

CSA Notice of Publication
National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*
Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure*
and Related Consequential Amendments and Changes

May 27, 2021

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing in final form the following materials:

- National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Instrument**);
- Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Companion Policy**);
- Related 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; and
 - Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards*.(collectively, the **Materials**).

The original proposals for the Materials (the **Original Materials**) were published on September 6, 2018. In connection with the Original Materials we conducted 38 outreach sessions across seven cities in Canada and received 42 comment letters. In response to the original feedback received, we made substantive changes, and reissued the proposals for the Materials (**Revised Materials**) on February 13, 2020. In connection with the Revised Materials we conducted 14 outreach sessions across four cities in Canada allowing us to further actively engage with stakeholders. We received 26 comment letters from various stakeholders, including issuers, investors, accounting firms, standard setters, industry associations and law firms.

The list of commenters on the Revised Materials is attached as Annex A. We wish to thank all commenters for contributing to the second 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

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.

Subject	Summarized Comment	Response
	<p>disclosure requirements for all specified financial measures: composition explanation and the explanation that the measure is not a standardized measure.</p> <p>One commenter indicated that the incorporation by reference for the quantitative reconciliation requirement will not be sufficiently accessible in the context for an investor to utilize.</p>	<p>Instrument. No change made to allow incorporation by reference for the explanation that the measure is not a standardized measure, as we feel that this information is important to highlight in each document where a Specified Financial Measure is disclosed.</p> <p>No change made. We thank the commenter for its view. We have retained the option for a quantitative reconciliation to be provided in a document, except within the MD&A and earnings releases since these are the most critical documents looked-at by investors and where the use of specified financial measures is generally most prevalent.</p>
5(3)(a)	<p>Two commenters recommend that we allow incorporation by reference from interim MD&A to annual MD&A.</p> <p>Two commenters recommended that section 5 of the Revised Materials should also allow incorporation by reference to the financial statements and not just the MD&A.</p>	<p>No change made. The MD&A is meant to be the main repository where recent disclosures relating to specified financial measures, as required under the Instrument, can be found for each Specified Financial Measure disclosed by the issuer.</p> <p>Adding incorporation by reference of information included in other documents, including previous MD&A filings, may obscure the relevant information and increase the burden placed on readers in locating the information themselves.</p>
5(3)(b)	<p>17 commenters recommended that issuers be permitted to incorporate by reference the information required under the Revised Materials in a news release issued or filed by the issuer if the reference is to the MD&A of the issuer.</p>	<p>Change made to allow incorporation by reference for the information required under the Instrument, as specified in subsection 5(1), in a news release issued or filed by the issuer if the reference is to the most recent MD&A of the issuer.</p> <p>However, as outlined in subsection 5(4) of the Instrument, for earnings release filings made under section 11.4 of NI 51-102, the issuer would be required to provide a quantitative reconciliation, as applicable, if a Specified Financial Measure was disclosed in this earnings release.</p>

Subject	Summarized Comment	Response
Part 2 – Disclosure Requirements Sections 6 to 11		
6(a)(i), 8(a), 11(a)(i) – labelling	One commenter requested that we remove the requirement that a Specified Financial Measure be labelled using a term, that given the measure’s composition, describes the measure.	No change made. We are of the view that the label which identifies a Specified Financial Measure must be appropriate given the nature of information.
6(c), 7(2)(c), 8(b), 9(b), 10(b) – prominence	<p>One commenter supported the prominence requirement as a key feature of the Revised Materials.</p> <p>Two commenters indicated that the prominence requirement is too burdensome and that a materiality threshold should apply to this requirement or greater prominence should be given to the most directly comparable financial measure presented in the primary financial statements only when it would be misleading not to do so.</p>	No change made. We thank the commenters for their views. Prominence is an area of concern for regulators as it has been a long-standing issue with respect to the misuse of specified financial measures.
6(d), 8(c), 9(d), 10(c) – comparatives	<p>Four commenters recommended that the requirement to disclose comparatives should allow that the issuer exercise judgment as to whether disclosure of comparatives is necessary to not mislead investors.</p> <p>One commenter recommended that we allow for an exception from the requirement to provide comparative period disclosure where this information can be obtained from the issuer’s most recent annual period or its most recent interim period filings.</p>	<p>Change made. We have changed the requirement in paragraphs 6(1)(f), 8(d), 9(d) and 10(1)(c) of the Instrument to require comparatives only in an MD&A or an earnings release of the issuer (unless impracticable to do so for certain specified financial measures).</p> <p>No change made, considering the change made above to limit the instances where the disclosure of comparatives is required.</p>

