP and other financial measures (the “2018 Submission”). CCGG was supportive of the comprehensive approach initially taken by CSA in 2018. We note that the scope and application of the disclosure obligations in the Second Proposal have been narrowed as

the result of the feedback received by the CSA during the 2018 consultation period. Notwithstanding that the Second Proposal is not as comprehensive as the initial proposal in 2018, CCGG continues to support the issuance of clear guidance in the form of a National Instrument and Companion Policy. Our view is that, even with its narrower application, establishing disclosure obligations in the form of a National Instrument is preferable to guidance alone, in facilitating more useful and consistent disclosures of non-GAAP and other financial measures.

In addition, CCGG has recently published its own research and recommendations, on the [Use of Non-GAAP Measures in Executive Compensation](#) (the “CCGG Non-GAAP Paper”). We were pleased to note the Companion Policy’s clarification that the Instrument would apply to disclosures required of issuers in their disclosures under the Statement of Executive Compensation (Form 51-102F6), and note the additional guidance provided in the Companion Policy on the application of the Instrument to such disclosures. Overall, CCGG is of the view that the approach taken by the CSA in the Second Proposal is consistent with the kinds of disclosures recommended by CCGG in the context of executive compensation as set out in the CCGG Non-GAAP Paper (for example, both recommend clear definitions of measures used; detailed reconciliation of the measure used to their nearest GAAP equivalent; and, confirmation of year-over-year consistency in calculations, or, alternatively, disclosures of changes made to calculation methodology along with a rationale for such changes).

A notable difference, however, between the Second Proposal and the recommendations made by CCGG in both its 2018 Submission and in the CCGG Non-GAAP Paper is that the Instrument does not require disclosures delineating the board’s role in vetting and approving non-GAAP and other financial measures.

SPECIFIC COMMENTS

In light of the foregoing, CCGG encourages the CSA to incorporate into the Instrument a requirement that issuers disclose their board oversight processes for non-GAAP and other financial measures, including:

- an acknowledgement of the audit committee’s and/or the board’s responsibility for vetting non-GAAP financial measures and scrutinizing adjustments proposed by management, along with a discussion of the process involved in doing so; and

- a statement with respect to whether adjustments above a certain threshold must be approved by the board.

In addition, while CCGG is supportive of the CSA's proposal to streamline disclosures through incorporating by reference to the Management Discussion and Analysis (MD&A) where appropriate, we note that the Instrument uses permissive language such that an issuer "may incorporate by reference the information required..."¹. Because incorporating by reference is not a requirement, where an issuer does not rely on it, and uses a non-GAAP financial measure in one document that is also used in other documents, CCGG continues to advocate, as it did in its 2018 Submission, that the issuer should be required to disclose any differences in definitions between the two documents (e.g. whether "adjusted EBITDA used in the MD&A is defined differently than adjusted EBITDA used for compensation purposes).

CONCLUSION

In summary, CCGG is supportive of the approach taken in the Second Proposal and is pleased to note that the CSA's approach is generally consistent with the recommendations in the CCGG Non-GAAP Paper. CCGG encourages the CSA, however, to consider incorporating into the Second Proposal specific disclosures with respect to the board's oversight role in vetting, scrutinizing and approving the use of non-GAAP and other financial measures and any adjustments thereto. In addition, CCGG encourages the CSA to clarify the language permitting issuers to use incorporation by reference to ensure that where such referencing is not used, any differences in definitions between the same measures used in different documents are disclosed.

¹ CSA Second Notice and Request for Comment - Proposed National Instrument 52-112 Non-GAAP and Other Financial Disclosure Measures Disclosure - Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure - Related Proposed Consequential Amendments and Changes, February 13, 2020 (2020), 43 OSCB 1311



We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Catherine McCall, at cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville at sneville@ccgg.ca.

Yours truly,



Marcia Moffat
Chair of the Board of Directors
Canadian Coalition for Good Governance

CCGG MEMBERS 2020

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- Aviva Investors Canada Inc.
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépôt et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OPSEU Pension Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- QV Investors Inc.

- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
- TD Asset Management Inc.
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund



Cenovus Energy Inc.

225 6 Ave SW
PO Box 766

Calgary, AB
T2P 0M5

403.766.2000
cenovus.com

June 24, 2020

The Secretary
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Toronto, ON M5H 3S8

M^e Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec)
G1V 5C1

Re: Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers (Québec)
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

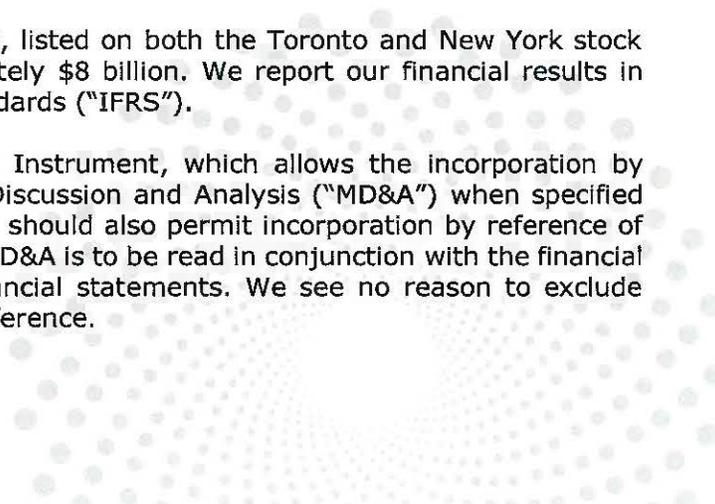
Dear Sirs/Mesdames:

Cenovus Energy Inc. ("Cenovus") is appreciative of the substantive changes made from the original materials and is pleased to provide comments on the *Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* (the "Proposed Instrument") released for a second comment period on February 13, 2020.

Cenovus is a leading Canadian integrated oil company, listed on both the Toronto and New York stock exchanges, with a market capitalization of approximately \$8 billion. We report our financial results in accordance with International Financial Reporting Standards ("IFRS").

While we support adding Section 5 to the Proposed Instrument, which allows the incorporation by reference of required disclosure to the Management Discussion and Analysis ("MD&A") when specified financial measures are disclosed, we believe Section 5 should also permit incorporation by reference of information to a company's financial statements. The MD&A is to be read in conjunction with the financial statements and is a supporting document to the financial statements. We see no reason to exclude financial statements as a source of incorporation by reference.

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)



In addition, we strongly disagree with the exclusion of news releases from this section. We continually strive for improved disclosures and a key component is providing clear and concise documents which includes reducing duplications where possible. News releases generally accompany the release of core filing documents and it seems illogical to repeat these detailed disclosures when they are currently reflected in the MD&A. News releases are also intended to provide an overview of key financial results and highlight information for a given period. The requirement to include significant disclosures surrounding non-GAAP measures and other specified financial measures directly in the news release removes the ability to present a high level, simplified document that summarizes the Company's position and engages the interest of investors who can easily access our core filing documents for additional information. Adding significant disclosure without permitting incorporation by reference defeats the purpose of the news release, which is to provide a concise representation of our financial results. We recommend leveraging current technology by requiring a link within the news release to the Company's website that provides the necessary disclosure in addition to the incorporation by reference to the financial statements or the MD&A. This approach ensures specified financial measures are identified and provides an efficient method to navigate to additional information if the investor chooses to do so.

In relation to the total of segments measure, IFRS requires an entity to reconcile segment revenues, segment profit and loss, assets and liabilities to the entity's total of these items, when reporting operating segment information. The reconciliation of the components of operating margin is included in note 1 of Cenovus's financial statements. If we report operating margin as a total of segments measure by combining two or more segments, this financial statement note would need to be replicated in the MD&A and news release to meet the disclosure requirements of the Proposed Instrument as it suggests that a quantitative reconciliation must be included in the MD&A and news release. While Cenovus agrees with the importance of clearly identifying and defining the specified financial measures, we believe the quantitative disclosure requirements could be satisfied using incorporation by reference to the financial statements.

Cenovus uses capital management measures presented as ratios to measure our overall financial strength. Under the definition in the Proposed Instrument, we are unsure whether each individual component of the ratio is automatically deemed to be a capital management measure or whether it is appropriate to reconsider the definitions for specified financial measures for each component when used for another purpose. As an example, we calculate net debt to adjusted EBITDA which is disclosed in our financial statements and together meets the definition of a capital management measure. However, if we present adjusted EBITDA in the MD&A as a line item of overall company results, we are questioning whether this component on its own is still identified as a capital management measure. Alternatively, is it appropriate to consider whether it meets the definition of any specified financial measure. In this case, if it is not considered a capital management measure, we conclude it does not meet any definition of specified financial measures, including non-GAAP measures, as it is presented in the financial statements. We recommend adding clarification to this definition.

We have also identified an inconsistency with respect to Section 10 of the companion policy. It states that if a capital management measure is calculated using one or more non-GAAP financial measures, the issuer must comply with Section 6 of the Proposed Instrument. However, if the components used to calculate the capital management measure are disclosed in the financial statements, it would not be possible to have a non-GAAP financial measure under the definitions as they are currently written. We have used our adjusted EBITDA to provide a specific example for clarity, but the theory would apply to all financial measures excluded from the definitions of specified financial measures strictly due to their inclusion in the financial statements. Section 10 of the companion policy should be revised for clarity surrounding identification and disclosure of the individual components of a capital management measure.

We feel clarity is needed to reconcile a specified financial measure to the most comparable financial measure presented in the primary financial statements. As an example, if we report operating margin for our upstream assets by combining two of our reporting segments, we are required to provide the quantitative reconciliation to the most comparable financial measure in our primary financial statements. In this case, we would reconcile to gross sales. However, gross sales on our primary financial statements is the total of all combined reportable segments. Under the Proposed Instrument, we are unsure whether it is sufficient to identify the line item for gross sales to be our most comparable financial measure or if the expectation is to reconcile the full value of gross sales from the primary financial statements to the specified financial measure we are reconciling. We believe adding clear guidance and examples on the reconciliation to the most comparable financial measure would be a helpful addition to the Proposed Instrument.

We also noted the term 'financial statements' is not defined. The Proposed Instrument refers to financial statements, notes to the financial statements and primary financial statements throughout the document. We have presumed the term 'financial statements' includes both primary financial statements and notes to the financial statements, however the base term is not defined. For example, the definition of non-GAAP measures uses the term 'financial statements' as well as 'primary financial statements'. Presuming the distinction was intentional, we recommend defining the term to clarify what is and is not included under the definition of 'financial statements'.

The Companion Policy has been very helpful with providing additional explanations of the Proposed Instrument. Section 2 of the Companion Policy explains that reporting issuers should not disclose a specified financial measure using social media if it is unable to include all the relevant disclosure. However, our understanding is that websites and social media fall within the scope of Section 5 of the Proposed Instrument allowing for incorporation by reference. We recommend including the additional wording "...either directly or by incorporating by reference" to Section 2 of the companion policy to clarify the requirements on social media disclosure.

Thank you for the opportunity to provide further commentary on this important area of Canadian securities regulations.

Yours truly,

Cenovus Energy Inc.


Jonathan M. McKenzie
Executive Vice-President & Chief Financial Officer



June 29, 2020

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West, 19th Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar, 2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measure Disclosure* – Proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* – Related Proposed Consequential Amendments and Changes (collectively, the “Proposed Instrument”)

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following comments on the Proposed Instrument.

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada



The CAC continues to agree with the analysis that non-GAAP financial measures lack standardized meaning, context when disclosed outside of financial statements, and transparency as to their calculation. The Proposed Instrument will provide for disclosure requirements when an issuer uses a non-GAAP financial measure, non-GAAP ratio and certain other financial measures. We support changes that strengthen the disclosure requirements and the creation of a set of enforceable standards that will make disclosures more meaningful to investors without inhibiting an issuer's ability to communicate the financial condition and prospects of their business or their ability to communicate industry-specific measures.

We understand that as a result of feedback, the disclosure requirements of the Proposed Instrument have been simplified. While we agree that the original proposal's scope and ambit presented some practical implementation and co-ordination concerns (particularly for specific types of issuers and cross-listed issuers), we are concerned that the Proposed Instrument now lacks substantive ambition and does not break new ground to improve the overall quality, clarity, and consistency of issuer disclosures, nor address the risk that investors will be misled by potentially confusing combinations of non-GAAP financial measures, alternative performance measures, and/or key performance indicators.

We support the CSA in following the developments on the IASB's Primary Financial Statements Project closely and believe that the CSA should continue to do so as the project evolves. We would suggest that rather than forming a policy project endpoint, the adoption of the Proposed Instrument should be a milestone in an ongoing CSA policy project to improve issuer disclosures across the range of financial and non-financial metrics that form a substantive portion of issuer disclosure, with the goal of pursuing quality, clarity, consistency, and ultimately usability, by investors. For example, a second-stage review of the requirements could include reviewing sector specific financial reporting requirements, including for oil and gas issuers and mining companies.

We also understand that the scope of application of the Proposed Instrument has been substantially narrowed. We agree with the decision to exclude certain investment funds, designated foreign issuers and SEC foreign issuers from the requirements of the Proposed Instrument. While we support the Proposed Instrument as a whole, we do note that many of the changes that have occurred since it was originally published involve deletions, and not additional investor protection safeguards.

Non-GAAP financial measures must be presented with no more prominence than the most comparable financial measure presented in the issuer's primary financial statements to which the non-GAAP financial measure relates. We believe this disclosure requirement is a key feature of the Proposed Instrument.

who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 175,000 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 158 local member societies. For more information, visit www.cfainstitute.org.

00274753-4



The Proposed Instrument will require that an issuer reconcile a non-GAAP financial measure with the most comparable financial measure found in the primary financial statements (as defined). As a matter of practice, we do not think a standing reconciliation to the closest GAAP measure on an issuer's website or most recent MD&A found on SEDAR will be sufficiently accessible in the context for an investor to utilize.

It is proposed that a "supplementary financial measure" be defined as a financial measure presented by an issuer that (a) is, or is intended to be, disclosed on a periodic basis to depict the historical or expected future financial performance, financial position or cash flow of an entity, (b) is not presented in the financial statements of the entity, (c) is not a non-GAAP financial measure, and (d) is not a non-GAAP ratio. The Companion Policy provides that where "same-store sales" are reported, it would be a supplementary financial measure to the extent it is used by an issuer to report performance from period to period. We query whether same-store sales would in fact be a supplementary financial measure. In our view it is more likely properly regarded as a non-GAAP ratio, as the denominator of the underlying measure (stores, sometimes with a highly variable definition of its own at a firm-specific level and over time), is not a GAAP measure and often the 'sales' figure utilized in the numerator of the underlying measure is commonly not the GAAP revenue or sales measure either (the figures being often adjusted for items such as specific business lines or stores, or FX variance where often presented most prominently in non-GAAP constant-currency terms (using an accounting basis not consistent with IAS 21 under IFRS) such as "constant dollar same-store sales" or "same-store sales on a constant currency basis"). We would suggest a replacement example for the Companion Policy for additional clarity and one where the common usage by issuers is not on a non-GAAP/adjusted basis such as in this case.

We agree with the guidance in the proposed Companion Policy that the Proposed Instrument would apply to Form 51-102F6 *Statement of Executive Compensation*. This information is used by investors to evaluate executive compensation and then decide how to vote at annual meetings, as well as educate themselves about an issuer's corporate governance policies. As noted, there is no policy reason to exclude performance goals or other non-GAAP financial measures from the requirements of the Proposed Instrument.

With respect to oral statements, care should be taken not to discourage the use of written disclosures in favour of oral disclosure. Written communications are typically more broadly distributed and accessible to investors than oral disclosures made in conference calls or other settings. Investors do not always make investment decisions in "real time", and investment takes place in different time zones and through different processes. It is thus important that investors have access to financial information in written form subject to the requirements of the Proposed Instrument.

In addition, we are concerned about the lack of guidance provided with respect to the use of oral statements (or transcripts thereof) in the proposed Companion Policy. While there is a note in a response to a comment that reminds issuers of their obligation not to disclose misleading information, if non-GAAP financial measures or other



supplementary measures covered by the Proposed Instrument are mentioned in an oral statement, their relationship to existing GAAP numbers must be understood.

The proposed Companion Policy indicates that an issuer should not disclose a specified financial measure using social media if it cannot include all the requisite disclosure. We are supportive of the requirement to consider website and social media platforms as documents subject to the requirements of the Proposed Instrument. There could be a potential gap with respect to implied endorsement by an issuer in oral statements or transcripts thereof containing non-GAAP financial measures or other supplementary measures that are not subject to the Proposed Instrument, but which are then repeated or redistributed without the necessary reconciliations and/or disclosures on an issuer's website or a social media platform. The Companion Policy and/or Proposed Instrument should make it clear that these oral statements or transcripts thereof, once repeated or redistributed on their website or social media with tacit endorsement, are subject to the new rules.

While the ability to incorporate certain information by reference will assist in eliminating duplication and enhance readability, it is important that the reference provide a hyperlink to the specific information being incorporated rather than require the reader to search out the information themselves in a cumbersome fashion.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

**The Canadian Advocacy Council of
CFA Societies Canada**

June 29, 2020

The Secretary
Ontario Securities Commission
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Toronto ON M5H 3S8
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cc:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Dear Secretary and Me Lebel,

Re: CSA Second Notice and Request for Comment
Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to provide comments on the above referenced CSA Second Notice and Request for Comment, issued February 13, 2020. CIRI membership represents over 230 non-investment fund reporting issuers with a combined market capitalization of \$1.9 trillion. More information about CIRI is provided in Appendix 1.

General Comments

Financial statements are considerably more complex and detailed today than they have ever been in the past. Providing investors with appropriate and fulsome information significantly contributes to the market's ability to assign a fair value to the shares of reporting issuers. In that same vein, CIRI believes it is just as important to develop, utilize and report non-GAAP financial measures as a reasonable and appropriate means to communicate additional key information and metrics that will more completely inform investors as to the performance of the reporting issuer.

Non-GAAP financial measures provide investors with additional insights and valuable information which allows them to better understand and evaluate an issuer's performance. Such measures can take into account non-recurring items to allow for core business comparability from period-to-period. Non-GAAP financial disclosure is recognized as an accepted means to address and/or clarify issues specific to a given industry or sector. Additionally, non-GAAP financial measures can provide investors with the means to review and utilize metrics similar to those used by competitors to provide increased comparability between reporting entities.

CIRI agrees with and strongly endorses the concept of improved non-GAAP financial disclosure and is therefore generally supportive of the Second Notice regarding proposed National Instrument 51-112 Non-GAAP and Other Financial Measures Disclosure. CIRI is particularly supportive of the substantive changes incorporated by the CSA into this Second Notice based on feedback from various market participants. It is also clear that the CSA considered the regulatory burden on capital market participants, including reporting issuers that constitute the majority of CIRI's membership, in this version.

Concern: Incorporation by Reference

CIRI does have one concern relevant to an issuer's central role of providing effective communication between reporting issuers and capital market participants including investors and others. Annex D, Section 5 of the Notice addresses the *Incorporating Information by Reference*, a well-established means to ensure that the appropriate information is disclosed in an effective and efficient manner. However, Subsection 5.3 (b) specifically excludes incorporating information by reference in a news release issued by an issuer. This seems anomalous given that the Notice and the proposed instrument allows cross-referencing for other disclosure documents, such as the Annual Information Form. This is detailed and exemplified elsewhere in the Notice (i.e. Annex E, Section 5 - *Incorporation by Reference*). CIRI believes that it would be reasonable to allow the same cross-referencing in a news release, as long as the release references the exact location (i.e. page number) of the reconciliation of the non-GAAP financial measure to its closest comparable GAAP equivalent within the MD&A and provides a hyperlink. Such cross-referencing in a news release is also consistent with the overall objective of reducing regulatory burden while maintaining effective communication with investors.

In general, CIRI is supportive of the efforts of the CSA to address the concerns and issues raised by respondents to the initial Notice and believes that the 2020 proposed instrument represents a significant improvement over the 2018 version. In addition, CIRI would strongly encourage the CSA to allow for a long transition time to fully implement the proposal as a National Instrument, given the widespread use of non-GAAP financial measures by issuers, and that the CSA consider having the implementation of the instrument coincide with the beginning of an issuer's annual financial period, if possible.

CIRI is pleased to provide the CSA with its comments regarding the proposed National Instrument 52-112 regarding non-GAAP and Other Financial Measures Disclosure and its efforts contributing to the ongoing initiative to reduce the regulatory burden for capital market participants, particularly reporting issuers.

