

CSA 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

September 6, 2018

Introduction

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

- 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 or changes to:
 - Multilateral Instrument 45-108 *Crowdfunding* (**MI 45-108**)¹;
 - Companion Policy 45-108CP *Crowdfunding* (**45-108CP**);
 - Companion Policy 51-102CP *Continuous Disclosure Obligations* (**51-102CP**);
 - Companion Policy 51-105CP *Issuers Quoted in the U.S. Over-the-Counter Markets* (**51-105CP**)²;
 - Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards* (**52-107CP**).

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

The Proposed Instrument sets out disclosure requirements for non-GAAP financial measures and other financial measures (i.e., segment measures, capital management measures, and supplementary financial 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 Proposed Companion Policy provides guidance on how we will interpret and apply the Proposed Instrument.

The Proposed Materials are intended to replace CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (SN 52-306) and complement other CSA financial disclosure requirements.

The text of the Proposed Materials is contained in Annexes A through E of this Notice and will also be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.nssc.novascotia.ca
www.fcnc.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The Proposed Instrument aims to address the disclosure surrounding non-GAAP financial measures and other financial measures.

The Proposed Instrument complements the *Securities Acts* of the various jurisdictions in Canada that make it an offence to provide false or misleading information to investors. The Proposed Instrument establishes disclosure requirements that must be met to disclose non-GAAP financial measures and other financial measures.

In some cases, non-GAAP and other financial measures are helpful to investors to assess an issuer's performance.

The Proposed Instrument does not contain specific limitations or industry-specific requirements; rather, it includes comprehensive disclosure requirements whose overall goal is to improve the quality of information provided to investors.

We acknowledge that some stakeholders may 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 believe that comprehensive disclosure requirements are best suited to respond to investor needs for quality information. These requirements 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 updated, 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 other financial measures, the Proposed Instrument introduces disclosure requirements if such financial measures are disclosed outside the financial statements.

Background

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, lack context when disclosed outside of the issuer's financial statements, 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, SN 52-306 is intended to help ensure that 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.

Over the years, we have also found that other financial measures that do not meet the definition of a non-GAAP financial measure in SN 52-306 may be equally problematic if not accompanied by appropriate disclosure. Such financial measures include those disclosed in the notes to the financial statements that lack context when disclosed outside the financial statements.

Replacing SN 52-306 with the Proposed Instrument will provide CSA Staff with a stronger tool to take appropriate regulatory action as needed.

We are aware that some accounting standards boards, such as the International Accounting Standards Board (IASB), are currently examining, among other things, the structure and content of financial statements. This work may potentially lead to certain changes in the types of information to be included in financial statements. If necessary in the future, we may update the Proposed Instrument (or other securities legislative requirements) to respond to these and other marketplace changes (if any).

We are aware that commentary continues to be issued by certain industry groups, professional bodies, and standard setters on the topic of non-GAAP financial measures and other financial measures disclosed outside the financial statements. This has, in some cases, created confusion with stakeholders as to requirements under Canadian securities law versus suggested non-authoritative guidance. When implemented, the Proposed Instrument will provide authoritative Canadian securities legislative requirements for all issuers when they disclose non-GAAP financial measures and other financial measures.

With the issuance of the Proposed Instrument, we join other securities regulators, including the International Organization of Securities Commissions (IOSCO), the European Securities and Markets Authority (ESMA), and the U.S. Securities and Exchange Commission (SEC), that have recently strengthened their efforts to regulate the disclosure of certain financial measures.

Summary of the Proposed Instrument

The Proposed Instrument:

- applies to all issuers (including investment funds), except for SEC foreign issuers, and all documents (e.g., Management's Discussion and Analysis, press releases, the Annual Information Form, prospectuses etc.) including other written communications in websites or social media;
- pertains to the disclosure of financial measures (including ratios) that are non-GAAP financial measures, segment measures, capital management measures, and supplementary financial measures as defined in the Proposed Instrument;
- includes an updated definition of a non-GAAP financial measure which builds upon and incorporates the disclosure guidance in SN 52-306, and
- introduces the concept of segment measures, capital management measures, and supplementary financial measures, together with associated disclosure requirements.