Subject	Summarized Comment	Response
	One commenter indicated that the requirement to disclose a measure for a comparative period using the same composition is too rigid and that we should revert back to “consistent basis” used in the SN 52-306.	No change made. We are of the view that the application of the “same composition” term in the Instrument does not substantially differ from the SN 52-306 “consistent basis” guidance.
6(e), 7(2)(d), 8(d), 9(c), 10(a), 11(b) – in proximity to the first instance	Three commenters asked for clarification in regard to the application of proximity to the first instance.	Change made. We have included additional guidance in the Companion Policy.
6(e)(iii), 8(d)(i), 10(a)(i), 11(b) – composition	One commenter suggested that clarification be made as to whether a separate explanation of a Specified Financial Measure’s composition is still required when the composition of the measure is explicit in its label.	Change made. We have added guidance in the Companion Policy to clarify the composition requirement and to include an example of what that composition disclosure would entail.
Section 6 – Non-GAAP financial measures that are historical information		
6(b), 6(c) – most comparable financial measure and prominence	One commenter indicated that they believed the requirements in paragraphs 6(b) and 6(c) overlapped.	No change made. The requirement in paragraph 6(1)(c) of the Instrument is to disclose the most directly comparable financial measure that is presented in the primary financial statements of the entity to which the non-GAAP financial measure relates; however, the requirement in paragraph 6(1)(d) of the Instrument relates to prominence and that the non-GAAP financial measure should be disclosed with no more prominence than that of the most directly comparable financial measure. We do not view the requirements of paragraphs 6(1)(c) and (d) to be overlapping.
6(c), 6(e)(iv)	One commenter expressed concern that the following Revised Materials guidance would preclude disclosure of similar measures that the commenter would consider to be important and useful to investors: prominence considerations in	No change made. The prominence and usefulness of non-GAAP financial measures guidance has been retained since these continue to be areas of concern for regulators.

Subject	Summarized Comment	Response
	regard to the use of multiple non-GAAP financial measures and the use of the term “incremental” in the context of requiring information to be incremental in order to be considered useful.	
6(e)(vi) – explanation of change	One commenter indicated that the requirement to explain the reason for a change in a non-GAAP financial measure under subparagraph 6(e)(vi) of the Revised Materials should be sufficient and that there should be no specific requirement to restate a non-GAAP financial measure for a comparative period.	No change made. Comparative period information is important for investors to understand and assess the non-GAAP financial measure being disclosed.
6(e)(i) and (ii) – identification and not a standardized financial measure disclosure	Four commenters indicated that the wording in the Revised Materials that a non-GAAP financial measure be cross-referenced to a section each time it is disclosed, is not aligned with the wording in paragraph 6(e) of the Revised Materials 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.	Change made. The identification of the measure as a non-GAAP financial measure has been moved out of subparagraph 6(1)(e)(i) of the Revised Materials to paragraph 6(1)(b) of the Instrument and as such the “in proximity to the first instance” would not apply to this disclosure item. In addition, additional guidance was added in section “Paragraph 6(1)(b) – Identification of a non-GAAP financial measure” of the Companion Policy in regard to footnote use.
Section 7 – Non-GAAP financial measures that are forward-looking information		
7(2)(b) – historical non-GAAP financial measure	Two commenters suggested that we remove the requirement to disclose the related historical financial measure.	No change made for these views; however, we did clarify in section 7 of the Companion Policy that the equivalent historical non-GAAP financial measure is required to be disclosed in the same document as the non-GAAP financial measure that is forward-looking information.
7(2)(d) – significant difference	Three commenters asked for more clarity in respect of the requirement to describe significant differences between the non-GAAP financial measure that is forward-looking information and	Change made. We have included additional clarifying language in the Companion Policy.

Subject	Summarized Comment	Response
	the equivalent historical non-GAAP financial measure.	
7(3)	<p>One commenter asked for clarification as to whether the exemption in subsection 7(3) of the Revised Materials is meant to apply only when the SEC issuer is required to comply with Regulation G under the 1934 Act or if the SEC issuer may voluntarily comply with Regulation G under the 1934 Act.</p> <p>One commenter indicated that the 7(3) exemption for SEC issuers should be limited to those entities that are SEC issuers filing outside of the Multi-Jurisdictional Disclosure System.</p>	<p>No change made. We are of view that subsection 7(3) of the Instrument is clear that the exemption is available to any disclosure of a non-GAAP financial measure that is forward-looking information made by an SEC issuer in compliance with Regulation G under the 1934 Act.</p> <p>No change made. The subsection 7(3) exemption is meant to apply to all SEC issuers complying with Regulation G under the 1934 Act.</p>
Section 8 – Non-GAAP ratios		
8(b) – prominence	One commenter recommended that we remove the requirement that a non-GAAP ratio be disclosed with no more prominence in the document than that of a similar financial measure presented in the primary financial statements to which the non-GAAP ratio relates.	No change made. Prominence is an area of concern for regulators.
8(d)(i) – component of the non-GAAP ratio that is a non-GAAP financial measure	<p>Five commenters asked for clarification of the requirement to identify each non-GAAP financial measure that is used as a component of the non-GAAP ratio.</p> <p>One commenter recommended that the components of a non-GAAP ratio need not be reconciled if the component is not otherwise disclosed in the document.</p>	<p>Change made. The requirement in subparagraph 8(c)(ii) of the Instrument was clarified to require that each non-GAAP financial measure that is used as a component of the non-GAAP ratio be “disclosed” rather than “identified”.</p> <p>No change made. We consider information about these non-GAAP financial measure components used in the calculation of the non-GAAP ratio to be key in understanding the non-GAAP ratio.</p>