Should you wish to discuss this submission further, please let me know.

Sincerely yours,



Yvette Lokker
President and Chief Executive Officer
Canadian Investor Relations Institute

Appendix 1

The Canadian Investor Relations Institute

The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

Investor Relations Defined

Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications and marketing to achieve an effective two-way flow of information between a public company and the investment community, in order to enable fair and efficient capital markets.

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include: Human Resource and Corporate Governance; Audit; Membership; and Issues.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is close to 500 professionals serving as corporate investor relations officers in over 230 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of investors and shareholders in capital markets beyond North America. The President and CEO of CIRI has been a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.



Stephen Frank
President and CEO

June 29, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)

Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Delivered via email

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comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames,

Re: CSA Second Notice and Request for Comment Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure (the “Proposed Instrument”); Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure (the “Proposed Companion Policy”); Related Proposed Consequential Amendments and Changes, together the “Consultation”

The Canadian Life and Health Insurance Association (CLHIA) is pleased to provide comments on the above Consultation. The CLHIA supports the overall goal of establishing high quality disclosure requirements for non-GAAP financial measures that provide users with high quality financial information promoting clearer understanding of financial performance of our members and public companies. We believe our comments below, if addressed, will enhance the clarity of the final notice and will allow our members to comply with the requirements efficiently. In addition, it is important that the CSA align its requirements with the International Accounting Standards Board’s guidance dealing with non-GAAP reporting – helping reduce the burden and confusion for reporting entities.

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P.O. Box 99, TD South Tower
Toronto, Ontario M5K 1G8
416-777-2221 www.clhia.ca

Association canadienne des compagnies d’assurances de personnes
79, rue Wellington Ouest, bureau 2300
CP 99, TD South Tower
Toronto (Ontario) M5K 1G8
416-777-2221 www.accap.ca

The CLHIA is the national trade association for life and health insurers in Canada. Our members account for 99% of Canada's life and health insurance business. The industry provides a wide range of financial security products such as life insurance, annuities and supplementary health insurance. Canadian life insurers operate in more than 20 countries and a number of our members are publically traded companies or subsidiaries of publicly traded companies with three of them being ranked among the top 15 largest life insurers in the world by market capitalization.

The Proposed Instrument should provide a specific exemption for a financial measure that is prepared in accordance with mandatory guidelines published by a governmental authority.

The Proposed Instrument and Proposed Companion Policy do not clearly exclude from the scope of the Instrument a financial measure that is prepared in accordance with mandatory guidelines published by a governmental authority. Currently, the Proposed Instrument provides an exemption for disclosure of a financial measure that is required under law or by an Self-Regulatory Organization ("SRO") of which the issuer is a member. This exemption does not capture the financial measures that Canadian life insurance companies are required to prepare under mandatory guidelines published by the Office of the Superintendent of Financial Institutions ("OSFI") or Autorité des marchés financiers ("AMF").

Canadian life insurance companies prepare and disclose financial measures in compliance with regulatory guidelines published by OSFI or AMF. We submit that there is no policy rationale to treat this disclosure different than financial measures that are required to be disclosed under law or by an SRO because the guidelines published by OSFI or AMF specifically prescribe the composition of the financial measure and Canadian life insurance companies cannot opt out of preparing these financial measures. For example, information relating to a life insurance company's capital is important to both investors and the analyst community. Federally regulated Canadian life insurance companies are required to maintain adequate levels of capital calculated in accordance with OSFI's guideline for the Life Insurance Capital Adequacy Test ("LICAT") while life insurance companies regulated by the AMF are required to maintain an adequate level of capital adequacy requirements for life insurers ("CARLI"). They disclose LICAT or CARLI information (such as relevant ratio and capital) to investors and in documents filed with securities regulators.

Further, the calculations for LICAT/CARLI as set out in the relevant guidelines are complex and it would not be feasible to do a GAAP reconciliation that is meaningful to investors.

Canadian life insurance companies also prepare and disclose to investors Source of Earnings, identifying the primary sources of gains or losses in each reporting period following regulatory guidelines and in accordance with educational notes published by the Canadian Institute of Actuaries.

Therefore, we respectfully request that the Proposed Instrument include a specific and clear exemption for disclosure of a financial measure that is prepared in accordance with mandatory guidelines published by a governmental authority.

The Proposed Instrument should allow news releases to cross-reference to the MD&A

We agree with the CSA's approach of introducing a form of cross-referencing back to an issuer's MD&A through incorporating information by reference. However, the revised version of the Proposed Instrument prohibits issuers from incorporating information by reference into a news release issued or filed by the issuers and this creates complexity and conflicts with the goal of easing regulatory burden. We believe that incorporating information by reference should be permitted in all news releases, particularly where the news release is an earnings news release that is issued contemporaneously with or promptly following the filing of the issuer's MD&A. The prohibition on incorporating by reference into a news release will impose unnecessary compliance burdens and costs on issuers, will result in more repetitive and voluminous news releases and will not impact the substance of the information that is readily available to investors. Permitting issuers to cross-reference their news releases to the MD&A gives investors a more readable and user-friendly access to specified financial measures disclosure and allows issuers to present simplified news releases.

The Proposed Instrument should permit reconciliation of specified financial measures that are segment measures to the segment note to the financial statements

Under IFRS, Canadian life insurance companies are required to provide reporting of the operating segments of the company in a note to the financial statements. The segment note discloses financial measures for the company's discrete reportable segments and includes a quantitative reconciliation of the total of the segment measures to the most comparable financial measure presented in the company's primary financial statements.

Canadian life insurance companies also disclose financial measures of a reportable segment that are not presented in the financial statements in documents outside of the financial statements that would meet the definition of a non-GAAP financial measure under the Proposed Instrument. Section 6 of the Proposed Instrument provides that when an issuer discloses a non-GAAP financial measure, the issuer must present a quantitative reconciliation to the most comparable financial measure presented in the primary financial statements of the entity. We respectfully submit that the Proposed Instrument should permit an issuer to reconcile a segment measure that is non-GAAP financial measure to the most directly comparable financial measure in the segment note to the financial statements.

As a general comment, the differential treatment of the primary financial statements and the notes is confusing and inconsistent with accounting standards which view the primary financial statements and the notes as one set of complete financial statements. Measures that are disclosed in the notes to the financial statements are presented in accordance with the requirements under GAAP. Accordingly, issuers should be permitted to present a reconciliation of a non-GAAP financial measure to the notes, without having to further reconcile to the primary financial statements.

Specifically, for companies that disclose segment measures that are non-GAAP measures, the issuer should be permitted to perform a reconciliation to the segment note without requiring a further reconciliation to the primary financial statements due to the reconciliation already provided for in the segment note. Requiring a reconciliation of segment non-GAAP measures to line items in the primary financial statements would create drawn-out and bulky disclosure without providing meaningful additional disclosure to investors. We respectfully request that the Proposed Instrument be revised to permit reconciliation of segment measures that are non-GAAP financial measures to the segment note in the financial statements.

The CLHIA appreciates this opportunity to provide its comments on the proposed Rules. If you require any additional information, please contact Noeline Simon, Vice President – Taxation, Pension and Reporting by email at nsimon@clhia.ca or by telephone at 416-359-2047.

Yours sincerely,



Stephen Frank



June 26, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

**Re: CSA Second Notice and Request for Comment - Proposed National Instrument 52-112
“Non-GAAP and Other Financial Measures Disclosure”, Proposed Companion Policy 52-
112 “Non-GAAP and Other Financial Measures Disclosure**

Dear Commissions:

Canadian Natural Resources Limited (“Canadian Natural”) is pleased to respond to the Canadian Securities Administrators (“CSA”) second notice and request for comment on Proposed National Instrument 52-112 “Non-GAAP and Other Financial Measures Disclosure” (“the Proposed Instrument”), and Proposed Companion Policy 52-112 “Non-GAAP and Other Financial Measures Disclosure” (“the Proposed Companion Policy”) (collectively, the “Proposed Materials”).

Canadian Natural is a senior independent oil and gas exploration and production company headquartered in Calgary, Alberta, Canada, with operations in Western Canada, the North Sea, and Offshore Africa. Our shares are publicly traded on the Toronto Stock Exchange and the New York Stock Exchange.

As an overall comment, we applaud the CSA on its efforts to address many of the concerns identified by respondents in the request for comments related to the original draft of the Proposed Materials, specifically related to enhanced readability, addition of provisions to incorporate information by reference, and simplified disclosure for non-GAAP financial measures that are forward-looking information. However, consistent with our general comments previously provided on the original versions of the Proposed Instrument and the Proposed Companion Policy (collectively the “Original Materials”), we continue to express concern that the Proposed Materials regarding non-GAAP and other financial measures disclosure requirements are too restrictive. This creates a risk that management may opt to not disclose these measures at all or revert to boilerplate disclosures, depriving the reader of the ability to understand different measures that are of importance to management.

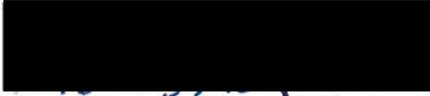
Canadian Natural Resources Limited

Suite 2100, 855 - 2nd Street SW, Calgary, Alberta, T2P 4J8 T 403.517.6700 F 403.514.7677 www.cnrl.com

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

Comments on specific areas are included as an Appendix to this letter. If you have any questions or wish to discuss our comments in more detail, please do not hesitate to contact the undersigned.

Sincerely,



Mark Stainthorpe
Chief Financial Officer &
Senior Vice-President, Finance



Ronald D. Kim
Vice-President, Finance &
Principal Accounting Officer

Appendix

Incorporating information by reference

We support the changes made to the Original Materials to reduce the scope of application of the Proposed Instrument and eliminate duplication in many areas, including the provisions to allow incorporation of information by reference back to the issuer's MD&A filed on SEDAR.

However, we believe that there are still certain areas where the Proposed Materials will contribute to additional unnecessary and/or redundant disclosures within news releases and MD&A that are filed together in a reporting cycle alongside the related financial statements, making these documents difficult to understand for users and more costly to prepare.

We propose that the provisions to allow incorporation of information by reference can be further improved through revisions to apply to cross-referencing of information found in news releases related to the issuer's MD&A issued in respect of the same reporting cycle, filed in accordance with securities legislation.

For clarity, news releases and MD&A related to the issuer's quarterly and/or annual financial statements are subject to filing requirements under NI 51-102 *Continuous Disclosure Obligations*. Absent such provisions to include cross referencing, the same disclosures, including reconciliations, could, under the Proposed Materials, be duplicated in related documents for the same reporting cycle filed in accordance with securities legislation (i.e. Be replicated in the MD&A and related news release for the same period). Such redundancy would increase complexity for the reader, and as an unintended consequence could result in material information being obscured by the repetition of identical information.

Disclosure Requirements for Segment Measures

We believe that the requirement for a quantitative reconciliation of the total of segments measure to the most comparable financial measure presented in the primary financial statements of the entity is unnecessary when that measure has already been reconciled to the issuer's primary financial statements within the segmented information note. We propose revisions to remove the requirement.

We suggest that the 'total of segments measures' definition be updated for additional clarity and that appropriate guidance be provided in the Companion Policy to remove any ambiguity about reconciliation of information already reconciled in an issuer's related financial statements for the same reporting cycle filed on SEDAR in accordance with timing specified under securities legislation.

We believe that this clarification would appropriately align the definition of 'total of segments measures' with the definitions of both non-GAAP measures and supplementary financial measures within the Proposed Instrument, where all three measures would apply when these measures "[are] not presented in the financial statements of the entity".

Scope of Application - Oil and Gas Activities

We note that in certain industries, reporting issuers typically disclose a number of measures that are commonly understood by users to be indicative of operational performance. We believe that the intention to specify the requirements around these measures could provide value to readers, for example where those measures aren't already well-defined or commonly understood.

However, in the case of the Oil and Gas sector, the Proposed Instrument may create significant additional complexity for readers. As an example, many oil and gas metrics, including measures such as "Netback" and other similar measures are calculated on a unit of revenue or cost incurred per unit of production sold basis, or alternatively at a lower level of disaggregation than the financial statement caption. For example, "Depletion per barrel, by segment". We note that the requirement to reconcile these measures and ratios at multiple levels of disaggregation, would present a large volume of additional information that is not necessarily informative for users. Further, we find that the requirement to do so not only within the MD&A,

but to also provide similar reconciliations in a related news release filed for the same reporting cycle, will significantly lengthen disclosure, and will likely lead to a reduction in what many users consider helpful disclosures.

In our view, the exceptions listed in the Proposed Instrument should also apply to required and voluntary Oil and Gas Metrics disclosures made under section 5.14 of NI 51-101, for the reasons stated below:

- The Oil and Gas Metrics disclosures are already subject to the disclosure requirements under 5.14 of NI 51-101, as specified by NI 51-101, section 5.1 Application of Part 5 Requirements Applicable To All Disclosure.
- The Oil and Gas Metrics disclosures determined in accordance with Form 51-101F1 Statement of Reserves Data and Other Oil and Gas Information, comply with the COGE Handbook as mandated by NI 51-101. NI 51-101 indicates "terms used in this Instrument but not defined in this Instrument, NI 14-101 or the securities statute in the jurisdiction, and defined or interpreted in the COGE Handbook, have the meaning or interpretation ascribed to those terms in the COGE Handbook".

For example, as Netback is not defined in NI 51-101, NI 14-101, or the securities statute under the provincial jurisdiction, the COGE Handbook guidance in respect of the use of and calculation of netback applies.

Disaggregation

The Proposed Materials no longer contain the proposals on disaggregation previously included in the Original Materials, which provided helpful clarification for issuers, given that from time to time they may choose to disaggregate financial statement line items to provide additional information to users, particularly in their MD&A. It is not clear why this was removed, and whether the changes are intended to expand the scope of application of the Proposed Instrument.

We recommend the proposals on disaggregation be retained, including:

"Measures that are a disaggregation of a line item presented in the primary financial statements, if that measure has been calculated in accordance with the issuer's accounting policies used to prepare the financial statements, would not meet the definition of a non-GAAP financial measure.

The disaggregation of a line item includes disclosure of more granular information regarding that line item. For example, information could be presented through a table illustrating the disaggregation of revenues by certain products or by division, even if the table did not sum to the revenue amount presented in the issuer's primary financial statements, assuming that division or product revenue was calculated in accordance with the issuer's accounting policies under the financial reporting framework used in the preparation of the issuer's financial statements."

Single cross-reference of each non-GAAP measure

We suggest that the Proposed Instrument be updated to clarify that certain common practices for defining and referencing information with an external disclosure document continue to be allowed in application.

Specifically, we believe that current common practice to define a term in its first instance of use, and thereafter to use the defined term, should continue to be permitted. Should any further definition or reconciliation of that term be required, the issuer could then refer the reader to the complete definition and corresponding reconciliation in the first instance it was defined, as applicable.

As a result, we disagree with the guidance in the Proposed Companion Policy "To prevent duplicate disclosure, an issuer may provide all the required disclosures for all non-GAAP financial measures in one section of the document that contains the non-GAAP financial measures, **and cross-reference that section each time a non-GAAP financial measure is presented in that document [emphasis added].**" While we find that it is helpful that the guidance makes specific allowance to provide all of the non-GAAP

financial measures in one section of the document, we find it unnecessary that an issuer would be required to reference that section, in not only the first instance, but also in every subsequent instance that the non-GAAP measure is used.

Illustrative Examples

We recommend illustrative examples of requirements be included in the Proposed Materials. For example, Annex C of the Original Materials could be retained, and updated to reflect changes from the Original Materials. Annex C provided a general overview of the application process for the Proposed Instrument, including a visual flowchart to help determine the scope of application and what category each measure fits into. In addition, it would be helpful for the Proposed Materials to include a tabular summary of definitions and requirements, highlighting commonalities and differences between all the measures.

IASB's proposals - consideration of potential changes

Canadian Natural supports the CSA's intention to monitor progress of the International Accounting Standards Board exposure draft on General Presentation and Disclosures (ED 2019-07) in conjunction with the Proposed Instrument. ED 2019-07 proposes that some management performance measures be included in the notes to the financial statements, thereby creating the potential for duplication between these measures and the non-GAAP and other financial measures defined in the Proposed Instrument. Specifically, we appreciate the CSA's continued focus on reducing regulatory burden for issuers.



CPA

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June 29, 2020

c/o

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Dear Sirs/Mesdames:

RE: CSA Second Notice and Request for Comment, Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*, Proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure*, Related Proposed Consequential Amendments and Changes

Chartered Professional Accountants of Canada (CPA Canada) appreciates the opportunity to respond to the Canadian Securities Administrators (CSA) on Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the Proposed Instrument or the proposals), the accompanying Proposed Companion Policy and related proposed consequential amendments and changes (collectively the Proposed Materials).

In formulating our response on the Proposed Materials, we reviewed current disclosure practices of Canadian companies and performed some field testing of the proposals. In addition, we have listened to several presentations by CSA staff and solicited the input of strategic advisors to CPA Canada and our extensive network of volunteers representing small, medium and large issuers, investors, and auditors.

As noted in our letter¹ responding to the first request for comment, we support the CSA's efforts to formalize disclosure expectations around non-GAAP and other financial measures through the development of a rule. We have worked closely with CSA staff on outreach activities related to the Proposed Materials and we would welcome the opportunity to discuss our comments in greater detail and answer any questions you may have related to them as you progress this important work.

We acknowledge that there have been improvements in some areas from the previous proposals, however, we still have concerns. We do not believe the proposals are well suited to current reporting practices. In our view, applying the proposals would result in a significant amount of unnecessary regulatory burden and disclosure of a significant amount of information that is not helpful to investors.

Overall, the more that we have gotten into the details of the Proposed Materials and looked at practice, it has struck us that there is a need to step back and reassess strategic aspects of the proposals. That would involve a rethink of what the important issues are and how they can be addressed in a way that meets user needs without resulting in excessive disclosure and unnecessary regulatory burden.

If you wish to proceed with what you have proposed, we believe it would be better to work more closely with the approach in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (staff notice). Most investors we consulted during our outreach did not have strong negative views about the disclosure under the staff notice. Lack of standardization continues to be the main issue investors have with the disclosure of financial measures in the current reporting environment but we understand you are not attempting to achieve standardization.

Below is a summary of the key issues we have identified in the Proposed Materials and some of our recommendations which we elaborate on in the sections that follow:

- Readability of the Proposed Materials is still a significant challenge. Failure to improve the readability will increase the cost of complying with the Proposed Instrument and may lead to inconsistent and inappropriate practices.
- The inclusion of additional categories of financial measures (e.g., non-GAAP ratio, supplementary financial measures, capital management measures, totals of segments measures) with different disclosure requirements remains confusing and unhelpful to investors. We believe the distinctions and the different approaches to them are not logical. There should be a reconsideration of the need for so many categories and why there are different requirements for them.
- There are inconsistencies between the Proposed Instrument and the Proposed Companion Policy, and these inconsistencies need to be resolved.

¹ https://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20181204_52-112_bealq.pdf

- To enhance understandability and promote consistent application, there is a need for more guidance and more complex examples. Examples dealing with simple and obvious circumstances are not always helpful. We also suggest that further guidance be issued after the release of final materials as circumstances change similar to what the U.S. Securities and Exchange Commission (SEC) has done.²
- We are concerned with the extent to which it is difficult to compare the Proposed Materials with SEC requirements and believe there may be significant differences between them. The CSA should consider publishing detailed guidance that compares the CSA requirements to the current SEC requirements at a specified date. We do not believe this comparison would need to be updated for changes in requirements.
- It appears that the impact of the International Accounting Standards Board (IASB®) Exposure Draft *General Presentation and Disclosures* (Exposure Draft) is being underestimated. The CSA should monitor the progress of the Exposure Draft and not issue a rule that is likely to require significant change in a short period of time.
- To properly address the issues noted above, we believe it is necessary for the CSA to conduct field testing of the proposals to help determine the changes necessary before finalizing the rule.

Readability of the Proposed Instrument

There have been some helpful but isolated improvements to the drafting of the Proposed Instrument. This is evident in the fact that we heard some complementary feedback on the changes from the previous proposals. However, we heard from a number of experts that the changes did not rectify the fundamental issue of the poor readability of the Proposed Materials. We agree with this perspective.