Annex C provides a general overview of the application process for the Proposed Instrument.

Anticipated Costs and Benefits of the Proposed Instrument

Benefits

Issuers

The Proposed Instrument does not limit an issuer's ability to disclose non-GAAP financial measures or other financial measures provided the disclosure is not misleading. If an issuer chooses to disclose these financial measures, the Proposed Instrument contains clear and formalized disclosure requirements that we anticipate will reduce the uncertainty regarding an issuer's disclosure obligations.

Investors

Investors have identified to us several problematic disclosure practices surrounding non-GAAP financial measures and other financial measures, such as a lack of transparency regarding the nature of these financial measures, including calculation, as well as a lack of consistency of disclosures among issuers. The Proposed Instrument addresses these investor concerns by requiring comprehensive disclosures, including disclosure regarding a financial measure's method of calculation and usefulness. Such disclosures are intended to help investors better analyze different financial measures within an industry or among different industries.

Costs

Since the disclosure requirements for non-GAAP financial measures are substantially aligned with the current guidance in SN 52-306, we do not expect issuers to incur increased costs to comply with these disclosure requirements.

We expect issuers will initially incur some immaterial administrative costs to comply with the new disclosure requirements relating to segment measures, capital management measures, and supplementary financial measures in the first reporting period after the Proposed Instrument comes into force, if issuers choose to disclose these financial measures.

Summary of the Proposed Companion Policy

The Proposed Companion Policy provides guidance on how we will interpret and apply the Proposed Instrument and includes, among other things, interpretations of various terms and provisions in the Proposed Instrument as well as selected illustrative examples.

Overall, the goal of the guidance provided in the Proposed Companion Policy is to assist issuers in applying the provisions of the Proposed Instrument so as to help ensure non-GAAP financial measures and other financial measures do not mislead investors. For example, the Proposed Companion Policy contains useful examples and guidance in the following key areas:

- definition of a non-GAAP financial measure, including the terms “disaggregation” and “equivalent financial measure”;
- definition of a supplementary financial measure, including the “periodic basis” attribute;
- requirements for a non-GAAP financial measure on labelling, prominence, consistency, location, identification, and usefulness;
- reconciliation requirements for a non-GAAP financial measure, including guidance on the determination of the most directly comparable measure;
- prominence requirement for a non-GAAP financial measure that is a ratio
- reconciliation requirement for a non-GAAP financial measure that is a financial outlook, and
- disclosure requirements for a segment measure and a capital management measure.

The expanded detail set out in the Proposed Companion Policy is intended to clarify the four defined types of financial measure subject to the Proposed Instrument and to explain how we expect the disclosure requirements in the Proposed Instrument to be satisfied.

Consequential Amendments and Changes

We, except the securities regulatory authorities listed in footnote 1 of this Notice, propose consequential amendments or changes to the instructions of Schedule A of Form 45-108F1 *Crowdfunding Offering Document* of MI 45-108 and section 16 of 45-108CP. We also propose changes to section 4.2 of 51-102CP and section 2.10 of 52-107CP. These proposed amendments and changes replace the references to the guidance provided in SN 52-306 with references to the requirements set out in the Proposed Instrument.

We, except the Ontario Securities Commission, also propose a consequential change to section 5 of 51-105CP to add a reference to the requirements set out in the Proposed Instrument.

Local Matters – Ontario

Authority for the 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

To address stakeholder concerns regarding the quality of disclosure surrounding non-GAAP financial measures and other financial measures, we considered updating SN 52-306 or developing a staff bulletin to supplement SN 52-306. After careful consideration, we concluded that the development of the Proposed Materials would be more effective in addressing stakeholder concerns and reducing uncertainty regarding an issuer's disclosure obligations.

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.

We particularly appreciate comments that are specific and accompanied by concrete examples.