Subject	Summarized Comment	Response
Section 9 – total of segments measures		
9(c) – quantitative reconciliation	<p>Six commenters recommended that we remove the quantitative reconciliation requirement for the total of segments measure or allow a cross-reference to the reconciliation included in the financial statement notes.</p> <p>One commenter recommended that the requirements of paragraph 9(c) of the Revised Materials be revised so that the level of detail required to be provided when presenting a quantitative reconciliation for a total of segments measure be clear, in order to adequately comply with the requirements set out in paragraph 9(c).</p>	<p>No change made. We are of the view that a quantitative reconciliation requirement for a total of segments measure under paragraph 9(c) of the Instrument is needed to ensure that a consistent form of reconciliation is provided to readers in the same manner as the non-GAAP financial measure reconciliation. This will also ensure that the quantitative reconciliation gives the total of segments measure the necessary context when it is disclosed outside of the issuer’s financial statements.</p> <p>In addition, the quantitative reconciliation for the total of segments measure was retained to ensure consistency of presentation with SEC issuers complying with Regulation G and Item 10(e) of Regulation S-K since such measures would meet the definition of a non-GAAP financial measure under SEC requirements.</p> <p>Change made. We have amended paragraph 9(c) of the Instrument to clarify that the quantitative reconciliation be in the permitted format outlined in subsection 6(2) of the Instrument.</p>
Section 10 – capital management measures		
General comment	Three commenters suggested that the Revised Materials should be clarified in respect of an issuer’s requirement to comply with section 6 of the Revised Materials for each non-GAAP financial measure used in the calculation of a capital management measure.	Change made. We have amended subparagraph 10(1)(b)(i) of the Instrument to clarify that an issuer is required to disclose any non-GAAP financial measures used in the calculation of a capital management measure.

Subject	Summarized Comment	Response
	One commenter recommended that the components of a capital management measure that are non-GAAP financial measures should not need to be reconciled if the non-GAAP financial measure component is not otherwise disclosed in the document.	No change made. We consider information about these non-GAAP financial measure components used in the calculation of the capital management measure to be key in understanding the capital management measure.
10(b) – prominence	One commenter recommended that the requirement that the capital management measure be disclosed with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the issuer, be removed, citing that the disclosure of a similar financial measure is highly subjective.	No change made. Prominence is an area of concern for regulators.
Section 11 – supplementary financial measures		
11(b) – composition	One commenter recommended that the requirement in paragraph 11(b) be removed as it was their view this requirement overlapped with the requirement in paragraph 11(a).	No change made. Transparency around the composition of a supplementary financial measure and the clear labelling of this measure in paragraphs 11(b) and 11(a), respectively, are the primary concerns we identified in respect of these supplementary financial measures. We do not view the requirements in paragraphs 11(a) and (b) to be overlapping.
Section 13 – Effective date		
13	Five commenters indicated that they would support a long transition period leading up to the effective date to ease the transition burden on issuers. Some of these commenters also indicated that we should consider making the Revised Materials effective for the beginning of an annual financial reporting period to ensure consistent and comparable reporting over periods.	We agree with the comment and have included a transition provisions in Part 13 of the Instrument.

ANNEX C

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

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

**PART 1
DEFINITIONS AND APPLICATION**

Definitions

1. In this Instrument,

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

- (a) is intended to enable an individual to evaluate an entity’s objectives, policies and processes for managing the entity’s capital,
- (b) is not a component of a line item disclosed in the primary financial statements of the entity,
- (c) is disclosed in the notes to the financial statements of the entity, and
- (d) is not disclosed in the primary financial statements of the entity;

“earnings release” means a news release that is required to be filed under section 11.4 of National Instrument 51-102 *Continuous Disclosure Obligations*;

“entity” includes any of the following:

- (a) a person or company other than an individual,
- (b) an asset or a group of assets for which financial statements are prepared;

“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 disclosed 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 directly comparable financial measure disclosed in the primary financial statements of the entity,
- (c) is not disclosed in the financial statements of the entity, and