The difficulty around readability is due to a number of reasons such as the frequent need to jump from one part to another to understand how to apply the requirements, the complexity of much of the wording, the use of imprecise or unclear wording, and the use of counterintuitive terms like non-GAAP ratios when it is commonly understood that there are no GAAP ratios. We believe that this will make it challenging for preparers to implement the proposals in a cost-effective manner.

Multiple categories of non-GAAP and other financial measures

A benefit of the approach in the staff notice is that entities have only one choice to make – is a measure non-GAAP or not. In many cases, companies have handled this quickly and easily by describing some measures as non-GAAP even when they may not meet that definition. Dealing with multiple categories will be much more difficult and will, among other things, add complexity and compliance costs.

In addition, we do not see a coherent rationale for many of the differences in disclosure requirements for the categories in the proposals.

Total of segments and capital management measures

We do not agree with making distinctions on whether disclosures are required or not based on whether information is in the financial statements or in the notes since the primary financial statements, together

² <https://www.sec.gov/divisions/corpfin/guidance/nongAAPinter.htm>

with information in the notes, are all subject to audit. We believe these categories unnecessarily expand the scope of the existing staff notice.

We also believe that imposing requirements for these categories results in a difference from the requirements of the SEC,³ which state that non-GAAP financial measures do not include financial measures, such as segment measures, that are required to be disclosed by GAAP. (We acknowledge the SEC makes an exception with respect to segment disclosures in their application guidance but believe this exception results in a narrower requirement than that in the proposals.)

Furthermore, we found the readability of both the capital management and segment measures sections in the Proposed Materials unclear and difficult to interpret.

Supplementary financial measures

In the proposed definition of supplementary financial measures, the Proposed Instrument states, among other things, that financial measures disclosed on a “periodic basis” are considered supplementary financial measures. We do not see why the disclosure requirements should be different depending on the frequency with which a financial measure is reported. In addition, it is not clear how the term “periodic basis” should be determined. For example, if a measure is reported in a quarter and then in an MD&A for an annual period, would the disclosure in the interim period mean that the measure is now being disclosed on a periodic basis?

Non-GAAP ratio

The use of the term non-GAAP ratio is counterintuitive and adds to the complexity of the proposals since there are no GAAP ratios. Based on our field testing, we found many ratios are calculated using more than one non-GAAP measure. We are unclear why a non-GAAP ratio is limited to a ratio where one of the components is a non-GAAP financial measure. If there is a rationale for this approach, we believe it should be explained in the Companion Policy.

Need for more guidance and more complex examples

More and better examples are needed for most aspects of the proposals. This could be done in a question and answer format as the SEC has done or in the Proposed Companion Policy. We suggest providing examples ranging from simple ones to illustrate principles to the more complex ones with which preparers will struggle.

Our field testing

Our field testing has helped us greatly in identifying issues related to the staff notice and the Proposed Materials. We read the annual filings of more than 40 Canadian companies (as well as interim filings for many of them) and six U.S. companies that are only SEC registrants. This included companies of different sizes and in different sectors. We believe this supports the tentative views which follow but acknowledge that more field testing would be necessary to form definitive ones.

This section reports only a small portion of our analysis and findings. It focuses primarily on specific disclosures of six Canadian companies related to liquidity measures used by many companies.

³ U.S. Securities and Exchange Commission. (April 4, 2018). *Non-GAAP Financial Measures; Questions and Answers of General Applicability*, Question 104.01. <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>

- **Working capital**

Working capital is a common financial measure understood as the difference between current assets and current liabilities and is referred to in requirements such as those in NI 51-102 *Continuous Disclosure Obligations*. A number of companies reported this as a non-GAAP measure, but a number did not.

This measure does not appear to meet the definition of a non-GAAP financial measure in the Proposed Instrument. Based on our interpretation of the Proposed Companion Policy, since working capital is calculated by combining financial information that originates from different line items from the primary financial statements, the Proposed Companion Policy indicates that working capital is a non-GAAP measure. This inconsistency between the Proposed Instrument and Proposed Companion Policy needs to be resolved.

Under SEC Regulation G *Conditions for Use of Non-GAAP Financial Measures*, this measure would not be considered a non-GAAP financial measure. We agree with this position.

We do not believe the disclosures of the usefulness of a working capital measure and how it is used by management are helpful to investors. We also do not see the purpose or benefit of requiring a reconciliation of this measure to the most comparable financial measure presented in the primary financial statements. The only disclosure requirement that might be a logical one would be to disclose the composition of working capital.

We believe working capital is not a non-GAAP measure and that the Proposed Companion Policy should be amended to be consistent with this position.

- **Working capital ratio**

The Proposed Companion Policy indicates that a working capital ratio would not meet the definition of a non-GAAP ratio since both elements used in its calculation are presented in the primary financial statements. While we agree with this, it also suggests that a working capital measure should not be considered a non-GAAP measure.

- **Net debt and total indebtedness**

The analysis of how these measures are currently treated and how they would be treated under the Proposed Materials is similar to the one described for working capital.

Of the six U.S. companies, only one disclosed a liquidity measure as a non-GAAP measure. Several disclosed measures such as net debt but did not consider them to be non-GAAP measures. The CSA should do field testing to see if approaches differ in applying the staff notice and SEC requirements and why they exist.

Of the six Canadian companies, one disclosed net debt as a non-GAAP measure and one did not. Practices varied for this measure as they did for total indebtedness and similar ones. Disclosures often described the composition of the measure but did not attempt to reconcile to a GAAP measure. We believe this resulted in sufficient disclosure but might not meet the requirement of the staff notice or the Proposed Instrument.

There is a fundamental question of when a financial measure that can often be characterized as a combination of two or more financial statement line items becomes a non-GAAP measure. As noted above, we believe that something like working capital is not a non-GAAP measure while most would

agree that adjusted profit is a non-GAAP measure even though it could be characterized as just the combination of a number of line items in the financial statements. Perhaps the distinction exists because using a term like “adjusted profit” is an attempt to provide a substitute for profit under GAAP. This distinction is not an easy one to make and illustrates the need for more clear guidance and more and better examples

- *Operating capital expenditures and other similar measures*

We find it difficult to determine whether operating capital expenditures would be categorized as a non-GAAP financial measure versus a supplementary financial measure.

- *Other*

We reviewed one company that reported 31 non-GAAP measures. In a separate section, they spent four pages describing how each of the measures is useful to investors and used by management. Many of the measures were liquidity measures where it was obvious that the measures were useful. We found the four pages to be of negligible value and were left wondering why the related disclosure requirement exists. It also left us wondering why so many non-GAAP measures were used. In contrast, the six U.S. companies used only 12 non-GAAP measures in total and only one of those was related to liquidity. Again, this raises more questions which merit further consideration.

Alignment with the SEC

Differences with the SEC should not be created unless there is a compelling reason to do so. Because we have so many Canadian companies that are also SEC registrants and our competitive position relative to the U.S. is so important, we believe that the CSA should publish detailed guidance that compares the CSA requirements to the SEC requirements at a date consistent with the release of the rule. We heard from several parties during our outreach that this would be useful.

Impact of IASB Exposure Draft

The Proposed Instrument notes a view that the IASB is only in the early stages of a project on General Presentation and Disclosures. We are concerned that the CSA is not fully considering the potential impacts of the Exposure Draft on the presentation of non-GAAP financial measures. These include, for example, the introduction of new subtotals to be included within the primary financial statements, a new definition of operating income, new distinctions between integrated and non-integrated investees, a definition of unusual items that is not consistent with what is in the Proposed Materials, and note disclosures related to performance measures. These changes would result in difficulties for those attempting to comply with CSA and IASB requirements at the same time.

The CSA should monitor the progress of the Exposure Draft and not issue a rule that is likely to require significant change in a short period of time. It appears likely that final CSA and IASB documents will not be compatible with each other and resolving that problem may be a significant challenge.

Small and medium-sized entities

The CSA seems to expect that issuers will incur only some additional immaterial administrative costs. Based on the comments above, we do not agree and believe that the anticipated costs will exceed those outlined in Annex K by a significant amount for many issuers. This burden may disproportionately fall on the large number of smaller issuers we have in Canada.

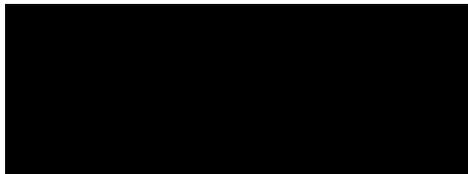
During our outreach, we heard concerns that the CSA has not received sufficient feedback from small and medium sized issuers, and we do not expect the CSA will get much input from this population on the Proposed Materials. We believe that targeted field testing of the proposals with smaller issuers may address this issue.

Effective date and transition

Consistent with our comments above, we believe significant effort will be required to implement the proposals. As a result, we believe a lengthy transition period is appropriate

We appreciate the opportunity to participate in this important consultation. Please contact Rosemary McGuire, Director, Research, Guidance and Support (rmcguire@cpacanada.ca) if you have any questions regarding our letter.

Yours truly,



Gordon Beal, CPA, CA, M.Ed.
Vice President, Research, Guidance and Support
Chartered Professional Accountants of Canada

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

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June 26, 2020

BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

c/o

The Secretary
Ontario Securities Commission
Email: comments@osc.gov.on.ca

M^e Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

We are writing in response to CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the “**Proposed Instrument**”) which, together with the related proposed companion policy (the “**Proposed Companion Policy**”) and other proposed consequential amendments, is intended to replace CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (“**SN 52-306**”).

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We acknowledge and appreciate that the revised draft of the Proposed Instrument addresses some of the feedback we provided in our first comment letter dated December 5, 2018 (our “**Original Comment Letter**”). However, it still falls short of addressing a number of critical issues identified in our Original Comment Letter. Informing these and our further comments below is the same general principle that we highlighted in our Original Comment Letter. Namely, in establishing a new framework that moves away from a policy-based approach for non-GAAP financial measure disclosure (as was the case in the existing guidance of SN 52-306) to a rules-based approach that governs more than just non-GAAP financial measures, it is critical that the CSA assess whether: (i) all of the additional disclosure that is mandated under the Proposed Instrument is necessary in order to meet the rule’s objective (*i.e.*, to ensure clear disclosure such that the reasonable investor in Canadian capital markets is not misled by a “specified financial measure”); and (ii) issuers may have difficulty complying with elements of the new rule, particularly as the scope of the Proposed Instrument encompasses measures not previously addressed in SN 52-306.

Several substantial revisions to the Proposed Instrument remain necessary to ensure that the increased regulatory burden on issuers is not disproportionate to its objective. To be proportionate, the Proposed Instrument should address only those situations where there is a real risk that a reasonable investor would be misled and, in those situations, apply a tailored and flexible approach having regard to the burden imposed on issuers. In our view, the Proposed Instrument fails to do this and, more generally, is out of step with current initiatives of the Canadian securities regulators to reduce the regulatory burden on issuers and apply proportionality in their rule-making.¹ As noted in the OSC Report, regulation is proportionate when it is (i) balanced (ensuring the regulatory burden is commensurate with anticipated benefits), (ii) tailored (avoiding a ‘one-size-fits-all’ approach where appropriate, taking into account how it may affect entities of different sizes or business models), (iii) flexible (recognizing that there can be multiple ways to achieve regulatory objectives, and incorporating stakeholder input to arrive at an optimal solution), and (iv) responsive (through frequent updates that support innovation and dynamism in capital markets, while still being mindful of investor protection, market efficiency, confidence in the market and financial stability).

The Proposed Instrument fails to achieve proportionality because it:

- represents a return to the burdensome ‘catch and release’ approach to regulation by requiring extensive disclosure of every potential scenario where any investor (including an unreasonable investor) might be misled, and providing narrow and insufficient carve outs;
- mandates a ‘one-size-fits-all’ approach for the prescribed disclosure;
- lacks flexibility for circumstances where the regulatory objective could be achieved in an alternate and less burdensome manner; and

¹ For example, see OSC report “Reducing Regulatory Burden in Ontario’s Capital Markets” distributed in November 2019 (the “**OSC Report**”) and see CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* and the update contained in CSA Staff Notice 51-353.

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- is not responsive due to the imposition of rules, rather than providing guidance, in respect of Other Financial Measures (as defined below).

We have set out a number of specific recommendations below that are limited to those that we think would be most meaningful to achieve proportionality and, where appropriate, cross-reference our Original Comment Letter for further detail.

While we recognize that this represents the second round of comments, we encourage the CSA to consider a new round of consultations with accounting firms and market participants before the rule is finalized. The implications of this rule are far-reaching and significant. It is therefore critical that due consideration be given to the views of those who will be most directly affected.

Apply Guidance Rather than Rules to Govern “Other Financial Measures”

Unlike SN 52-306, and despite the concerns listed in our Original Comment Letter, the Proposed Instrument still distinguishes and separately regulates certain other financial measures that are defined as Segment Measures, Capital Management Measures and Supplementary Financial Measures (collectively, the “**Other Financial Measures**”). We agree that these Other Financial Measures should be distinguished from, and should not be subject to, the same degree of disclosure mandated with respect to non-GAAP financial measures. However, given that each of the Other Financial Measures is a novel concept not previously subject to any regulation, any new prescriptive rules to govern them risks confusing issuers and investors with the inevitable consequence that many issuers will fail to comply due only to a lack of understanding of those rules. This risk of confusion and non-compliance is exacerbated by an absence of clarity as to the meaning of these Other Financial Measures, and the prescribed disclosure for them, in the Proposed Instrument and the Proposed Companion Policy.

SN 52-306 has been guiding market participants with respect to the disclosure of non-GAAP financial measures for almost two decades.² Over this period, the guidance set out in SN 52-306 has been updated multiple times to refine earlier guidance and adapt it to reflect changing market circumstances.³ Market participants (including both issuers and investors) have had the opportunity to adapt to the CSA’s recommended approach to disclosure of non-GAAP financial measures, and the CSA has had the opportunity to provide direct guidance to issuers on the applicability of this guidance. It is also worth noting that, despite its many iterations over the years, SN 52-306 would not have worked if codified in its earlier iterations. In fact, even with the benefit of a ‘test-run’ spanning almost two decades to consider and refine this guidance, many changes and new exceptions are still necessary in order to ‘get it right’ as a rule. This is clearly evidenced by the many differences between

² CSA Staff Notice 52-303 – *Non-GAAP Earnings Measures*, which was a predecessor to SN 52-306, was issued in January 2002.

³ Revised CSA Staff Notice: 52-306 – *Non-GAAP Financial Measures* (November 21, 2003); Revised CSA Staff Notice: 52-306 – *Non-GAAP Financial Measures* (August 4, 2006); Revised CSA Staff Notice: 52-306 – *Non-GAAP Financial Measures and Additional GAAP Measures* (November 9, 2010); Revised CSA Staff Notice: 52-306 – *Non-GAAP Financial Measures and Additional GAAP Measures* (February 17, 2012); and CSA Staff Notice: 52-306 (Revised) – *Non-GAAP Financial Measures* (January 14, 2016).

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SN 52-306 and the Proposed Instrument, the amount of feedback provided with respect to the Proposed Instrument, and the many valid concerns markets participants continue to express.

The immediate codification of requirements regarding Other Financial Measures, even with modifications to the current requirements in the Proposed Instrument, would be a marked departure from the CSA's past practice in this area and, in our view, ill-advised without a 'test-run' to assess what does and does not work. Whether implemented as guidance or as a rule, any additional disclosure with respect to Other Financial Measures will necessarily result in increased regulatory burden for issuers (which would be disproportionate if implemented as currently proposed), and would almost certainly result in confusion among all market participants. Further, if implemented as rules, issuers will have no option but to comply even where the required disclosure is meaningless, confusing or impractical – thereby unnecessarily exacerbating the burden for issuers and resulting in unintended or unavoidable non-compliance.

To avoid this result, we reiterate our previous recommendation that any regulation of Other Financial Measures be achieved through non-binding guidance⁴ and not, at least for the time being, through prescriptive rules in the Proposed Instrument. If implemented as guidance, issues of imbalance and initial confusion stemming from this disclosure could be managed. Guidance allows issuers to take a principled approach in cases where their particular circumstances do not align with the scenarios contemplated by the suggested guidance – thereby avoiding issues associated with a 'one-size-fits-all' approach – while still providing disclosure as necessary to ensure that the relevant measure is not misleading to investors. Consistent with the approach taken by the CSA on regulation of non-GAAP financial measures, starting with guidance allows the CSA and other market participants to monitor issuers' disclosure in respect of these Other Financial Measures in practice. It also affords the CSA an appropriate period of time to evaluate the ability of issuers to comply with the guidance and assess the benefit to investors of this additional disclosure so that the CSA can ultimately develop a more refined and proportionate set of prescriptive rules with respect to some or all of these financial measures. See our Original Comment Letter for our specific recommendations as to the content of guidance for Other Financial Measures.⁵

Incorporating Information by Reference

We recognize that the Proposed Instrument allows for the incorporation by reference of some of the prescribed information with respect to the specified financial measures (the "**Incorporated Disclosure**"). While we are fully supportive of this change, the approach taken is not sufficient to address the primary reason we raised this concern in our Original Comment Letter. Most notably, there is no principled basis for not permitting incorporation of the Incorporated Disclosure in a news release.⁶

⁴ It would be best if any guidance as to the disclosure of Other Financial Measures were addressed exclusively through the Proposed Companion Policy (rather than a separate companion policy) to ensure consistency in approach and, where appropriate, terminology with the proposed rules governing Non-GAAP financial measures.

⁵ See Original Comment Letter at p. 6.

⁶ See the exception in subparagraph 5(3)(b) of the Proposed Instrument.

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As noted in our Original Comment Letter, issuers are often under significant time pressures to issue a news release containing event driven or other current disclosure in a timely manner. In fact, it is precisely in these instances that the requirement to include detailed reconciliation tables and other prescribed disclosure poses the most significant burden on issuers. We cannot think of any justification for not allowing incorporation of disclosure in all circumstances where that disclosure is already included elsewhere in periodic reports that are easily accessible to the investing public. This is consistent with the principles underpinning incorporation by reference in the short form prospectus regime, as well as the “access equals delivery” model being considered by the CSA⁷. If it is sufficient that reports containing information critical to one’s investment are accessible in the context of a prospectus offering, why is this insufficient in the context of an earnings or other news release? If anything, the past few months of physical distancing in the wake of COVID-19 have demonstrated the relative ease with which the public-at-large can easily access and retrieve information from the internet. We therefore reiterate our previously expressed view that timely disclosure that is not delayed or obscured by mandated regulatory disclosure that is easily (and quickly) accessible elsewhere should be the objective of a modern disclosure regime.

Further, while we generally agree with the scope of the Incorporated Disclosure that may be incorporated by reference,⁸ we believe that the Incorporated Disclosure should be expanded to include disclosure that “explains the composition” of a non-GAAP financial measure⁹ and the equivalent requirement for other specified financial measures.¹⁰ This prescribed ‘composition disclosure’ is lengthy and detailed, and may obscure the more critical disclosure in the document. Republishing this detail each time a measure is disclosed may also suggest an issuer has changed the measure. Instead, this composition disclosure is more appropriately made only in an issuer’s annual MD&A, and updated only if there is an intervening change. We also note that the requirements in the Proposed Instrument relating to labelling of non-GAAP financial measures¹¹ already provide appropriate protection to mitigate the risk that a reasonable investor may be misled by disclosure and not aware of the composition of a non-GAAP financial measure.

Finally, the Proposed Instrument does not allow incorporation by reference of the Incorporated Disclosure in an issuer’s MD&A.¹² While we agree that this incorporation would be inappropriate for an issuer’s annual MD&A, an issuer should be permitted to incorporate Incorporated Disclosure (including ‘composition disclosure’) from an issuer’s annual MD&A in its interim MD&A. Not allowing this incorporation is inconsistent with the purpose of interim MD&A, which is to update an issuer’s annual

⁷ For our submissions supporting this proposed “access equals delivery” model, please refer to our [comment letter dated March 5, 2020](#) in response to CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*.

⁸ As listed in subsection 5(1) of the Proposed Instrument.

⁹ *i.e.*, subparagraph 6(e)(iii) of the Proposed Instrument.

¹⁰ *e.g.*, subparagraph 8(d)(i) for non-GAAP ratios.

¹¹ See subparagraph 6(a) of the Proposed Instrument.

¹² See the exception in subparagraph 5(3)(a) of the Proposed Instrument.

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disclosure,¹³ and the principle that interim MD&A should always be read together with the preceding annual MD&A (together with the corresponding financial statements) for an understanding of the issuer's results and financial condition.

