

CSA Staff Notice 52-306Non-GAAP Financial Measures**Purpose**

This notice provides guidance to issuers who disclose financial measures other than those prescribed by Generally Accepted Accounting Principles ("GAAP"). This notice supersedes Staff Notice 52-303, which is withdrawn, dealing with non-GAAP earnings measures. Staff noted certain non-GAAP financial measures were being presented without the disclosures and reconciliations recommended for non-GAAP earnings measures. As a result, staff has decided to explicitly broaden the scope of this notice to all non-GAAP financial measures.

Definition

For the purpose of this staff notice, a non-GAAP financial measure is a numerical measure of an issuer's historical or future financial performance, financial position or cash flow, that is not required by GAAP, that (i) either excludes amounts that are included in the most directly comparable measure calculated and presented in accordance with GAAP; or (ii) includes amounts that are excluded from the most directly comparable measure calculated and presented in accordance with GAAP.

Problems Identified

Many issuers publish non-GAAP financial measures. Such measures are commonly included in press releases, Management's Discussion and Analysis ("MD&A"), prospectus filings and occasionally financial statements. Many non-GAAP financial measures are derived from net income determined in accordance with GAAP and, by omission of selected items, present a more positive picture of financial performance. Terms by which non-GAAP financial measures are identified include "pro forma earnings", "operating earnings", "cash earnings", "free cash flow", "distributable cash", "EBITDA", "adjusted earnings", and "earnings before one-time charges". These terms lack standard, agreed upon meanings and each may be used differently by different companies and even by the same company from period to period. In addition, calculations such as return on assets which use an asset base or net income that differs from amounts in the GAAP financial statements are non-GAAP financial measures.

Staff has noticed improvements in issuers' disclosures of non-GAAP financial measures but there is room for further improvement. In particular, issuers commonly present a non-GAAP financial measure without any explanation of the reasons for presenting the measure or a discussion of how management uses the measure.

Staff is concerned that investors may be confused or even misled by non-GAAP financial measures. To minimize the potential for confusion, such measures need to be accompanied by clear disclosure that the measures do not have a standardized meaning, an explanation of their composition and a reconciliation to the most directly comparable measure in the issuer's GAAP financial statements.

Staff has observed instances of issuers reporting non-GAAP financial measures that appear to be defined differently from quarter to quarter or from year to year. For example, "one-time losses" may be excluded in one quarter but "one-time gains" may be included in a subsequent quarter.

When an issuer considers certain items to be "non-recurring" or "one-time charges", and removes them from GAAP net income or loss in calculating alternative measures of earnings, the issuer rarely discusses the nature of these charges and why they are not expected to recur in the future. Further, staff has observed items identified by issuers as non-recurring, infrequent or unusual, where a similar charge or gain occurred within the prior two years or when it would be reasonably likely to recur within the next two years.

Staff is also concerned that some issuers give greater prominence to one or more non-GAAP financial measures related to earnings than to net income determined in accordance with GAAP. Non-GAAP financial measures are sometimes the primary focus of earnings releases. Such releases commonly include comparisons of non-GAAP earnings measures to the previous quarter and to previously published estimates of earnings, both in aggregate and on a per share basis, together with absolute and percentage changes. Net income determined in accordance with GAAP is often presented as secondary to the non-GAAP measure and commonly lacks a similar level of analysis.

Staff's Expectations

Financial statements prepared in accordance with GAAP provide investors with a clearly defined basis for financial analysis and comparison among issuers. Staff recognizes that non-GAAP financial measures may be a useful means of providing investors with additional information to assist them in understanding critical components of an issuer's financial results. It is important, however, that such measures not be presented in a way that confuses or obscures the GAAP measures. Staff reminds issuers of their obligation to discuss in MD&A management's perspective on the results of operations. Issuers should consider whether the separate presentation of non-GAAP financial measures provides added benefit to readers. Staff suggests that a comprehensive discussion in the MD&A of operations and the impact of specific events on operations may be preferable to presenting non-GAAP financial measures.

Staff reminds issuers of their responsibility to ensure that information they provide to the public is not misleading. Selective editing of financial information may be misleading if it results in the omission of material information. Staff cautions issuers that regulatory action may be taken if issuers disclose information in a manner considered misleading and therefore potentially harmful to the public interest.