Forward-Looking Information

We agree with the CSA's view, reflected in changes to the Proposed Instrument, that forward-looking non-GAAP financial measures should not be subject to the same disclosure requirements as historical non-GAAP financial measures and, in particular, support the removal of the requirement for a quantitative reconciliation. However, in our view, the proposed framework for forward-looking non-GAAP financial measures still requires disclosure that is not necessary in the circumstances and, as a result, does not achieve the appropriate balance.

Subparagraph 7(2)(b) of the Proposed Instrument requires the disclosure of a historical non-GAAP financial measure whenever a forward-looking non-GAAP financial measure is used. The rationale for this requirement is unclear. Where an issuer believes that it will be helpful to readers to disclose the historical non-GAAP financial measure in the same document or that it would be misleading not to include such measure, it will do so. Making this requirement mandatory serves no identifiable purpose, but will trigger all the attendant disclosure requirements relating to historical non-GAAP financial measures. We also note that there is no similar requirement to disclose historical metrics under existing securities legislation where disclosing other forward-looking information,¹⁴ and we do not see any justification in the context of non-GAAP financial measures to deviate from this principle. In addition, the requirement in subparagraph 7(2)(d) to provide a "description of any significant difference" between the forward-looking non-GAAP financial measure and the historical measure is unclear. We are concerned that, in the absence of clarification, this requirement may be interpreted as mandating disclosure that is tantamount to a qualitative reconciliation. We trust that is not the intent as, from a policy perspective, investors need only to know whether the estimate of the forward-looking non-GAAP financial measure contemplates a different set of components than those used in the calculation of the historical non-GAAP financial measure.¹⁵ Any requirement to provide a qualitative reconciliation of a forward-looking measure would be unduly burdensome for issuers and, in our view, would be of limited value to

¹³ We also note that the instructions to s. 2.2(b) of 51-101F1 specifically indicates that an issuer, in preparing its interim MD&A, may assume the reader has access to the issuer's annual MD&A and that the issuer does not have to duplicate the discussion and analysis of financial condition from its annual MD&A.

¹⁴ See, for example, disclosure requirements under Part 4A of National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102").

¹⁵ For example, an issuer should not be required to describe any significant difference between a historical non-GAAP financial measure and a forward-looking non-GAAP measure where such a difference is the result of an anticipated change in an underlying variable component of the calculation or estimate of the measure. The description of differences between the measures should be required only where the components taken into account in the forward-looking estimate differ significantly from the components used to calculate the historical non-GAAP financial measure most recently disclosed by the issuer.

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investors. Requiring such a level of disclosure may also have a significant chilling effect on issuers providing this key forward-looking information to the markets.

Given that the objective of this disclosure is to ensure that the reasonable investor is not misled or confused, we propose that the CSA consider a clearer and more practical framework for non-GAAP financial measures that are forward-looking information, limited to the following requirements:

- the forward-looking non-GAAP financial measure is identified as a non-GAAP financial measure, and explains that it may not be comparable to measures presented by other issuers;¹⁶
- the composition of the financial measure is explained¹⁷, including any significant differences in the components of the forward-looking non-GAAP financial measure as compared to the historical non-GAAP financial measure;¹⁸ and
- if a historical non-GAAP financial measure was previously disclosed in the issuer's MD&A, the issuer should include a cross-reference to that historical disclosure.

Consistent with subparagraph 7(3) of the Proposed Instrument, we support an exception to all SEC issuers from the requirement to comply with this requirement. However, as we note later in this submission, we believe this exception should extend to all the requirements of the Proposed Instrument.

Historical Non-GAAP Financial Measures

Requirement to Present Measures for Comparative Periods

The requirement to provide a measure with the "same composition" for a comparative period is still too rigid. Notably, SN 52-306 currently requires that non GAAP financial measures be presented on a "consistent basis" from period to period. It is our view that the use of the "consistent basis" standard is more appropriate as a principled matter.

While the added exception in cases where it is "impracticable"¹⁹ responds in part to the recommendation in our Original Comment Letter, we believe that an issuer should also be afforded an exception to using the "same" composition for the measure in each of the comparative periods if it has provided sufficient disclosure to clearly identify any substantive difference in constructing that measure

¹⁶ *i.e.*, mirroring the requirements in subparagraphs 6(e)(i) and 6(e)(ii) with respect to historical information.

¹⁷ *i.e.*, mirroring the requirement in subparagraph 6(e)(iii) with respect to historical information.

¹⁸ As noted above, the issuer should be required to identify any significant changes in the way it is calculating the forward-looking information as compared to the way it has historically calculated the measure (but should not be required to analyze any changes in the individual components of the calculation or produce disclosure that effectively amounts to a qualitative reconciliation of those measures).

¹⁹ See subparagraphs 6(d) and 8(c)(ii) of the Proposed Instrument.

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as between the periods. This aligns with the principles of balance and flexibility for proportionate rulemaking (per the OSC Report), and is appropriate for circumstances where the necessary information is not readily available or would be unduly burdensome to produce because it achieves the same regulatory objective through a less burdensome approach.

Further, a clearer and more measured approach is necessary in assessing what is “impracticable” for purposes of the exception to this requirement. The CSA’s interpretive guidance in the Proposed Companion Policy as to what would qualify as “impracticable” undermines the intention of the exception. The only example included in the Proposed Companion Policy is a scenario where it would be *impossible* for an issuer to provide comparative period disclosure (because no comparative period exists). To make matters worse, the Proposed Companion Policy still includes a statement that the CSA does not consider the cost or the time involved in preparing comparative period disclosure as being a sufficient rationale for an issuer to assert that it is impracticable to present the disclosure. While cost and time alone should not be determinative, they are certainly important considerations when assessing the implications of the disclosure on the issuer relative to the benefit that would be obtained by the investor from having such disclosure. We therefore encourage the CSA to remove or modify this statement in any final rule to align with the CSA’s current burden reduction initiatives. Consistent with the recent pledge for proportionate rulemaking articulated in the OSC Report, the appropriate standard for this disclosure should not be what an issuer could achieve if it had unlimited resources and time; instead, it must be balanced against the objective of the regulatory requirement. To reflect this, the Proposed Companion Policy should be expanded to include additional examples of scenarios where it would be “impracticable” for purposes of the exception to this requirement. We note that our Original Comment Letter included examples of common scenarios where it would not be considered feasible or practical for issuers to present disclosure for comparative periods²⁰, and recommend that, at a minimum, the CSA add these as examples to its guidance.

Finally, and in addition to the above, we continue to believe that a separate exception from the requirement to provide comparative period disclosure should be available for an issuer that presents a non-GAAP financial measure on an “LTM”, or last twelve month, basis. As noted in our Original Comment Letter²¹, in these circumstances, an appropriate and useful comparison may be obtained from the issuer’s most recent fiscal year and its most recent and comparative interim periods from which the LTM was constructed. It should not be necessary for an issuer to construct a comparative prior twelve-month period. If not an express exception, the CSA should clarify in the Proposed Companion Policy that presenting disclosure of the periods from which the LTM was constructed is sufficient.

Labelling Requirements

The previous iteration of the Proposed Instrument required that non-GAAP financial measures be labelled “appropriately” given their composition. This has been modified to require a label that, among

²⁰ See Original Comment Letter at pp. 4-5.

²¹ See Original Comment Letter at p. 5.

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other things, “describes the measure”.²² This change is confusing and ambiguous as it suggests additional disclosure is necessary when labelling a measure above and beyond all of the other disclosure already required by the rule. We trust this is not the intent and, if it is, we caution against this approach. It is not clear how a label can be descriptive and, even if it could be, why this would be necessary. The primary policy concern should be to ensure that non-GAAP financial measures are labelled in a manner that distinguishes them from their GAAP equivalent, which is already reflected in the requirements of the Proposed Instrument.²³ In addition, the other required disclosures²⁴ are sufficient to ensure that the composition of the non-GAAP financial measure is described. Accordingly, subparagraph 6(a)(i) of the Proposed Instrument is an unnecessary (and, we assume, unintended) burden, and should be deleted. In the alternative, the CSA could modify subparagraph 6(a)(i) of the Proposed Instrument to require that a non-GAAP financial measure be labelled using a term that “is not misleading”²⁵ or “is not inconsistent” with the measure’s composition. We do not endorse a reversion to the “appropriate” standard reflected in the previous iteration of the Proposed Instrument as “appropriate” is (ironically) an inappropriate standard for purposes of a black-letter rule as it is vague and fails to provide sufficient specificity to issuers required to comply with the rule.

Explanation of Reconciling Items

Subparagraph 6(e)(v)(B) of the Proposed Instrument requires that the quantitative reconciling prepared by an issuer include disclosure that “explains each reconciling item”. In our experience, reconciling items are often self-explanatory. Accordingly, we recommend that subparagraph 6(e)(v)(B) be modified to only require this disclosure in circumstances where it is necessary.²⁶

Proximity Requirement

The Proposed Companion Policy suggests that the proximity requirements of subparagraph 6(e) of the Proposed Instrument can be satisfied by identifying a non-GAAP financial measure as such when it is first used in a document and then referencing a separate section within the same document that contains the disclosure required under subparagraph 6(e). We agree with the CSA that cross-referencing is an appropriate way for an issuer to satisfy these disclosure requirements. However, we recommend that the CSA explicitly provide in the Proposed Instrument that cross-referencing is permitted (or alternatively, add a definition for “proximate” that includes cross-referencing), rather than only discussing this in the Proposed Companion Policy.

²² See subparagraph 6(a)(i) of the Proposed Instrument. Our recommendation applies equally to the equivalent requirement for non-GAAP ratios in subparagraph 8(a) of the Proposed Instrument.

²³ Specifically, subparagraph 6(a)(ii).

²⁴ Including the requirements of subparagraph 6(e)(iii).

²⁵ This is the current standard of CSA Staff Notice 52-306.

²⁶ For example, the revised language could read: “if necessary, explains each reconciling item...”.

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We also note that the Proposed Companion Policy only addresses the proximity requirements for historical non-GAAP financial measures.²⁷ Cross-referencing should be permitted to satisfy all of the proximity requirements of the Proposed Instrument, including in respect of forward-looking information, non-GAAP ratios and other measures.²⁸ In our view, the Proposed Companion Policy (or, as noted above, Proposed Instrument) should be modified to clarify that this is the case.

Requirement to present “similar” measure

Subparagraph 8(b) of the Proposed Instrument requires that whenever a non-GAAP ratio is disclosed, an issuer must make equally prominent disclosure of “similar” financial measures in the issuer’s primary financial statements. What is “similar” for this purpose is highly subjective and a vague standard that is inappropriate for a prescriptive rule. This will inevitably lead to inconsistent disclosure practices, and it may be difficult for issuers to determine with any certainty whether they comply with this requirement. In our view, the other requirements of the Proposed Instrument already provide for a sufficient level of disclosure in respect of non-GAAP ratios (particularly, the disclosure already required for the non-GAAP financial measure component(s)) and, accordingly, we recommend that subparagraph 8(b) be removed.

For the same reasons we recommend that subparagraph 10(b) of the Proposed Instrument in respect of capital management measures also be removed.

Requirement to present most comparable GAAP measure

We believe that there is inherent overlap between the requirement that a non-GAAP financial measure be presented with no more prominence than the most comparable GAAP measure (as reflected in subparagraph 6(c) of the Proposed Instrument) and the separate requirement that the document present the most comparable GAAP measure (as reflected in subparagraph 6(b)). Although this redundancy is not a material issue, per se, we believe that the Proposed Instrument would be clearer if the requirements of subparagraphs 6(b) and 6(c) were combined.²⁹

Application – Exceptions

As outlined in our Original Comment Letter, the scope of issuers and documents that are subject to the Proposed Instrument is unnecessarily broad. Further consideration should be given to ways to narrow the scope of the Proposed Instrument so that it is tailored for its objective. The following are a few examples.

²⁷ See subparagraph 6(e) of the Proposed Instrument.

²⁸ e.g., see subparagraphs 7(2)(d), 8(d), 9(d), 10(a) and 11(b).

²⁹ For example, the combined language could read: “...the document presents the most comparable financial measure that is presented in the primary financial statements of the entity to which the measure relates, and the non-GAAP financial measure is presented with no more prominence in the document than such measure;”.

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SEC Issuers

We continue to believe that the exception in subparagraph 4(b) of the Proposed Instrument should be broadened to include any SEC issuer. As noted in our Original Comment Letter, we do not believe it is necessary or appropriate to require any SEC issuer to comply with the Proposed Instrument if they are already otherwise in compliance with the disclosure requirements prescribed by the SEC. This will result in a duplication of efforts and unnecessary burden, and can result in inconsistent, and sometimes conflicting, disclosure that confuses analysts, investors and other market participants. In our view, affording cross-listed issuers the option to provide disclosure that is comparable to their U.S. peers should be an important objective in modernizing Canada's capital markets where it can be achieved while still meeting Canadian regulatory objectives. Notably, the Proposed Instrument does extend an exception to all SEC issuers from the requirement to comply with the requirement in respect of forward-looking non-GAAP financial measures. Absent an exception for all SEC issuers, an expansion of the exception in clause (iii) of subparagraph 4(c) of the Proposed Instrument will be necessary to exclude documents (including exhibits) filed or furnished with the SEC that are filed on SEDAR pursuant to section 11.1 of NI 51-102.

Third Party Reports and Valuations

It is not clear to us why the exception in subparagraph 4(d)(i) of the Proposed Instrument is limited to reports and valuations referred to in a prospectus³⁰ and prior valuations required to be disclosed in a business acquisition report.³¹ For example, a formal valuation obtained in accordance with the requirements of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* may include disclosure of non-GAAP financial measures that do not otherwise comply with all of the requirements of the Proposed Instrument (and the issuer will inherently have no ability to address this issue given the requirement that the formal valuation be prepared by an independent valuator). In our view, the exception in subparagraph 4(d)(i) should be expanded to include any third party report or valuation that is filed with the CSA (or incorporated in a document filed with the CSA).

³⁰ *i.e.*, filings under subparagraph 9.1(1)(a)(vi) or 9.2(a)(v) of National Instrument 41-101 *General Prospectus Requirements*.

³¹ *i.e.*, filings under section 2.5 of Form 51-102F4 *Business Acquisition Report*.

DAVIES

The following lawyers at our firm participated in the preparation of this comment letter.

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Yours very truly,

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June 29, 2020

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 Alberta Securities Commission
 Financial and Consumer Affairs Authority of Saskatchewan
 Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 Financial and Consumer Services Commission (New Brunswick)
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward
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 Nova Scotia Securities Commission
 Securities Commission of Newfoundland and Labrador
 Registrar of Securities, Northwest Territories
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Re: Revised version of Proposed National Instrument 52-112 (the "Proposed Instrument"), Proposed Companion Policy 52-112 (the "Proposed Companion Policy"), Related Proposed Consequential Amendments and Changes (collectively, the "Proposed Materials")

Dear Sirs/Mesdames,

We are pleased to provide our comments on the Proposed Instrument, related companion policy and consequential amendments and changes. We continue to be supportive of CSA's efforts to enhance disclosure requirements regarding non-GAAP measures and other financial measures in responding to investor needs for quality information.

We acknowledge the CSA's efforts to address comments received on the previously issued draft materials and the usefulness of the additional examples and clarifications included the Proposed Materials.

Our comments on the Proposed Material, in order of significance, are as follows:

- Given the various classifications, it would be helpful if the Proposed Instrument clearly set out the steps in assessing financial measures. For example, the Proposed Instrument should clearly state that the first step in the assessment is to determine whether the financial measure is a non-GAAP measure thus requiring the disclosures set out in Section 6 through 8. If the financial measure does not meet the definition of a non-GAAP measure, then the Proposed Instrument should specify the next assessment an issuer should undertake. We believe this could be easily achieved by providing a flow chart in the Proposed Companion Policy that outlines the steps to be followed.

- The requirements in Section 10 (Capital management measures) of the Proposed Instrument continue to be difficult to navigate. In assessing the disclosures required, preparers must consider numerous exceptions [emphasis added]. Due to these exceptions, preparers may not appropriately assess the criteria resulting in either non-compliance or in unnecessary disclosure being included.
 - *... in proximity to the first instance of the capital management measure in the document, the document*
 - *explains the composition of the capital management measure, and*
 - **unless presented** in the notes to the financial statements of the entity to which the measure relates,
 - *provides, directly or by incorporating it by reference as permitted by section 5, an explanation of how the capital management measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the capital management measure, and*
 - **unless the capital management measure is a ratio, fraction, percentage or similar representation**, provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation of the capital management measure to the most comparable financial measure presented in the primary financial statements of the issuer;
- In several instances, the Proposed Instrument suggests that disclosure of financial measures and reconciliations in the notes to the financial statements results in the amounts becoming “GAAP” numbers when they may not be defined by IFRS or another accounting framework. For example, working capital would be a GAAP measure if disclosed in the notes to the financial statements as part of going concern disclosures, despite not being defined in IFRS. As such, there is some concern that preparers may try to include measures that are not defined by GAAP in their financial statements in order to avoid providing non-GAAP disclosures in the other documents.
 - The proposed SEC exemption wording may not address all SEC filer scenarios. We continue to be concerned that issuers such as Canadian voluntary 10-K filers (i.e. domestic Canadian companies choosing to file on US domestic forms) would be required to address both Canadian and U.S. requirements. In addition, it is not clear how the guidance would apply to a non-Canadian domiciled reporting issuer (who does not meet the definition of a designated foreign issuer) and therefore should be subject to the requirements of the Proposed Instrument, however, they also meet the definition of an SEC foreign issuer. We suggest additional guidance be provided in the Proposed Companion Policy to clarify this definition.
 - Inconsistencies exist between the Proposed Instrument and U.S. requirements, which could create issues and create confusion for cross-listed issuers. These differences may also have the unintended consequence of causing differences in disclosure among entities depending on whether they are cross-listed or only listed in Canada. In addition, the optionality within the Proposed Instrument may create diversity in how entities in the same industry reconcile their non-GAAP financial measures. Some specific differences we note are as follows:
 - Total segment measures when presented outside of the financial statements are considered non-GAAP under U.S. guidance however are viewed as a ‘total segment measure’ under the Proposed Instrument with reduced disclosure requirements. Given the different classification under the two jurisdictions, entities who are subject to both Canadian and US regulations may struggle when complying the rules. We acknowledge that the Proposed Companion Policy states “[a]n SEC issuer may characterize a total of segments measure as a non-GAAP financial measure in compliance with SEC rules on non-GAAP financial measures” but does not provide automatic relief from providing the total segment measure. Given the Proposed Companion Policy is non-authoritative, we would suggest the Proposed Instrument provide automatic relief.

- The Proposed Instrument has now been modified to require a reconciliation to the “most comparable” versus “most directly comparable” measure. While the Proposed Companion Policy states that judgment should be applied, it is not evident why this change was made, and would appear to create more diversity in practice. In addition, this is also a difference to U.S. guidance, which requires a reconciliation to the most directly comparable GAAP measure.
- In presenting the required reconciliation, the Proposed Instrument allows an issuer to begin with the non-GAAP financial measure or the most comparable financial measure presented in the primary financial statements, provided the reconciliation is presented in a comprehensible and consistent manner. The option of allowing the non-GAAP financial measure to be the starting point for the reconciliation is inconsistent with the U.S. guidance, which requires the reconciliation to start with the most directly comparable GAAP measure.
- The Proposed Companion Policy provides ‘rolling 12-month results’ as an example of financial information that does not meet the definition of a non-GAAP measure. We would suggest that this example be omitted or revised to include such amounts as non-GAAP measures or supplementary measure, requiring associated disclosures, as it is not evident to us how ‘rolling 12 month results’ would always be in compliance with IFRS. For example, the ‘rolling 12-month results’ ended March 31, 20XX would not correspond to the financial periods presented in the March 31, 20XX financial statements, and therefore arguably not in compliance with IFRS.
- The Proposed Instrument also scopes out disclosures required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, such as “other cash costs”. It is our view that the Proposed Materials should clarify that disclosures provided under other securities regulations are specifically labelled as such in order to differentiate such other measures from financial measures that would otherwise be within the scope of the Proposed Instrument.
- Part 2, Item 6(e) of the Proposed Instrument states that disclosure is provided “in proximity to the first instance of the non-GAAP financial measure in the document”. It is not clear whether all the non-GAAP disclosures set out in item 6 need to be included in close proximity to the non-GAAP financial measure (i.e. on the same page) or whether preparers can continue the practice of using footnotes to reference the non-GAAP financial measure and providing the disclosure later in the document. The wording in the Proposed Instrument appears to contradict the statement in the Proposed Companion Policy that allows preparers to “identify the non-GAAP financial measure as such when it first appears in the document and then reference a separate section within the same document that contains the disclosure.” We would suggest amending the Proposed Instrument to remove the “close proximity language” in order to be consistent with the language in the Proposed Companion Policy. We also suggest revising the total segment measure definition as follows: “is a subtotal or total of financial measures of two or more reportable segments measures of an entity...” to clarify that the guidance applies to segment measures as defined in GAAP.

We will be pleased to discuss any of our comments further if required. Any questions can be directed to Julia Suk (jsuk@deloitte.ca) or Andrew Macartney (amacartney@deloitte.ca).

Yours truly,



Chartered Professional Accountants
Licensed Public Accountants



**Building a better
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Autorité des marchés financiers
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Superintendent of Securities, Department of Justice and Public Safety,
Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

29 June 2020

Me Philippe Lebel
Corporate Secretary and Executive
Director, Legal Affairs
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Dear Me Philippe Lebel,

CSA Request for Comment – Proposed National Instrument 52-112

We are pleased to provide our comments to the Canadian Securities Administrators (CSA) on the Second Notice and Request for Comment on Proposed National Instrument 52-112 “Non-GAAP and Other Financial Measures Disclosure” (the Proposed Instrument) and the related Proposed Companion policy and consequential amendments and changes.

We support the CSA’s initiative of issuing a Proposed Instrument that has the force of law to improve the consistency and transparency of Non-GAAP and other financial measures disclosures for stakeholders, including investors and analysts. We commend the CSA on the substantive changes made from the original proposed materials first published on September 6, 2018. We believe the changes made to the original proposed materials strike a better balance between providing investor protection and reducing the regulatory burden.



Work effort and transition requirements

Although the scope of the Proposed Instrument has been reduced from the original materials, we believe that a more than insignificant amount of effort will be required by reporting issuers to implement the disclosure requirements of the Proposed Instrument. As such, and in light of the current challenging environment, we believe issuers should be provided with a transition period of at least one year to implement the Proposed Instrument following its finalization. We continue to believe that the Proposed Instrument should be effective for the beginning of an annual financial reporting period to ensure comparable reporting over subsequent periods.

In determining the effective date for the Proposed Instrument, we would also encourage the CSA to consider the International Accounting Standards Board's (IASB's) current project on General Presentation and Disclosures, including disclosure of management performance measures in financial statements, and to assess the likely extent and timing of change required if the IASB's proposals are adopted after the Proposed Instrument is effective. The CSA's assessment of the extent of regulatory burden in comparison to the benefit of further change required within a relatively short time frame from the Proposed Instrument becoming effective may influence the CSA's determination of the appropriate effective date of the Proposed Instrument.

We would be pleased to discuss our comments on the Proposed Instrument. If you wish to do so, please contact Kam Grewal (Kam.Grewal@ca.ey.com).

Yours sincerely,

A solid black rectangular box redacting the signature of the sender.

Chartered Professional Accountants
Licensed Public Accountants



leadership beyond finance

June 29, 2020

Chief Accountant
Ontario Securities Commission
20 Queen St W,
Toronto, ON M5H 3S8

Dear Cameron McInnis

Re: Comments on National Instrument 52-112, Non-GAAP and Other Financial Measures Disclosure

The Committee on Corporate Reporting (CCR) of Financial Executives International Canada (FEI Canada) is pleased to respond to the request for comment on the *National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure*.

FEI Canada is the all-industry professional membership association for senior financial executives. With 12 chapters and over 1600 members, FEI Canada provides professional development, networking opportunities, thought leadership and advocacy services to its members. The association membership, which consists of Chief Financial Officers, Audit Committee Directors and senior executives in the Finance, Controller, Treasury and Taxation functions, represents a significant number of Canada's leading and most influential corporations.

CCR is one of several thought leadership committees of FEI Canada. CCR is devoted to improving the awareness of issues and educating FEI members on the implications of the issues it addresses and is focused on continually improving the standards and regulations impacting corporate reporting.

CCR and FEI Canada would like to thank you for the opportunity to comment on the CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure, Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes (NI 52-112).

Our Summary Comments on the revised NI 52-112 are outlined below in this letter. FEI Canada has been an active participant in this project, and we have been very closely observing the proposed changes made in the Second Notice.

As an overall document, the updated draft is a substantial improvement on the previous version and addresses many of our earlier comments or/and concerns. We would like to congratulate the Ontario Securities Commission team that has spent significant time and effort on reviewing and incorporating comments from the previous version.

Summary Comments

- We observed that some of the sections in the paper have been written in the negative action, and not the positive action. We specifically see this in paragraphs 6 and 8 where "An issuer must not disclose" unless the following apply... We would prefer it if the language was written that "if an issuer chooses to disclose, the following disclosures must be made". This issue of defining "in the negative action" is unnecessarily complex when reading the definition of a "supplementary financial measure". Presumably this definition can lead one to the conclusion that key performance measures, such as same store sales or cost per ounce, etc are supplementary financial measures but the definition is not at all clear if that is the case. Additionally, some examples of each would be helpful in aiding understanding of the definitions.
- In the Companion Policy on page 1323 under "Source of Reconciling Items", there are several disclosure requirements if the reconciling item is not from the entity's financial statements. This statement should be clear that if a reconciling item is disclosed in a note to the financial statements, the disclosure requirements are not applicable.
- The staff paper should emphasize more on the importance of governance and controls that an entity's board, audit committee and management must exercise on the Non-GAAP measures procedures. Some examples of a control framework may be helpful to preparers of financial statements.

We appreciate the role the Ontario Securities Commission has to protect investors and feel that the proposed revised papers reflect a good balance of investor protection while enabling companies, projects and start-ups to provide additional information that will be beneficial to their investors.

Sincerely,

A black rectangular redaction box covering the signature of Celine Arsenault.

Celine Arsenault

Chair – Committee on Corporate Reporting

INVESTOR ADVISORY PANEL

May 26, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Re: IAP Response to the Revised Version of Proposed National Instrument 51-112 Non-GAAP and Other Financial Measures Disclosure

The Ontario Securities Commission's Investor Advisory Panel (IAP) welcomes this opportunity to provide the Canadian Securities Administrators (CSA) with our response to the revised version of *Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* (the Proposed Rule). The IAP is an initiative by the Ontario Securities Commission (OSC) to enable investor concerns and voices to be represented in its rule development and policymaking process. Our mandate is to solicit and represent the views of investors on the Commissions' policy and rulemaking initiatives.

We indicated our support for the original version of the Proposed Rule in our November 20, 2018 letter responding to the CSA's first request for comment, and we remain supportive of the effort to promote transparent and informative disclosure of non-GAAP financial information.

We note, however, that the revised version of the Proposed Rule limits its application to certain issuers and exempts certain disclosures, financial measures, and types of documents. While we understand the need to eliminate unnecessary regulatory burden and limit costs for issuers, we urge the CSA to prioritize full and transparent disclosure to investors when considering any further reductions in scope of the Proposed Rule's application.

At the same time, we caution that misleading measures cannot be made accurate by means of additional disclosure – regulators must ensure that issuers are using appropriate measures in the first place and that there is adequate scrutiny of individual issuers.

Our previous letter commented on the disturbing prevalence of documented deficiencies in issuer continuous disclosure over many years. To the extent that the reporting of non-GAAP financial measures has been a significant contributing factor to these disclosure deficiencies, we urge the CSA to indicate how this problem is addressed through the Proposed Rule.

Alternatively, if the Proposed Rule is not designed to rectify those deficiencies, we would welcome an initiative specifying measures that regulators will take in this area, including the appropriate application of enforcement measures, when necessary, in future.

To echo our letter to OSC Chair Maureen Jensen dated February 14, 2019 (RE: Issuer Continuous Disclosure), we recommend that the OSC, in conjunction with the other members of the CSA, undertake an examination of the effectiveness of current methods and controls used with a view to strengthening overall compliance with continuous disclosure obligations.

Thank you for taking the time to review and consider this letter.

Please let us know if you have any questions or require clarification of our recommendation.

Sincerely,



Neil Gross
Chair, Investor Advisory Panel



VIA EMAIL

June 26, 2020

British Columbia Securities Commission
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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
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**Re: CSA Second Notice and Request for Comment
Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosures
Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosures**

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)

Dear Sirs/Mesdames,

The purpose of this letter is to provide comments on the proposed National Instrument and related Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosures* (together the “*Proposed NI*”). We appreciate the opportunity offered by the Canadian Securities Administrators (“CSA”) to share our perspective on this proposed regulation.

Intact Financial Corporation is a publicly traded company listed on the Toronto Stock Exchange and is the largest provider of property and casualty insurance in Canada, with a 17% market share and a market capitalization of approximately \$19 billion. The quality of our financial disclosure is fundamental to us, as evidenced by our recognition by Brendan Wood International (BWI) as 2018 Global Top Gun Company for Transparency and Reporting, alongside four other insurance companies.

We acknowledge the efforts of the CSA to improve the overall clarity of the Proposed NI and progress towards implementing practical and effective disclosure. We understand the importance of complete and transparent disclosure given the challenge of comparability from one company to the other. However, we have continued concerns on two issues:

1. We still believe that the “equal or greater prominence of GAAP financial measures over non-GAAP financial measures”, as described, is too prescriptive. We are concerned that the Proposed NI will result in **unnecessarily heavy and burdensome disclosure that will dilute key messages and potentially confuse investors**. Our experience has shown that non-GAAP financial measures often better respond to investor needs than GAAP financial measures. Our view is that **equal or greater prominence should be given to GAAP financial measures when it would be misleading not to do so**. To significantly improve the overall quality of disclosure for investors, we believe that we should apply **materiality and judgement** to the level of disclosure provided to investors

2. We also disagree with the decision to not permit cross referencing in the case of a press release issued or filed by the issuer to a section of the MD&A containing all pertinent and required disclosure. We believe that **disclosure effectiveness principles** should guide how to best disclose the information.

You will find our detailed comments in the appendix attached to this letter.

Yours truly,



Frédéric Cotnoir
Senior Vice President, Corporate and Legal
Services and Secretary
Intact Financial Corporation



Louis Marcotte, FCPA, FCA
Senior Vice President and Chief Financial Officer
Intact Financial Corporation

OVERALL COMMENTS

1. Progress towards practical and effective disclosure

We acknowledge the progress made in some areas to improve disclosure effectiveness by:

- permitting cross-referencing in certain documents back to the MD&A (*see item 2 below*);
- reducing disclosure requirements in some areas; and
- reducing the scope of application (e.g. excluding transcripts of an oral statement).

2. Cross-referencing in a news release back to the MD&A should be permitted

Section 5 - Incorporating information by reference

(3) Subsection (1) does not apply if the document that contains the specified financial measure is

- (a) the MD&A filed by the issuer, or
- (b) a news release issued or filed by the issuer.

We question the rationale **not to permit cross-referencing in a news release back to the MD&A**, which is filed on SEDAR at the same time and contains all the required disclosures (definitions, reconciliations, etc.). We understand that readers of a news release may differ from those of the MD&A. However, we see no substantive difference if the news release is accompanied by the required disclosure and proper referencing to the MD&A, presented in a way that does not mislead investors. Rather, we believe it is confusing and ineffective to have more regulatory disclosure than content in the news release itself.

3. More disclosure should be incorporated by reference

In proximity to the first instance of the non-GAAP financial measure in the document, the document

- (i) identifies the measure as a non-GAAP financial measure,
- (ii) explains that the non-GAAP financial measure is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the measure relates and might not be comparable to similar financial measures presented by other issuers,
- (iii) explains the composition of the non-GAAP financial measure,

We believe that **cross-referencing to the MD&A should be permitted** in all documents with regards to the disclosure of the **composition** of non-GAAP financial measures, non-GAAP ratios and capital management measures. In our view, this disclosure is best placed in proximity to the reconciliation to the most comparable financial measure presented in the primary financial statements, which we consider should be included in a specific section of the MD&A.

4. Equal or greater prominence of GAAP financial measures over non-GAAP financial measures remain too prescriptive

We still believe that the equal or greater prominence of GAAP financial measures over non-GAAP financial measures **as described (see below) remain overly prescriptive** (like the SEC Regulation G)

- Analysts and investors are looking for management’s insights into a company’s core performance, in terms of quality of earnings and performance over time – in other words, **narrative explanation, through the eyes of management. This is the purpose of the MD&A.**
- In situations where the conclusions drawn from the non-GAAP financial measure and the GAAP financial measure would be substantially the same, due to an immaterial difference between the two, this criterion would unnecessarily burden disclosure. In such cases, duplication of financial measures (i.e. adding the GAAP measure alongside each non-GAAP measure) will **dilute key messages and could confuse readers.**
- We found the **disclosure of U.S. peers** (which are presumably in compliance with SEC Regulation G) **very heavy and the key messages unclear** given the duplication of information in the headlines, tables, narrative and graphs.
- **Our view is that equal or greater prominence should be given to GAAP financial measures when it would be misleading not to do so; and that equal or greater prominence criteria should consider materiality.**

Extracts from Proposed NI

Determining the relative prominence of a non-GAAP financial measure **is a matter of judgment, considering the overall disclosure and the facts and circumstances in which the disclosure is made.**

The following are examples that would cause a non-GAAP financial measure to be **more prominent than the most comparable measure presented in the financial statements:**

- Presenting a non-GAAP financial measure in the form of a statement of profit or loss and other comprehensive income without presenting it in the form of a reconciliation to the most comparable measure, sometimes referred to as a “single column approach”;
- Omitting the most comparable measure from a news release headline or caption that includes a non-GAAP financial measure;
- Presenting a non-GAAP financial measure using a style of presentation (for example, bold, underlined, italicized, or larger font) that emphasizes the non-GAAP financial measure over the most comparable measure;
- Multiple non-GAAP financial measures being used for the same purpose thereby obscuring disclosure of the most comparable measure;
- Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most comparable measures or without including the most comparable measures in the same table or graph; and
- Providing a discussion and analysis of a non-GAAP financial measure in a more prominent location than a similar discussion and analysis of the most comparable measure. For greater certainty, we take the view that a location is not more prominent if it allows an investor who reads the document, or other material containing the non-GAAP financial measure, to be able to view the discussion and analysis of both the non-GAAP financial measure and the most comparable measure contemporaneously. For example, within the previous, same or next page of the document.

The above list is not exhaustive.

Considering the non-exhaustive list of examples provided in the Proposed NI, we question how much judgement can be applied to ensure compliance with the “Equal or greater prominence of GAAP financial measures over Non-GAAP financial measures” in the Proposed NI.

5. Overall clarity

Overall, we find the Proposed NI much easier to understand.

- Definitions of the various financial measures and related disclosure requirements are much clearer.
- Proposed companion policy helps understand the various definitions and how the disclosure requirements apply to each measure. However, we think that Annex C in the Original Proposed NI or a similar visual representation should be reinstated to summarize the definitions and disclosure requirements in a visual or tabular format.
- Webinars and interpretation guidance should be considered.

6. IASB Exposure draft on General Presentation and Disclosure

The International Accounting Standards Board (IASB) has recently issued an exposure draft on *General Presentation and Disclosures* aimed to replace *IAS 1 - Presentation of Financial Statements*. As mentioned, the exposure draft could change the structure and content of the income statement and result in some non-GAAP financial measures being included in a note to the financial statements with accompanying disclosure. This may have an impact on the Proposed NI requirements.

We are supportive of the CSA monitoring the progress of the exposure draft and considering any changes to securities legislation as appropriate. Disclosure effectiveness is important to providing quality information to stakeholders.

We intend to respond to the IASB's exposure draft in a separate letter by September 30, 2020.



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Superintendent of Securities, Department of Justice and Public Safety,
Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut
The Secretary Ontario Securities Commission
M^e Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs,
Autorité des marchés financiers

29 June 2020

Proposed National Instrument 52-112 *Non GAAP and Other Financial Measures Disclosure*

We appreciate the opportunity to comment on the Canadian Securities Administrators' ("CSA") Second Notice for Request and Comment on Proposed National Instrument 52-112 *Non GAAP and Other Financial Measures Disclosure* ("Proposed Instrument") and Proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* ("Proposed Companion Policy").

We strongly support improving transparency and consistency among issuers regarding disclosure of non-GAAP financial measures. Although the number of measures requiring specific disclosures were not reduced, we believe the updated Proposed Instrument has greater clarity and is significantly less complex in its expectations regarding forward-looking information and as such are supportive of the Proposed Instrument.



The Secretary Ontario Securities Commissions

29 June 2020

We have included in the Appendix our observations on certain matters. Please contact Laura Moschitto (416 777 8068) if you wish to discuss any of the issues raised in this letter.

Yours sincerely,

KPMG LLP

A handwritten signature in black ink that reads 'KPMG LLP'. The signature is written in a cursive, slightly slanted style. Below the signature is a single horizontal line that tapers at both ends, serving as a decorative underline.



29 June 2020

Appendix

Incorporating Information by Reference

We support allowing issuers to cross-reference certain required disclosures to MD&A filed on SEDAR. We believe it is helpful to users to find all disclosures in one location and it is common practice to have a section in MD&A where all non-GAAP financial measures are summarized. To this end, we would support expanding the ability to cross reference as follows:

- Allow cross references in documents filed simultaneously with or after the MD&A as best practice is to file documents simultaneously. We observe that the example in the Proposed Companion Policy would not allow an issuer that files its Annual Information Form at the same time as its MD&A to cross reference as the “MD&A has to be filed on SEDAR prior to filing the Annual Information Form.”
- Allow cross references in press releases filed simultaneously with or after the MD&A
- Allow cross references of the following which currently require disclosure in each document (albeit the proximity guidance allows aggregation in one location for 6(e)(ii) and 6(e)(iii))
 - 6(e)(ii) – explaining that the non-GAAP financial measure is not a standardized measure
 - 6(e)(iii) – explaining the composition of the non-GAAP financial measure
 - 8(d)(i) – explaining that the non-GAAP financial ratio is not a standardized measure
 - 8(d)(ii) – explaining the composition of the non-GAAP financial ratio
 - 10(a)(i) – explaining the composition of the capital management ratio

Proximity to the First Instance

We note that the Proposed Companion Policy with respect to paragraph 6(e) indicates that issuers will be able to satisfy the requirement with respect to ‘proximity to the first instance’ by identifying the non-GAAP financial measure when it first appears in a document and then referencing a separate section within the same document.

We believe this should be extended to the following, even if cross referencing is allowed above, as various documents may not be filed prior to the MD&A, and will benefit from consolidating information in one location:

- Non-GAAP financial ratios (8(d)(i)(ii)(iii))
- Total of Segment measures (9)(c))
- Capital Management measures (10(a)(i)(ii))



The Secretary Ontario Securities Commissions

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Non-GAAP Financial Ratios (NGFR)

A non-GAAP financial ratio includes a non-GAAP financial measure (NGFM) in either the numerator or denominator or both. We are uncertain whether the expectation is that the NGFM measure used in the NGFR be reconciled to a GAAP measure.

The rule requires in 8(d)(i) that the issuer explain the composition of the NGFR and identify each NGFM that is used as a component. It is not clear whether the NGFM can simply be identified qualitatively or must be identified quantitatively. Since financial measure, must include an amount, we believe the intent is to identify the amount which would then require reconciliation of the NGFM to the closest GAAP measure. However, this is not sufficiently clear. We suggest guidance in the Proposed Companion Policy be added to elaborate on what is required when explaining the composition of the NGFR.

Total of Segment Measures (TSM)

We note there is a requirement to provide a quantitative reconciliation of the TSM to the most comparable financial measure presented in the primary financial statements. IFRS 8.28 requires that an entity provide a reconciliation of the total of the reportable segments' measures of profit or loss to the entity's profit or loss before tax expense and discontinued operations or after-tax if an entity allocates to reportable segments tax expense. Given the Proposed Instrument allows cross referencing for the quantitative reconciliation, we would recommend that issuers be allowed to cross-reference to the financial statement note when a reconciliation is contained in the financial statements. This would be consistent with the Capital Management measure which may be referenced to a financial statement note.