Staff expects issuers to define clearly any non-GAAP financial measure and to explain its relevance to ensure it does not mislead investors. Issuers presenting non-GAAP financial measures should present those measures on a consistent basis from period to period. Specifically, issuers should:

1. state explicitly that the non-GAAP financial measure does not have any standardized meaning prescribed by GAAP and is therefore unlikely to be comparable to similar measures presented by other issuers;
2. present with equal or greater prominence than the non-GAAP financial measure the most directly comparable measure calculated in accordance with GAAP;
3. explain why the non-GAAP financial measure provides useful information to investors and how management uses the non-GAAP financial measure;
4. provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure calculated in accordance with GAAP, referencing to the reconciliation when the non-GAAP financial measure first appears in the disclosure document;
5. explain any changes in the composition of the non-GAAP financial measure when compared to previously disclosed measures.

In staff's view, it is not appropriate to present non-GAAP financial measures in the GAAP financial statements.

In staff's view, non-GAAP financial measures should not reflect adjustments for items identified as non-recurring, infrequent or unusual, when a similar charge or gain is reasonably likely to occur within the next two years or occurred during the prior two years.

Other Specific Matters

Distributable Cash

Certain issuers such as income trusts may disclose information about distributable cash. While cash distributions (i.e. actual distributions) are required to be disclosed in the financial statements under GAAP, staff considers distributable cash to be a non-GAAP financial measure. If an issuer presents information about distributable cash, then the staff expectations set out in this notice are applicable.

We expect disclosure to include a reconciliation to the most directly comparable measure calculated in accordance with GAAP. Staff believes that the reconciliation should generally begin with cash flows from operating activities as presented in the issuer's financial statements. Issuers that view distributable cash as an operating performance measure, as opposed to a cash flow measure, and therefore begin reconciliations with net

income as presented in the issuer's financial statements would be expected to explain the basis for this view. A discussion of the reconciling items should be provided, especially when the reconciling items are discretionary in nature. For example, many income trusts deduct a reserve for future capital spending. A discussion of how the future capital requirements were determined and whether they relate to capital spending planned in the next twelve months or further into the future would be appropriate.

When disclosing distributable cash, the issuer should also disclose cash distributions with equal or greater prominence. If cash distributions materially exceed distributable cash, staff would expect the disclosure of distributable cash to include an explanation of how the additional distributions were financed as this impacts the issuer's liquidity. If distributable cash materially exceeds cash distributions, staff would expect the disclosure of distributable cash to include an explanation of why all the distributable cash was not distributed.

Segment Disclosures

Staff is aware that some confusion exists regarding whether certain information presented in conformity with the Canadian Institute of Chartered Accountants Handbook Section 1701, Segment Disclosures, is a non-GAAP financial measure. Since issuers are required to disclose in the financial statements specified segment information as reported to the chief operating decision maker, such information is not considered to be a non-GAAP financial measure for the purpose of this notice. If the segment information discussed in MD&A or elsewhere has been adjusted in any way from the segment disclosures in the financial statements the adjusted segment information is considered to be a non-GAAP financial measure and the staff expectations set out in this notice are applicable. Whenever segment information is discussed outside the financial statements, it is appropriate to refer readers to the financial statement note on segment information. Issuers should also explain why the segment information provides useful information to investors and how management uses the segment information.

Forward-Looking Information

The staff expectations set out in this notice apply equally to disclosure of forward-looking non-GAAP financial measures.

Questions

Please refer your questions to any of the following individuals:

Sylvie Anctil-Bavas, Analyste
Service de l'expertise comptable
Commission des valeurs mobilières du Québec
Tél: (514) 940-2199 poste 4556
Fax: (514) 873-7455
Courriel: Sylvie.anctil-bavas@cvmq.com

Laura Moschitto, Senior Accountant
Office of the Chief Accountant
Ontario Securities Commission
Phone: (416) 593-8217
Fax: (416) 593-3693
E-mail: lmoschitto@osc.gov.on.ca

Fred Snell, Chief Accountant
Alberta Securities Commission
Phone: (403) 297-6553
Fax: (403) 297-2082
E-mail: fred.snell@seccom.ab.ca

Carla-Marie Hait, Chief Accountant
British Columbia Securities Commission
Phone: (604) 899-6726
Fax: (604) 899-6581
E-mail: chait@bcsc.bc.ca

November 14, 2003

#1365569 v1