Capital Management Measures

Capital management measures are important measures. We note that there is a requirement in 10(a)(ii)(B) to provide a quantitative reconciliation of the most comparable financial measure presented in the primary financial statements. We note that no reconciliation is required when the capital management measure is a ratio. We are not sure what supports the distinction between a capital management measure ratio and a NGFR and note that distinction could lead to abuse. By simply characterizing a measure as a capital management measure that includes a NGFM issuers may be able to avoid providing disclosures that would be required if the ratio was a NGFR.

Forward-looking Information

We note that there is an exemption in 7(3) from providing forward-looking information if the disclosure is made by an SEC issuer and in compliance with Regulation G under the 1934 Act. It is not clear whether the exemption is meant to apply only when the SEC issuer is required to comply with Regulation G or if the



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SEC issuer may voluntarily comply with Regulation G. In particular, if a 40-F SEC issuer voluntarily complies with Regulation G, can the issuer utilize the exemption?

Exemption for Pro Forma Financial Statements

We note that there is an exemption in 4(c)(ii) for specified financial measures that appear on pro forma financial statements. We are concerned that issuers may take this opportunity to present “pro forma EBITDA” or other similar amounts. We believe the exception should be limited to where the pro forma financial statement line captions are consistent with the issuer’s financial statements or otherwise are consistent with required disclosures under the applicable financial reporting framework.

Yours sincerely

Laura Moschitto
Partner, Department of Professional
Practice, KPMG LLP

June 26, 2020

British Columbia Securities Commission
 Alberta Securities Commission
 Financial and Consumer Affairs Authority of Saskatchewan
 Manitoba Securities Commission
 Ontario Securities Commission
 Autorité des marchés financiers
 Financial and Consumer Services Commission (New Brunswick)
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
 Nova Scotia Securities Commission
 Securities Commission of Newfoundland and Labrador
 Registrar of Securities, Northwest Territories
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Comments on CSA Draft Instrument 52-112 respecting Non-GAAP and Other Financial Measures Disclosure and concordant regulations

1 Introduction

This letter is submitted in response to the CSA Second Notice and Request for Comment (the **Notice of Consultation**) regarding Proposed National Instrument 52-112 respecting Non-GAAP and Other Financial Measures Disclosure (the **Draft Instrument**), the Proposed Companion Policy (the **Draft Policy**) and concordant regulations (collectively, the **Proposed Regime**) issued by the Canadian Securities Administrators (the **CSA**) on February 13, 2020. It reflects the views of a working group consisting of issuers having a combined market capitalization of approximately CAD \$200 billion (the **Working Group** or **we**).

Members of the Working Group welcome the CSA's effort to reflect multiple comments provided by various stakeholders during the first consultation period ended on December 5, 2018 in relation to the initial draft National Instrument and draft Companion Policy (the **Original Materials**), as published on September 6, 2018. The Working Group also appreciates this second outreach to solicit further comments from market stakeholders. At the outset, the members commend the CSA for proposing to simplify and reduce the scope of the new regulatory framework. With a view to further clarifying and refining the Proposed Regime, we provide herewith additional comments in respect to the Proposed Regime. We thank you for affording us an opportunity to comment on this important matter and we trust that the CSA will consider the views expressed in this letter in finalizing the Proposed Regime.

2 General comments

After studying the Draft Instrument and Draft Policy, we are of the view that, although improvements have been made to the Original Materials, the Proposed Regime remains very complex, will constitute a source of uncertainty for both issuers and investors and create potential exposure for issuers, unless further changes are made. In addition, it will add to the regulatory burden of issuers, which is contradictory to other initiatives of the CSA.

In particular, we would like to emphasize the following observations:

2.1 Application of the Proposed Regime

(a) Document made available to the public “in the local jurisdiction”

We note that the Original Materials made the previous disclosure regime applicable to non-GAAP and other financial measures “disclose[d] in a document [and] that is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction [...]” [Our emphasis]. Conversely, the Draft Instrument not only omits the limitation of scope to disclosures made “in the local jurisdiction”, but the Draft Policy appears to include disclosures made outside Canada where these are not specifically “required” and their composition not specified by the requiring foreign body:

The Instrument also does not apply to a financial measure that is disclosed in accordance with the laws of a jurisdiction of Canada, or jurisdiction outside Canada, including governments, governmental authorities and SROs. This exclusion is, however, only applicable in situations where a financial measure is required to be disclosed and the law specifically specifies its composition; for example, a government payment calculated and disclosed in accordance with the Extractive Sector Transparency Measures Act (Canada). [Our emphasis]

Accordingly, voluntary disclosures outside Canada could be within the purview of the Proposed Regime. The Working Group is of the view that the Proposed Regime should only apply to the documents filed within the Canadian jurisdictions.

We submit therefore that it would be advisable to include in section 2 of the Draft Instrument the reference to documents intended to be, or reasonably likely to be, made available to “the public in the local jurisdiction”, as was the case in the Original Materials, and also to further define “local jurisdiction” as a Canadian province or territory.

(b) Social media and links to third party documents

The Draft Policy indicates that the Draft Instrument applies to disclosures of specified financial measures on social media. We respectfully submit that, given the brief and less formal nature of communications published on social media, these are more akin to oral statements and should therefore be excluded from the scope of the Draft Instrument.

Alternatively, we submit that, given the brief and less formal nature of communications published on social media, links to third-party publications made available through social media should be excluded from the scope of the Draft Instrument due to the impractical nature of including the regulatory disclosures along with such social media posts and due to the lack of control that issuers have over third-party publications.¹

¹ The Draft Policy states on p. 1319 that “[i]f a reporting issuer uses social media to provide links to publications (e.g., analyst reports), such publications are within the scope of the Instrument.” The references to the page numbers of the Notice of Consultation mentioned in this letter come from the Ontario Securities Commission’s Bulletin dated February 13, 2020.

(c) Form 51-102F6

Item 2.1(4) *in fine* of Form 51-102F6 (**CD&A**) currently provides that “if the company discloses performance goals or similar conditions that are non-GAAP financial measures, [the company should] explain how [it] calculates these performance goals or similar conditions from its financial statements.”

The Draft Policy explains that if no financial amounts are presented, the Proposed Regime would not apply to the CD&A. However, if a non-GAAP or other financial measure within the scope of the Proposed Regime is expressed as an amount, the associated requirements of the Draft Instrument would apply.

The Working Group is of the view that such requirement would add to the burden of disclosure applying to proxy circulars and be too cumbersome. If the requirement under the Proposed Regime is maintained, we are of the view that the future correlation between the requirement as currently set out in item 2.1(4) of the CD&A and the requirements under the Proposed Regime should be better explained and potential consequential clarification amendments made to the CD&A requirements.

(d) Pro forma financial statements

We welcome the exclusion from the scope of the Draft Instrument of pro forma financial statements required to be filed under securities legislation. However, we are of the view that pro forma financial statements the filing of which is not *expressly* required under securities legislation should also be excluded from the scope of the Proposed Regime. Alternatively, the CSA may instead require issuers providing non-required pro forma financial statements to briefly explain why these are provided, instead of subjecting these to the extensive disclosure requirements of the Proposed Regime.

2.2 Definitions, proper categorization of financial measures and related examples in the Draft Policy

(a) Too many categories and significant number of measures in scope

Although improvements have been made in the Proposed Regime, the reference to five different categories of financial measures (six when counting historical and forward-looking non-GAAP financial measures separately) within the scope of the Proposed Regime, each with different disclosure requirements, is still very complex, will result in a significant increase in the number of in-scope measures, will constitute a source of uncertainty for both issuers and investors and will create potential exposure for issuers. Readers of continuous disclosure documents will be faced with multiple levels of detail, based on how each measure was categorized, with regards to a much larger number of in-scope measures which may be confusing and hinder readability. Accordingly, the Working Group is of the view that the CSA should start by providing a roadmap with a general overview of the application process to adequately categorize financial measures, as was done in the Original Materials. Furthermore, concrete examples of how various financial measures, frequently used by reporting issuers, should be categorized, would also be most helpful. This could be provided in tabular format in an appendix to the Draft Policy. However, as per our comment below in section 2.2(b), the CSA would need to specify in its examples whether measures have been presented in an issuer’s Notes to its financial statements.

However, the Working Group questions whether this outcome is in line with the intention of the CSA especially given the CSA’s objective to reduce the regulatory burden and related costs imposed on reporting issuers. For example, at least one member of the Working Group reported that the number of in-scope measures would more than triple with a significant increase coming from the supplementary financial measures category. This will result in a significant amount of time being consumed by reporting issuers’ staff and, in some cases, outside advisors working to determine first how various financial measures should be categorized and second what disclosure wording should be developed and added to documents,

We note that in the Overview section of the Notice of Consultation, the CSA mentions that the Draft Instrument and the Draft Policy result in an overall net reduction in regulatory burden compared to current Staff Notice 52-306, particularly given that they aim, among others, to:

- (i) exempt certain disclosures, financial measures and documents;
- (ii) reduce and simplify disclosures for certain non-GAAP financial measures;
- (iii) reduce uncertainty regarding disclosure obligations; and
- (iv) diminish the time and effort investors spend understanding certain financial information.

The Working Group questions the extent to which the above-mentioned objectives will in practice be achieved by the Proposed Regime in its current form. Further, we suggest that prior to finalizing the Proposed Regime, an additional field-testing by reporting issuers be conducted to compare real against anticipated outcomes of the Proposed Regime. This would also serve to test and compare the consistency of categorizing similar financial measures among issuers.

(b) Location of disclosure will determine a measure's category

Whether or not an issuer discloses a measure in the Notes to its financial statements will determine the categorization of, and required disclosure applicable to, such measure under the Proposed Regime. For example, the decision to include in the Notes a capital management measure would determine whether such measure ends up being categorized as a non-GAAP financial measure or a capital management measure given that, by definition, a non-GAAP financial measure cannot be presented in the financial statements. The same would be true for a total of segments measure. We draw your attention to the fact that this could result in inconsistent disclosures being made by different issuers with regards to the same measure which we believe could result in a source of confusion for investors.

(c) Supplementary financial measures

Section 1 of the Draft Instrument defines a "supplementary financial measure" as meaning "a financial measure presented by an issuer that (a) is, or is intended to be, disclosed on a periodic basis to depict the historical or expected future financial performance, financial position or cash flow of an entity, (b) is not presented in the financial statements of the entity, (c) is not a non-GAAP financial measure, and (d) is not a non-GAAP ratio". Section 11 of the Draft Instrument requires that such financial measures be "(a) [...] labelled using a term that, (i) given the measure's composition, describes the measure, and (ii) distinguishes the measure from totals, subtotals and line items presented in the primary financial statements of the issuer; (b) in proximity to the first instance of the supplementary financial measure in the document, the document provides an explanation of the composition of the supplementary financial measure." We submit that the requirements in (a) and (b) are overlapping and that where a supplementary financial measure is appropriately labeled as per (a), the composition of such measure becomes explicit and does not require further explanation pursuant to (b). We therefore respectfully submit that the disclosure requirements applicable to supplementary financial measures should be limited to the appropriate and explicit labeling. This will enhance readability while providing readers with useful information as to the financial measure's composition.

Finally, the definition of "supplementary financial measure" in the Draft Instrument should in our view be amended to include only measures that are disclosed on a periodic basis, removing the intent component. Issuers often may not know, when disclosing a measure for the first time, whether they will reuse such measure in the future, or the measure may cease to be used by the second publication.

(d) Definition of Non-GAAP financial measures

The Draft Instrument defines a “non-GAAP financial measure” as meaning “a financial measure presented by an issuer that (a) depicts the historical or expected future financial performance, financial position or cash flow of an entity, (b) with respect to its composition, excludes an amount that is included in, or includes an amount that is excluded from, the composition of the most comparable financial measure presented in the primary financial statements of the entity, (c) is not presented in the financial statements of the entity, and (d) is not a ratio”.

For ease of reference and clarity, the definition should in our view be clarified to specifically add, as indicated in the Draft Policy, that: a) it includes a financial measure calculated by combining financial information that originates from different line items in the primary financial statements, unless that resulting measure is separately presented in the notes to the financial statements (**Notes**); and b) it excludes a component of a line item of the primary financial statements that has been calculated in accordance with the accounting principles used to prepare such line item. In addition, the definition should be clarified to specifically indicate that totals and sub-totals in the primary financial statements are considered line items of the primary financial statements. Further, we submit that the definition should also exclude a component of a financial measure included in the Notes that has been calculated in accordance with the accounting principles used to prepare such measure given that the Notes are an integral part of the financial statements.

(e) Non-GAAP financial measures – reconciliation requirement

We would submit that for the purpose of the requirement set out in section 6(e)(v) of the Draft Instrument to explain reconciling items, the Draft Policy should be modified to clearly state that a detailed explanation is not required to be provided even with respect to a reconciling item that is taken from the Notes as opposed to the primary financial statements. We draw your attention to the fact that the bottom of page 1323 of the Draft Policy seems to contain inconsistent statements on this subject. We would note that some issuers might otherwise decide to add line items in the primary financial statements in order to avoid potentially complex reconciliations, which could increase the length and readability of the primary financial statements.

(f) Total of segments measures / capital management measures reconciliation requirements

In accordance with our view presented above in relation to non-GAAP financial measures, we respectfully submit that a total of segments measure should not need to be reconciled if it constitutes a single component of a line item from the primary financial statements calculated in accordance with the accounting policies used to prepare such line item. For instance, “total product revenues” should not be required to be reconciled to “total operating revenues” in the primary financial statements where it constitutes a single component, without other adjustments, of the “total operating revenues” line item.

In addition, where quantitative reconciliations are required, we note that the Draft Instrument does not indicate how to perform such quantitative reconciliation for total of segments measures and capital management measures, while the quantitative reconciliation requirements for non-GAAP financial measures are very detailed. The CSA should clarify the level of details required when performing quantitative reconciliations for total of segments measures and capital management measures in order to adequately comply with the requirements set out in section 9(c) and section 10(a)(ii)(B), respectively, of the Draft Instrument. Furthermore, as mentioned above in section 2.2(d) with regards to the reconciliation of non-GAAP financial measures, we would submit that, should the rules concerning the reconciliation of total of segments measures and capital management measures also require to explain each reconciling item, then no detailed explanation should be required in the case where the reconciling item is taken from the Notes (i.e., it should not be limited to reconciling items taken from the primary financial statements).

(g) Total of segments measures versus individual segment measures

An issuer may individually disclose a financial measure for one or several of its reportable segments either together with, or without, the related total for all of its reportable segments. Such individual segmented measure would not be captured by the definition of total of segment measures given that it would not constitute a subtotal or total of financial measures of two or more reportable segments. The CSA should clarify that in either case, a financial measure of a reportable segment is not intended to be captured by the Draft Instrument. We understand that this outcome would be justified by the difficulties in meeting the new disclosure requirements with respect to segmented measures. For example, reconciliations of segmented measures could not be performed on a segmented basis given the impossibility of allocating total corporate costs, such as borrowing costs and taxes, among segments.

2.3 IASB Exposure Draft – General Presentation and Disclosures

We note that on page 1293 of the Notice of Consultation, the CSA indicates that it is aware of the International Accounting Standards Board's (IASB) Exposure Draft entitled "General Presentation and Disclosures" (the "Exposure Draft") with respect to which comments must be submitted by September 30, 2020. The Exposure Draft is expected to result in an increasing number of financial measures being disclosed in issuers' financial statements which, in turn, would result in a decreasing number of measures being categorized as non-GAAP financial measures under the Proposed Regime since, by definition, a non-GAAP financial measure cannot be presented in an issuer's financial statements. Given the important impact that the Exposure Draft could have on the categorization of financial measures, we would submit that the CSA should either, for example through discussions with the IASB, seek to minimize potential inconsistencies between the Proposed Regime and the Exposure Draft or, alternatively, delay the coming into force of the Proposed Regime until the Exposure Draft is sufficiently advanced to properly assess its implications.

2.4 Disclosure

(a) Ratios' non-GAAP components

The CSA should clarify that the numerator and/or denominator of non-GAAP ratios that constitute non-GAAP financial measures, and that are not otherwise referred to in an issuer's disclosure document on a standalone basis, do not need to be reconciled on the basis that ratios do not constitute financial measures to the same extent as standalone measures and that the proposed composition explanation and other disclosure requirements set out in the Draft Instrument would provide a sufficient explanation.

(b) Capital management measures' non-GAAP components

Similarly, components of capital management measures that are non-GAAP financial measures, and that are not otherwise referred to in an issuer's disclosure document on a standalone basis, should not be required to be reconciled and the portion of page 1327 of the Draft Policy, indicating that components of capital management measures that are non-GAAP financial measures should be subject to the full requirements applicable to non-GAAP financial measures which would include reconciliation, should be deleted. As mentioned above with respect to non-GAAP ratios, the proposed composition and other disclosure requirements set out in the Draft Instrument would in our view provide a sufficient explanation.

(c) "Significant difference"

When presenting non-GAAP financial measures that are forward-looking information, issuers are, among other things, required to provide a description of any "significant difference" between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure. We are of the view that concrete examples and additional explanations should be provided so as to enable the issuers to comply with this requirement.

(d) “Single column approach”

The CSA should provide clarity on their concerns around the presentation of non-GAAP financial measures pursuant to the “single column approach” or in a format resembling primary financial statements. Such presentation should in our view be permitted if the Draft Instrument’s disclosure requirements are otherwise complied with in respect of such non-GAAP financial measures, given that such approach assists in presenting the corresponding GAAP measures with equal prominence and in proximity to the non-GAAP financial measures.

(e) Adjustments

We are of the view that the Draft Instrument should clarify whether: a) the adjustment of (i.e. addition to or subtraction from) a total of segments measure, and b) a ratio using a total of segments measure as a numerator or denominator, result in the creation of a non-GAAP financial measure or supplementary financial measure. For example, should an issuer disclose Adjusted EBITDA as a total of segments measure in the Notes, present an Adjusted EBITDA measure further adjusted to add or subtract an amount, and also present an Adjusted EBITDA margin ratio, these three measures could potentially be classified in three distinct categories (namely: (i) Adjusted EBITDA (in total of segments measures); (ii) Adjusted EBITDA measure further adjusted (in non-GAAP financial measures); and (iii) Adjusted EBITDA margin (in supplementary financial measures)). This scenario could result in increased confusion for investors, who would be provided with different levels of disclosures for measures that are all based upon the same underlying financial information (Adjusted EBITDA).

(f) Period-over-period percentage variations

It should in our view be further clarified that the presentation of period-over-period percentage growth or decline of a non-GAAP financial measure, with respect to which the Draft Instrument’s disclosure requirements are otherwise satisfied in an issuer’s disclosure document, does not constitute a non-GAAP ratio. The same should also be true for the presentation of period-over-period percentage growth or decline of a line item taken from the primary financial statements or of a financial measure set out in the Notes, which should not constitute a supplementary financial measure.

2.5 Cross-referencing**(a) News Releases**

We note that pursuant to section 5(3)(b) of the Draft Instrument, cross-references to the MD&A are not permitted in news releases issued or filed by the issuer. While we acknowledge that it may be problematic if the MD&A and the news release are not concurrent, the exclusion is not warranted in our view in the case of earnings releases and should either be removed or the policy reasons behind this choice explained. The purpose of issuing news releases is to promptly and clearly inform stakeholders of new information. Readability is key in news releases and would, in our view, be hindered by lengthy disclosures, while a cross reference to a concurrent MD&A may provide readers with additional information they wish to access in order to better understand the financial measures disclosed. In addition, the need to comply with lengthy disclosure requirements could delay the issue of news releases, which would be problematic in situations where new information must be disclosed promptly.

(b) MD&A

We are of the view that cross-referencing to the MD&A should be permitted for all of the Draft Instrument’s disclosure requirements except for: a) identification as a non-GAAP financial measure; and b) mention that the measure is not a standardized financial measure and that it might not be comparable to similar financial measures presented by other issuers. For example, we do not see why the explanation of the composition of non-GAAP financial measures, non-GAAP ratios, supplementary financial measures or capital management measures would absolutely need to be included where such measures are

disclosed in a document as opposed to being satisfied by means of cross-reference to the MD&A. We submit that this would adversely affect the flow and readability of disclosure documents and that such disclosure would more appropriately belong in the section of the MD&A providing detailed disclosure about the relevant measures.

3 Conclusion

While we note multiple improvements in the Proposed Regime, we are of the view that further simplification and clarification of the requirements is warranted in order to fulfill the ultimate purpose of providing investors with clear, readable and useful information and not to further add to issuers' regulatory burden. As indicated above, we consider that the creation of multiple financial measures categories, each with different disclosure requirements, will create confusion for both readers and issuers. Certain limitations such as those related to cross-referencing in press releases and disclosure on social media should in our view be further revised in light of the nature of such communications. We are of the view that the CSA should provide concrete examples on categorization of the most commonly used financial measures so as to illustrate the differences and help issuers complete the category determination in a consistent manner. Finally, we submit that the CSA should carry out field-testing with issuers to compare real against anticipated outcomes of the Proposed Regime.

Yours very truly,

(signed) Norton Rose Fulbright Canada LLP

June 29, 2020

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
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RE: Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measure Disclosure, Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure and Related Proposed Consequential Amendments or Changes

Ladies and Gentlemen:

This letter is submitted in response to the Second Notice and Request for Comment dated February 13, 2020 (the "**Notice for Comment**") by the Canadian Securities Administrators (the "**CSA**") on the revised version of proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the "**Proposed Instrument**"), the revised version of proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the "**Proposed Companion Policy**" and together with the Proposed Instrument, the "**Proposed Materials**") and the related proposed consequential amendments or changes to various other instruments and companion policies of the CSA.

We thank you for the opportunity to comment on the Proposed Materials. We are of the view that the Proposed Materials address many of the comments the CSA received on the original versions of the Proposed Materials that were first published on September 6, 2018.

We support the CSA's decision to include Sections 5(1) and 5(2) in the Proposed Instrument, which will allow issuers to cross-reference certain disclosure prescribed by the Proposed Instrument by incorporating such information in a document by reference to the issuer's management's discussion and analysis ("**MD&A**") in certain circumstances and provided that certain statements are included in such document. However, we do not agree with the inclusion of subsection 5(3)(b) of the Proposed Instrument, which excludes press releases from the application of Section 5(1). We believe an issuer should be able to incorporate by reference the information set forth in Section 5(1) into its press releases. Therefore, we encourage the CSA to delete subsection 5(3)(b) of the Proposed Instrument in its entirety.

We note that press releases are the only documents (other than MD&A) that are excluded from incorporating the disclosure set forth in Section 5(1) of the Proposed Instrument by reference. In addition, the CSA does not provide any rationale in either the Notice for Comment or the Proposed Materials for such exclusion.

We believe that an issuer should be able to incorporate by reference such information into its press releases for the following reasons:

- it is consistent with the current common practice for many reporting issuers, including many senior issuers, which disclose non-GAAP financial measures in news releases, clearly identify them as such and cross-reference to other substantive disclosures (including the quantitative reconciliations) in their MD&A;
- excluding press releases from the application of Section 5(1) of the Proposed Instrument may cause some issuers to leave out important non-GAAP financial information from its press releases that would otherwise be helpful to investors in order to avoid long and cumbersome regulatory disclaimers in their press releases;
- requiring issuers to include the full disclosure prescribed by the Proposed Instrument without the ability to cross reference the information specified in Section 5(1) of the Proposed Instrument to issuers' MD&A will cause lengthy and cumbersome disclaimers and disclosure in the issuers' press releases (and also repeats information found elsewhere in issuers' disclosure (specifically, MD&A)), which will result in unnecessary reviewing and issuing costs to issuers, with no discernible increase in investor protection;
- providing the statement required by Section 5(2) of the Proposed Instrument that specifies the location of the required disclosure in the issuer's MD&A and states that the MD&A can be found on System for Electronic Document Analysis and Retrieval (SEDAR) allows investors to easily locate the disclosure that is incorporated by reference into the press release; and
- excluding the ability of an issuer to incorporate such information by reference in its press releases is at odds with the general approach to securities regulation which generally permits incorporation by reference.

We appreciate the opportunity to provide comments on the Proposed Materials. We trust that our comments will be helpful to the CSA and that the CSA will consider the views in this letter when finalizing the Proposed Materials.

Yours very truly,

PEMBINA PIPELINE CORPORATION

(signed) "*J. Scott Burrows*"
By: J. Scott Burrows
Title: Senior Vice President and Chief Financial Officer
Date: June 29, 2020

(signed) "*Cameron Goldade*"
By: Cameron Goldade
Title: Vice President, Capital Markets
Date: June 29, 2020

(signed) "*Tracy Hecker*"
By: Tracy Hecker
Title: Vice President and Controller
Date: June 29, 2020



June 29, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island Nova Scotia
Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Care of:

The Secretary Ontario Securities Commission
comment@osc.gov.on.ca

Me Philippe Lebel Corporate Secretary and Executive Director, Legal Affairs Autorité des marchés financiers
consultation-en-cours@lautorite.qc.ca

Re: CSA Second Notice and Request for Comment, Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure and the related proposed Companion Policy, Consequential Amendments and Changes

We would like to thank the Canadian Securities Administrators (“CSA”) for their work to date on proposed National Instrument 52-112 and its Companion Policy and related Consequential Amendments. In particular, we would like to thank the CSA for its work on addressing the comments from stakeholders on the first draft of 52-112, and appreciate the opportunity to respond to such important proposals.

Although we believe that substantial progress has been made in addressing comments raised in the first request for comment, we have some additional observations on the second draft of the proposals.

IASB Project

We understand that the CSA continues to monitor the International Accounting Standard Board’s (“IASB’s”) General Presentation and Disclosures Project. Although we agree that this project should not be halted to wait for the conclusion of the IASB project, we believe it will be important to understand directionally where the IASB is headed and to ensure that there is sufficient flexibility to deal with such measures. The IASB is expected to receive comments on its proposals by September 30, 2020. We understand that you will consider a transition period for these proposals and during that transition period there may be opportunities for further outreach or discussions with stakeholders on the implications of the

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IASB's proposals with a need for an accelerated process if there are any fundamental incompatibility issues that arise.

Non-Financial Reporting

We agree with the CSA's response to comments on the first draft of the proposals which explain certain non-financial measures may be outside the scope of these proposals. However, note that the European Union ("EU") is currently undertaking consultations on its Non-Financial Reporting Directive¹. We believe that the CSA should monitor the EU's project and stakeholder's reactions to it and consider both the impact on Canadian companies with listings in Europe in terms of information that will be required to be reported and to monitor whether there is any need for additional reporting on such information in Canada. Furthermore, Accountancy Europe has released a paper on Interconnected Standard Setting² which explores the need for global standard setting in this area. Although implementing global standards is likely to be a long-term process, Canada should remain connected to the initiatives that are occurring, so we are able to proactively provide input into such initiatives.

SEC Issuer

We note that the second draft proposes to provide exemptions for certain SEC Issuers from complying with the requirements of 52-112 for non-GAAP financial measures that are forward-looking information and allows SEC Issuers to label a total of segments measured as a non-GAAP measure. We believe that companies filing under the Multi-Jurisdictional Disclosure System (MJDS) are primarily required to comply with Canadian rules in the area of financial reporting and disclosures. Accordingly, we believe that the exemption should be limited to those entities that are SEC Issuers filing outside of the MJDS system. For those entities that are fully compliant with US non-GAAP rules (e.g. those foreign private issuers filing on Form 20-F or domestic issuers filing on Form 10-K) we continue to believe an exemption from the scope of 52-112 in its entirety would be appropriate.

More broadly given the number of dual-listed companies and the understanding of non-GAAP measures driven by the SEC regulations, we believe the CSA should carefully consider the cost vs. benefits of significant differences in the regulatory approach to non-GAAP measures.

¹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non-Financial-Reporting-Directive>

² <https://www.accountancyeurope.eu/publications/interconnected-standard-setting-for-corporate-reporting/>



Investment Fund Managers

We welcome the CSA's proposals to exclude funds subject to 81-106.

However we don't believe the CSA has addressed concerns regarding investment fund managers or other entities reporting KPIs in dollar amounts which are not part of their financial statements.

Mutual fund managers (who are not subject to 81-106) frequently use Assets under Management (AUM) based on net asset values of underlying funds under management as a key performance metric.

Although these numbers are stated as dollar amounts they do not relate to assets consolidated by the fund manager.

We believe that based on the current definition of a "non-GAAP financial measure" these may be captured, but as there is no directly comparable measure presented in the financial statements it would not be possible to provide a reconciliation.

A similar issue may arise in other situations where an issuer acts as an agent for revenue recognition but reports underlying volumetric information, or for certain financial information for underlying investees reported at fair value (e.g. for certain investment companies). We believe that the final instrument should consider the appropriate disclosure in cases where it is not possible to provide a reconciliation because there is not a comparable GAAP measure.

Forward-Looking Information

We welcome the CSA's attempt to simplify the disclosure for forward-looking non-GAAP measures. We note that in the summary of the changes the revised requirement is discussed as "a requirement to describe each reconciling item between the non-GAAP financial measure that is forward-looking information". In the proposed national instrument the requirement is described as "a description of any significant difference between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure".

We do not believe it is clear whether the requirement is to discuss differences in the composition of the measure (i.e. is it prepared on the same basis) or to discuss the underlying assumptions used in the forward-looking measure as compared to actual results in the historical measure.

If the requirement is the former, we believe that issuers may simply disclose that the measure is prepared on a consistent basis without providing any of the significant assumptions that have been made in making an estimate of such forward-looking information.

We believe that issuers providing forecasts of either GAAP or non-GAAP information in their continuous disclosure documents that the underlying assumptions are relevant. In some cases may be discussed as a percentage (e.g. "our adjusted EBITDA forecast assumes that sales will increase by 10% and margins will remain relatively stable") or be more quantitative (e.g. "our adjusted EBITDA forecast assumes sales will increase by \$1M). Although we support flexibility in the nature of the disclosures, we believe the objective of such disclosures should be to provide an understanding of the key inputs used in such measures.



Other Comments

- Although we believe the current proposal has enhanced readability compared to the previous version, we encourage the staff to continue to look for opportunities to simplify the guidance and consider the level of cross-referencing within the proposed national instrument which can make understanding the rules more complex.
- The proposal in 5(3)(b) is not to permit cross-referencing from a news release to the MD&A. While we understand the rationale that this wouldn't be permitted in certain circumstances where for example an earnings release is filed as a news release prior to the MD&A for the period being filed, we do not understand the rationale for not permitting the cross-referencing within news releases if they are filed subsequent to or contemporaneously with the MD&A that contains the required disclosure.
- It would be helpful to clarify whether in place of footnotes a section of endnotes would be acceptable to avoid clutter (i.e. the same endnote could be referenced multiple times throughout the document).
- S. 8(d)(i) notes that the issuer must "identify" the non-GAAP financial measure used as a component of the ratio. Where such measures are not presented elsewhere in the document, should this section clarify that the quantitative reconciliation information concerning those non-GAAP measures is required to be provided.

Should you have any questions regarding our response please contact Michael Walke (416-815-5011) or Scott Bandura (403-509-6659).

Yours truly,



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The Secretary
Ontario Securities Commission
20 Queen Street West, 19th Floor, Box 55
Toronto, ON M5H 3S8

June 22, 2020

Submitted via electronic email

Re: CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure, Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes

Dear:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Thank you for the opportunity to comment on the *CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure, Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes*.

The Real Property Association of Canada ("REALPAC") is Canada's senior-most voice for Canada's commercial investment real estate industry. Our members include the largest publicly traded real estate companies and real estate investment trusts (REITs) in Canada.

As an industry we strive to provide useful, consistent and transparent information to our investors and other users and respond to their changing needs. As such, we support the goal to improve disclosures across all industries and provide quality information to investors and other financial measures users.

REALPAC is pleased to see many of the changes that CSA made in response to comments received on the original version of the proposed materials and appreciate that the majority of our concerns have been addressed.



Our specific comments on the revised CSA *Proposed National Instrument 52-112* (and its accompanying Companion Policy and Consequential Amendments and Changes) follow.

1. Incorporating Information by Reference

Per Paragraph 5(3), the ability to incorporate by reference the information required under subparagraphs 6(e)(v) does not apply if the document that contains the specified measure is a news release issued or filed by the issuer. As such, it is our understanding that if, for example, a real estate entity discloses a non-GAAP financial measure such as FFO, AFFO or ACFO in a press release, then they are required to include a full quantitative reconciliation to the most comparable GAAP measure from the financial statements in the press release as well.

We are concerned that this requirement creates additional burden for preparers, does not add value for investors, and in fact, may create more confusion than clarity to new releases. A typical press release on an issuer's results provides a condensed snapshot of an entity's performance for the quarter. In the press release, the entity would include disclosures regarding non-GAAP measures presented therein. Cautionary language would already be included in the press release identifying the non-GAAP measures and directing investors to the appropriate section of the Management Discussion and Analysis (MD&A) for additional information. Adding the reconciliation to the press release requires presenting duplicative information that is already found in the issuer's MD&A and will result in much longer and complicated press releases. We think this is unnecessary and goes against initiatives to reduce regulatory burden.

2. Reconciliation of a non-GAAP financial measure: Proportionate Share of Joint Ventures

As noted in our previous comment letter, in the real estate industry a common disclosure in an entity's MD&A involves providing information on its proportionate share in joint arrangements. Current practice by many real estate entities is to present this information in a "two-column approach", reconciling the full income statement and balance sheet to show the entity's proportionate share in joint arrangements that are part of regular business operations.

Real estate entities are frequently users of debt, and debt is often utilized at the joint venture level. Presentations that do not go beyond the IFRS requirements fail to disclose the use of financial leverage at the joint venture level. Therefore, an additional benefit of the two-column approach is to better disclose IFRS off-balance sheet debt to users of reporting.

We are pleased to see that this presentation will continue to be acceptable under the CSA *Proposed National Instrument 52-112* (per proposed Companion Policy 52-112 subparagraph 6(e)(v)), provided that the reconciling items and proportionate share amounts are labelled as non-GAAP and not given more prominence than the discussion on GAAP amounts. We support continuing to allow this reconciliation.

3. Reconciliation of Non-GAAP Financial Measures to Most Directly Comparable GAAP Amounts



In our initial comment letter, we cited the January 2015 OSC publication of *Staff Notice 51-724 Report on Staff's Review of REIT Distribution Disclosure*. In response to this notice, many REITs provided enhanced disclosure around AFFO, including a reconciliation to cash flow from operations. Subsequently there has been some confusion on the disclosure requirements around AFFO where it is utilized by management as an earnings measure rather than as a cash flow measure. Where REITs have adopted REALPAC's guidance on AFFO and view AFFO as an earnings measure, it is our understanding that AFFO should only be reconciled to GAAP net income (with a subtotal for FFO), and not GAAP cash flow from operations as well, as, in these circumstances, net income is the most directly comparable GAAP amount.

We are pleased to see that this is clarified by "Most Comparable Measure" guidance in Subparagraph 6(e)(v) noting that this is an area of applying judgment and that, in practice, earnings-based measures and cash flow-based measures are used to disclose operational performance.

In addition, we requested clarification whether items such as "rent per square foot" amounts are required to be reconciled to a GAAP measure, and guidance on how this could be performed. For example, amounts such as "average expiring rent per square foot" and "average net rent per occupied square foot" are based on contractual rent at a point in time. We were unclear on if and how these amounts should be reconciled to IFRS rental revenue on a quarterly basis and questioned how this could be presented in a clear and useful manner to users.

We understand that under the revised guidance per Subparagraph 8(a)-(d), there is no longer a proposed requirement to reconcile non-GAAP ratios to IFRS amounts. We believe this resolves our concern around this point.

4. Usefulness of Non-GAAP Financial Measures Disclosures

We previously expressed concern with the use of the term "incremental" in the context of requiring information to be incremental in order to be considered "useful". For accounting purposes, the term "incremental" can be a powerful word. By using the term "incremental" we have concerns that this is intended (or could be read) to preclude disclosure of similar measures that we consider to be important and useful to investors and other users.

For example, some entities use multiple measures to explain "operating performance" – such as "net operating income" (NOI) and "funds from operations" (FFO). While both include aspects of operating income, FFO takes into account several more deductions to represent a recurring economic earnings measure.

While it is our understanding that the term "incremental" is not intended to be such a high hurdle, we would like to have clarification on the applicability of this term in the context of determining whether or not information is considered to be "useful" under the Proposed National Instrument 52-112 (and its accompanying Companion Policy and Consequential Amendments and Changes) if it is not also "incremental."

We also expressed concern with one of the examples used that would cause a non-GAAP financial measure to be more prominent than the most comparable measure presented in the financial statements, now included in Paragraph 6(c) – Prominence of a non-GAAP financial



measure that is historical information: “Multiple non-GAAP financial measures being used for the same purpose thereby obscuring disclosure of the most comparable measure”.

We are still concerned that this will limit disclosure on common metrics disclosed and used by investors and others, such as NOI, FFO, AFFO and ACFO.

While it is our understanding that this clause is not meant to indirectly restrict the common industry metrics noted above, we would like to have clarification on the applicability of this clause.

5. Definition of Non-GAAP

In our previous comment letter, we expressed concerns with the proposed definition of non-GAAP, and suggested that the CSA may want to simplify and clarify how non-GAAP measures are defined or consider whether a principles-based approach (such as that which exists in *CSA Staff Notice 52-306 (Revised) Non-GAAP Financial Measures*) is easier and more practical for entities to apply.

We are pleased to see that the CSA has reverted to a definition consistent with *CSA Staff Notice 52-306 (Revised) Non-GAAP Financial Measures*.

6. Disclosure Requirements for Ratios

As noted in our previous comment letter, in the real estate industry, it is common to disclose payout ratios for any combination of FFO, AFFO and ACFO (where relevant) to show the amount of distributions to unitholders as a percentage of funds from operations or cashflows. We were concerned about how to reconcile these ratios to GAAP amounts because under IFRS, there is no comparable payout ratio (i.e. the concept of payout ratio does not exist under IFRS).

In addition, preparers include ratios such as debt to gross book value or debt service ratio in supplemental documents. These ratios provide key information that is valued by investors and analysts because of the use of leverage in the real estate industry. Most REITs also disclose debt to assets, where the debt included in the ratio may reasonably exclude some liabilities from the IFRS financial statements. Similar to payout ratios, they have no comparable “GAAP” measure in the IFRS financial statements to which they can be reconciled.

We sought clarification on these points and are pleased to see this provided and that reconciliations to GAAP amounts are not required for ratios.

7. Reducing Regulatory Burden

In previous comment letters, we have expressed support for the CSA’s initiative to ease the regulatory burden on non-investment fund reporting issuers. We were concerned that the initial rules proposed for NI 52-112 would significantly increase regulatory burden and costs. We are pleased to see that the CSA has reconsidered many of these requirements and decreased the extent of those previously proposed.

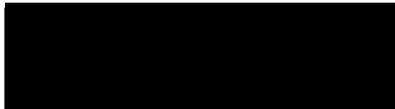


8. Exclusion of Oral Statements

In our previous comment letter, we sought clarification that the exclusion of oral statements extended to written transcripts of oral communications that are not issued or referenced directly by the issuer (such as those issued by external parties). We are pleased to see this clarification provided.

We thank the OSC for the opportunity to provide our input on *CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measure Disclosure – Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure – Related Proposed Consequential Amendments and Changes*. If you would like to discuss our comments, please contact Nancy Anderson, REALPAC’s Vice President Financial Reporting and Chief Financial Officer, at 416-642-2700 x226.

Respectfully submitted,



Nancy Anderson, Vice President, Financial Reporting and Chief Financial Officer
REALPAC

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June 29, 2020

Without Prejudice
By E-mail

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

Re: CSA Second Notice and Request for Comment
Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*
Proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure*

We submit the following comments in response to the CSA Second Notice and Request for Comment (the “**Request for Comment**”) published by the Canadian Securities Administrators (the “**CSA**”) on February 13, 2020 with respect to proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (“**NI 52-112**”) and proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (“**CP 52-112**”, and together with NI 52-112, the “**Proposed Instrument**”).

We have organized our comments below with reference to the proposed rule or policy to which the comments relate. All references to parts and sections are to the relevant parts or sections of the applicable rule or policy. Where our comments are responsive to the specific questions posed in the Request for Comment, we have included the text of such question below for ease of reference.

Thank you for the opportunity to comment on the Proposed Instrument. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or of any client of the firm) and is submitted without prejudice to any position taken, or that may be taken, by our firm on its own behalf or on behalf of any client.

1. Proposed National Instrument 52-112**a. Section 4 - Application – exceptions**SEC Issuers

We acknowledge that the CSA noted in the Request for Comment that the Proposed Instrument has not been revised to exempt SEC issuers from the application of NI 52-112 on the basis that the exemption for SEC foreign issuers is consistent, and based on similar rationale, to other exemptions provided to SEC foreign issuers under current Canadian securities legislation. However, we respectfully submit that consideration should be given as to whether SEC issuers should be exempt from the requirements of NI 52-112 to the extent that they are complying with Canadian disclosure obligations through the filing of a U.S. equivalent document. For example, National Instrument 51-102 *Continuous Disclosure Obligations* (“**NI 52-102**”) defines an “AIF” to include “an annual report under the 1934 Act on Form 10-K or Form 20-F” in the case of an SEC issuer and defines an “MD&A” to include a management’s discussion and analysis prepared in accordance with Item 303 of Regulation S-K under the 1934 Act. To the extent that the U.S. equivalent disclosure document satisfies the Canadian disclosure requirements, additional Canadian requirements under NI 52-112 should not be required. Additional burden imposed upon SEC issuers will make the Canadian capital markets less attractive to these issuers and is not consistent with the CSA’s goal of reducing regulatory burden.

Fairness Opinions

We submit that fairness opinions should be explicitly excluded from the application of the Proposed Instrument, similar to how valuations and pro forma financial statements are currently excluded.

Information Derived from a Material Contract

Given that material contracts are explicitly exempted from the application of NI 52-112, we submit that disclosure of a definition or financial covenant derived from a material agreement in a document other than the material agreement itself should be excluded from the application of the Proposed Instrument as well.

b. Subsection 5(3) - Incorporating information by reference

As currently drafted, subsection 5(3) of NI 52-112 does not permit an issuer to incorporate by reference the information specified in subsection 5(1) in a news release issued or filed by the issuer. Given the nature of press releases, we respectfully submit that issuers should be permitted to incorporate by reference the information required under NI 52-112 in a news release issued or filed by the issuer if the reference is to the MD&A of the issuer. Reporting issuers typically press release quarterly and annual financial results and having to include the prescribed disclosure under NI 52-112 would result in such press releases being lengthy, complex and impracticable. The increased burden of the added disclosure would not be outweighed by the benefit to investors and is contrary to the CSA’s burden reduction initiatives.

c. Subsection 6(c) – Non-GAAP financial measures that are historical information

Section 6(c) of NI 52-112 requires that the non-GAAP financial measure be presented with “no more prominence” in the document than that of the most comparable financial measure. The same concept is used elsewhere in NI 52-112 (i.e., section 7(2)(c) with respect to forward-looking information, section 8(b) with respect to non-GAAP ratios, and section 10(b) with respect to capital management measures). Section 6(c) of CP 52-112 suggests that the most comparable measure must be presented with “equal or greater prominence” than the non-GAAP financial measure in order to meet this standard. We submit that this standard is difficult for issuers to satisfy as one measure will always have to appear first in a

document and in the case of an MD&A, for example, the non-GAAP financial measure may be more relevant than the GAAP measure. A materiality standard may be appropriate in this regard.

2. Companion Policy 52-112

a. Section 2 – Application to reporting issuers – Websites and Social Media

We acknowledge that the Proposed Instrument will apply to disclosure on websites and social media. We are concerned, however, that publications that an issuer links in social media will become subject to the requirements of NI 52-112 given that these are third party publications that are not within the control of the issuer.

b. Section 6(d) – Comparative information – Impracticable

Section 6(d) of NI 52-112 allows an issuer to exclude comparative information if it is impracticable to present the measure for the comparative period. In CP 52-112, paragraph 6(d) explicitly provides that the CSA will not consider the cost or time involved in preparing comparative information as sufficient rationale for an issuer to assert that it is impracticable to present comparative period information. We submit that this is inappropriate, particularly as section 2.1 6 of the *Securities Act* (Ontario) requires that “business and regulatory costs... of market participants should be proportionate to the significant of the regulatory objectives sought to be realized.” We respectfully submit that the CSA should consider cost and time.

In addition, the requirement that the prior period comparative information use the “same composition” may be too onerous for issuers given that composition can change for a number of valid reasons and that such changes will have to be described under section 6(e)(vi) of NI 52-112. As such, there should be no requirement to restate prior periods.

c. Section 6(d) – Comparative information – Changes in Accounting Standards

The suggested approach for adjustments that do not apply every period (e.g., transactions costs for mergers and acquisitions) or that are not anticipated is not practical as it implies that an issuer should include all potential adjustments that may occur or recur in the definition and description of the measure all potential adjustments that may occur or recur in the future.

* * * * *

Thank you for the opportunity to comment on the Proposed Instrument. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Laura Levine
Simon A. Romano
David Tardif



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Chief Accountant

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June 25, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
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Dear Sirs and Mesdames:

Re: TELUS Corporation Inc. Reply to CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measure Disclosure

TELUS Corporation (“TELUS”) is pleased to submit the following comments in response to the CSA’s Second Notice and Request for Comment on Proposed National Instrument 52-112 “Non-GAAP and Other Financial Measures Disclosure”.

TELUS is a leading national telecommunications company in Canada, with \$14.8 billion of annual revenue and 15.3 million customer connections. TELUS provides a wide range of communications

products and services, including wireless, data, Internet protocol (IP), voice, television, entertainment and video, and is Canada's largest healthcare IT provider.

TELUS is a reporting issuer in each of the provinces of Canada (and a foreign private issuer reporting in the United States pursuant to the Canada-United States Multijurisdictional Disclosure System) and its corporate reporting and annual reports have been recognized with many awards over the last two decades. The TELUS team strives to continually improve the quality and value of TELUS's stakeholder disclosures and is firmly committed to providing full and fair financial disclosures for the benefit of TELUS's investors and other stakeholders.

TELUS would like to offer the following comments on the Proposed Materials:

1. General Comments:

- 1.1. Although improvements have been made to the Original Materials, the reference to five different categories of specified financial measures (six when counting historical and forward-looking non-GAAP financial measures separately) within the scope of the Proposed Instrument, each with different disclosure requirements, is still complex, will require the application of significant judgment and will constitute a source of transitional and ongoing uncertainty for both issuers and investors and create potential exposure for issuers. TELUS would suggest that it would be valuable to provide a roadmap with a general overview of the application process to adequately categorize financial measures, as was done in the Original Materials.

Notwithstanding the internal application testing of the Proposed Instrument performed by the CSA, given the significance of the changes to existing practice, TELUS would strongly suggest that additional field-testing by reporting issuers be used to inform the final drafting of the Proposed Instrument so as to ensure the practicability of the final instrument and that the desired outcomes are achieved, including to ensure that the expectation of substantially less disclosure than expected under SN 52-306 is realized. TELUS would suggest that field-testing also would highlight whether or not there were appropriately consistent results (disclosures) across reporting issuers (for example, would "free cash flow" generate comparable disclosure across all issuers?), with a view to such consistency diminishing the time and effort investors spend on understanding certain financial information.

- 1.2. It is currently not clear in the Proposed Instrument, whether the term "entity" implies a legal entity, or whether the IASB's concept of a reportable entity should be applied to the Proposed Instrument. The concept of what constitutes an "entity" is fundamental to the Proposed Instrument's framework and is required to accurately classify specified financial measures into the correct categories.

As an example, in the context of a consolidated reportable entity with a non-controlling interest, any reported adjustments to results of operations attributable to the shareholders of the parent corporation would not be a specified financial measure as such adjusted results are not reflective of the historical financial performance of the consolidated reportable entity.

- 1.3. The Proposed Instrument requires the explanation of the composition for any non-GAAP measure, non-GAAP ratio, capital management measure and supplementary financial measure. In some instances, the composition is explicitly disclosed in the measure's label. For example, "Same store sales" as a line item may be classified as supplementary financial measure. In this example, the composition of the measure is explicit in its label. TELUS would suggest clarification be made as to whether a separate explanation of the specified financial measure's composition, which may be repetitive, is still required in these cases.
- 1.4. The Proposed Instrument does not seem clear with respect to the classification of financial measures that are presented as subtotals of two or more specified financial measures. For example, if two non-GAAP financial measures are disclosed separately and a subtotal of the two measures is presented in a table, it is not clear if this total would then also be subject to the

requirement of the Proposed Instrument. By definition, this subtotal may be considered a specified financial measure, however, providing the required accompanying disclosure would then be redundant.

- 1.5. TELUS would suggest additional guidance would be useful, as it relates to whether qualitatively defined measures meet the presentation requirements stipulated by paragraph (c) of the definition of a non-GAAP measure, paragraph (b) of the definition of a capital management measure, and/or paragraph (b) of a total of segments measure.

For example, a qualitatively defined measure of what an entity considers capital, which may be composed of a combination of line items from the primary financial statements and is qualitatively presented in the financial statement notes, could enable a reasonable investor applying a not unreasonable effort to calculate the measure. In this scenario, TELUS would not expect this measure to meet the definition of a non-GAAP measure as the measure is qualitatively presented in the financial statement notes, however, the guidance does not appear clear.

- 1.6. The Proposed Companion Policy provides a non-exhaustive list of what is considered to be non-financial information. In TELUS's view, the following items on the list may or may not include financial information and it is not clear if this list would then exclude this information from being in scope. Application guidance for such items would be useful as it should not be a matter of judgment as to whether or not an item includes or excludes financial information:

- *Environmental measures*: When expressed as a ratio or percentage, where a component of the ratio is a financial measure (e.g. Domestic energy intensity measured as a percentage of adjusted revenue), this would be considered financial information.
- *Information on major shareholdings*: Where quantitative information is disclosed on material subsidiaries, this would be considered financial information.
- *Acquisition or disposal of the issuer's own shares*: Where share price information is disclosed, for example, related to a Normal Course Issuer Bid, this would be considered financial information.

- 1.7. Section 5 of the Proposed Instrument provides for incorporating information by reference. TELUS would suggest the following clarifications or amendments to this section:

- 1.7.1. TELUS would suggest that paragraph 5(1) be amended such that the reference be to the financial statements if the information is included therein, or to the MD&A if not included in the financial statements so as to reduce duplication, and resulting possible investor confusion, arising from the MPM disclosures required by the IASB Exposure Draft.

- 1.7.2. Paragraph 5(2)(a) requires a statement indicating that the required information is incorporated by reference. Clarification as to whether the specific information that is incorporated by reference must be explained or whether a general statement cross-referencing to the financial statements or MD&A is acceptable. For example, when cross-referencing to the MD&A for information as to why a non-GAAP financial measure is useful to investors and additional purposes of the measure per subparagraph 6(e)(iv), it is not clear if a general statement referring to the MD&A for "more information", would be acceptable under the Proposed Instrument.

- 1.7.3. TELUS notes that pursuant to paragraph 5(3)(b) of the Proposed Instrument, cross-references to the financial statements or MD&A are not permitted in news releases issued or filed by the issuer. This exclusion is not warranted in all instances, for example earnings releases, in TELUS's view and should either be amended (or removed) or the policy reasons behind this choice explained.

- 1.8. TELUS has reviewed the Proposed Instrument in conjunction with the IASB's Exposure Draft on General Presentation and Disclosures. As the MD&A is a discussion of the financial statements, it is TELUS's view that definitions and metrics should be aligned to the maximum extent possible across all in-scope documents so as to diminish the time and effort investors spend on understanding certain financial information.

While both the Proposed Instrument and the IASB Exposure Draft set out standards in response to demand for consistency and comparability in performance reporting, the definitions of financial performance measures vary across the proposals. This applies in particular to reconciling items that are described as "non-recurring", "infrequent", "unusual" or using a similar term. Whereas the Proposed Instrument looks 2 years into the future and 2 years into the past, the IASB Exposure Draft purposely does not specify a period, is solely prospective, and defines income and expenses that have limited predictive value as unusual when it is reasonable to expect that similar items (in type or amount) will not arise for several future annual reporting periods.

These distinctions will create duplicate variations of nuanced disclosure, including explanations and reconciliations, necessary for ostensibly a single measure to meet the requirements set out by both the Proposed Instrument and the IASB Exposure Draft. In TELUS's view, this duplication will create obfuscation of information, reduction in comparability, contribute to investor confusion and may, at times, be onerous for the preparer to ensure the specific requirements of each standard are being met in the respective documents.

Recommendations:

Align the definition of "unusual" in the Proposed Instrument with that of the IASB Exposure Draft
With a view to diminishing the time and effort investors spend on understanding "unusual" items, TELUS would suggest that broad alignment of definition over multiple geographies (via the IASB Exposure Draft) would be preferable to having Canadian issuers being "outliers".

Prevent obfuscation of information due to duplicate versions of disclosure for a single measure
Where the IASB Exposure Draft proposes to define management performance measures ("MPM") as subtotals of income and expenses that are used in public communications outside the financial statements, the Proposed Instrument defines non-GAAP financial measures as measures not presented in the financial statements. Therefore, any measure classified as a MPM under the IASB Exposure Draft, would not be included as a non-GAAP measure under the Proposed Instrument as the measure would be presented in the MPM note, would not meet paragraph (c) of the Proposed Instrument's definition and would not be subject to section 6 of the Proposed Instrument.

TELUS would be supportive of keeping this definition in place to prevent duplicate versions of the same disclosure such that MPMs are outside the scope of the Proposed Instrument.

Additional guidance:

TELUS would suggest that additional guidance on the application of two (or more) standards with conflicting definitions or requirements be provided. In particular, TELUS would suggest it helpful to address how such disparities between an applied financial reporting framework, self-regulatory organization ("SRO"), and securities legislation (i.e. CSA) should be resolved.

2. Specific Comments: Non-GAAP Financial Measure

- 2.1. The Proposed Companion Policy gives an example of component information and states that when an issuer presents a financial statement line item in a more granular way outside the financial statements, it may be a component of a line item for which the component has been calculated in accordance with the accounting policies used to prepare the line item presented in the financial statements. Such a measure would not be a non-GAAP financial measure. However, such a measure, may still meet the requirements of paragraphs (a) – (d) of the

non-GAAP financial measure definition. TELUS would suggest clarifying this in the definition that such a component, as described, would not be a non-GAAP measure.

Further, TELUS would suggest clarifying whether a financial statement line item, in this context, would include subtotals or totals specified and required by an issuer's GAAP (e.g. Net Income).

- 2.2. Some financial measures presented by an entity may be measures specific to a single reportable segment (and an entity may in fact have only one reportable segment). As these measures would not be a total or subtotal of two or more reportable segments, they would not meet the definition of a total of segments measure, however, they may meet the definition of a non-GAAP financial measure under the Proposed Instrument.

Where an entity reports non-GAAP financial measures, specific to each reportable segment, and also presents the same non-GAAP measure, determined using the same composition, on a consolidated basis, the requirements under section 6 may create duplicative disclosure and resulting investor confusion. For example, the reconciliation of EBITDA for each individual reportable segment to consolidated net income presented in the primary financial statements, would include in its presentation the same information as a reconciliation of consolidated EBITDA to consolidated net income presented in the primary financial statements. TELUS would suggest limiting the disclosure requirements under section 6 for non-GAAP measures that are specific to a single reportable segment where the same non-GAAP measure is presented on a consolidated basis to avoid duplication and resulting investor confusion.

- 2.3. When an issuer's GAAP requires an issuer to make a selection as to how cash flows from operating activities are reported (i.e. direct method or indirect method), the financial measures presented on the statement of cash flows will vary based on the selected method of presentation. As such, certain cash flow measures would be classified as either non-GAAP financial measures or not, depending on the method selected. For example, where a financial measure that is a cash flow measure depicts a class of gross cash receipts, this measure may be derived from a measure presented in the statement of cash flows under the direct method, but not under the indirect method.

In TELUS's view, the selected method of reporting cash flows from operating activities in the statement of cash flows, or any other accounting policy selection from permitted options, should not determine whether or not a financial measure should be classified as a non-GAAP financial measure.

- 2.4. Paragraph (d) of the definition of a non-GAAP financial measure requires that a non-GAAP financial measure, with respect to its composition, excludes an amount that is included in, or includes an amount that is excluded from, the composition of the most comparable financial measure presented in the primary financial statements of the entity. TELUS suggests added guidance as to whether a measure that includes an amount that is expected to be included in a *future* period, where the right to recognize the amount in the future is conditional on the passage of time, or amount that has been included in the measure in a *prior* period, would be still be classified as a non-GAAP measure. For example, where an entity that recognizes a contract asset on its balance sheet, a cash-based metric may be used by management to measure amounts billed, requiring an adjustment to revenue for amount previously recognized.

3. **Specific Comments: Non-GAAP Ratios**

- 3.1. Subparagraph 8(d)(i) requires the document to explain the composition of the non-GAAP ratio and identify each non-GAAP financial measure that is used as a component of the non-GAAP ratio. However, it is not clear if the identification of each non-GAAP financial measure as a component of a ratio would then require separate application of section 6.

For example, paragraph 6(b) and subparagraph 6(e)(v) would then require reference and reconciliation to the nearest measure in the Primary Financial Statements. This could then cause

duplicative disclosure and investor confusion. For example, reason for change per subparagraphs 6(e)(vi) and 8(d)(iv) could be the same explanation.

4. Specific Comments: Capital Management Measures

- 4.1. TELUS would suggest that the Proposed Instrument or the Proposed Companion Policy clarify whether a component of a capital management measure, which is also presented in the financial statement notes, would be considered a capital management measure. The component measure may not be intended to enable a person to evaluate an entity's objectives, policies and processes for managing the entity's capital on a stand-alone basis, however, is intended to do so when viewed in juxtaposition with the capital management measure of which it is a component.

Further, the Proposed Companion Policy states that if a capital management measure was calculated using one or more non-GAAP financial measures, the issuer must comply with section 6 of the Proposed Instrument, in respect of each non-GAAP financial measure used. Oftentimes, measures used to calculate a capital management measures are presented in the financial statement notes (e.g. in the capital management note) when they are accompanying the capital management measure of which they are a component. These measures would not meet the definition of a non-GAAP measure, however, TELUS would suggest clarifying this in the Proposed Companion Policy.

- 4.2. Paragraph (b) of the definition of a capital management measure refers to a financial measure presented in the financial statement notes of the entity, but not presented in the primary financial statements. TELUS would suggest that the Proposed Companion Policy clarify whether this definition refers only to the capital management note to meet the requirements of IAS 1 of IFRS, or if paragraph (b) of the definition of a capital management measure should be applied to the complete set of the financial statement notes.

5. Specific Comments: Total of Segment Measures

- 5.1. In paragraph (b) of the definition of a total of segment measure, a total of segment measure must be presented in the financial statement notes of the entity, but not presented in the primary financial statements. TELUS would like to clarify whether this definition implies only the segment note needs to meet the requirements of IFRS 8, or if paragraph (b) of the definition of a total of segment measures should be applied to the complete set of financial statement notes.

If the intent of the CSA is to apply the total of segment requirement to all financial statement notes, TELUS would suggest that there is an inconsistency between the classification of a financial measure at a consolidated level presented in the financial statement notes, which may be a total of segments measure, and the classification of a financial measure that is presented in the financial statement notes for a single reportable segment, which would not meet any classification requirements and would not be considered a specified financial measure. For example, if consolidated restructure expense is presented in the financial statement notes, but not the primary financial statements, this would be considered a total of segments measure. However, restructure costs at the segment level would not be a total of segments measure because it is not a subtotal or total of two or more segments. TELUS would suggest that segmented and consolidated measures that follow the same calculation and have the same composition be classified in the same category.

6. Specific Comments: Scope Exclusions

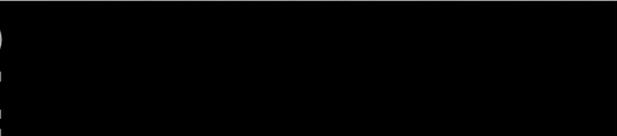
- 6.1. The Draft Policy states that "[i]f a reporting issuer uses social media to provide links to publications (e.g., analyst reports), such publications are within the scope of the Instrument." TELUS considers that so broadening the scope of the Proposed Instrument so as to impose its requirements onto third party publications is impractical and overly broad. TELUS would suggest removing publications referred to in links provided in social media from the scope of the Proposed Regime, or alternatively, adding a provision that would allow links to such references

if accompanied by a disclaimer stating that such third party publications are outside of the organization's purview as it relates to non-GAAP and other specified financial measures.

Please feel free to contact us at your convenience if additional clarification on TELUS's response is required.

Yours truly,

TELUS Corporation



Trent Klein CPA, CA
Chief Accountant

cc: Doug French, FCPA, FCA
EVP & Chief Financial Officer, TELUS

INCLUDES COMMENT LETTERS RECEIVED (at Page 60)