In addition to any general comments, we also invite comments on the following specific questions:

1. Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.
2. Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.
3. Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?
4. Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.
5. Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.
6. Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

Please submit your comments in writing on or before December 5, 2018. 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

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal QC H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Please refer your questions to any of the following:

British Columbia Securities Commission
Anita Cyr, Associate Chief Accountant, British Columbia Securities Commission
604-899-6579 | acyr@bcsc.bc.ca

Maggie Zhang, Senior Securities Analyst, British Columbia Securities Commission
604-899-6823 | mzhang@bcsc.bc.ca

Alberta Securities Commission

Anne Marie Landry, Senior Securities Analyst, Alberta Securities Commission
403-297-7907 | annemarie.landry@asc.ca

Janice Anderson, Senior Accounting Specialist, Alberta Securities Commission
403-297-2520 | janice.anderson@asc.ca

Ontario Securities Commission

Alex Fisher, Senior Accountant, Ontario Securities Commission
416-593-3682 | afisher@osc.gov.on.ca

Jonathan Blackwell, Senior Accountant, Ontario Securities Commission
416-593-8138 | jblackwell@osc.gov.on.ca

Katrina Janke, Senior Legal Counsel, Ontario Securities Commission
416-593-8297 | kjanke@osc.gov.on.ca

Mark Pinch, Associate Chief Accountant, Ontario Securities Commission
416-593-8057 | mpinch@osc.gov.on.ca

Autorité des marchés financiers

Hélène Marcil, Chief Accountant, Autorité des marchés financiers
514-395-0337 Ext: 4291 | helene.marcil@lautorite.qc.ca

Michel Bourque, Senior Regulatory Advisor, Direction de l'information continue,
Autorité des marchés financiers
514 395-0337 Ext: 4466 | michel.bourque@lautorite.qc.ca

Nicole Parent, Analyst, Direction de l'information financière, Autorité des marchés financiers
514-395-0337 Ext: 4455 | nicole.parent@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

**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 AND APPLICATION

Definitions

1 In this Instrument

“capital management measure” means a financial measure that is disclosed in the notes to the financial statements to enable users of financial statements to evaluate the issuer’s objectives, policies and processes for managing capital;

“financial outlook” has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

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

“non-GAAP financial measure” means

- (a) a financial measure of financial performance, financial position or cash flow that is not disclosed or presented in the financial statements and that is not a disaggregation, calculated in accordance with the accounting policies used to prepare the financial statements, of a line item presented in the primary financial statements, or
- (b) a financial outlook for which no equivalent financial measure is presented in the primary financial statements;

“primary financial statements” means

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

“segment measure” means a financial measure of segment profit or loss, revenue, expenses, assets, or liabilities that is disclosed in the notes to the financial statements;

“supplementary financial measure” means a financial measure that is not disclosed or presented in the financial statements and that

- (a) is a disaggregation, calculated in accordance with the accounting policies used to prepare the financial statements, of a line item presented in the primary financial statements, and
- (b) is, or is intended to be, disclosed on a periodic basis to present an aspect of financial performance, financial position or cash flow.

Application

- 2 (1) This Instrument applies to an issuer, other than an SEC foreign issuer as defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.
- (2) This Instrument applies to any non-GAAP financial measure, segment measure, capital management measure or supplementary financial measure that an issuer discloses in a document and that is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction, whether or not filed under securities legislation, unless the issuer discloses a specific financial measure in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada.
- (3) This Instrument does not apply to a specified document, a supporting document or a material contract filed by the issuer.
- (4) For the purposes of subsection (3), “specified document” means a document referred to in any of paragraphs 12.1(1)(a) to (e) of National Instrument 51-102 *Continuous Disclosure Obligations*.
- (5) For the purposes of subsection (3), “supporting document” means a document referred to in any of clauses 2.3(1)(a)(iv)(A) to (C) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.
- (6) For the purposes of subsection (3), “material contract” has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*, for an issuer other than an investment fund, and National Instrument 81-106 *Investment Fund Continuous Disclosure*, for an investment fund.

PART 2 DISCLOSURE REQUIREMENTS

Non-GAAP financial measures

- 3 An issuer must not disclose a non-GAAP financial measure in a document unless all of the following apply:

- (a) the non-GAAP financial measure is labelled appropriately given its composition and in a way that distinguishes it from totals, subtotals and line items presented in the primary financial statements;
- (b) subject to subsection 4(1), the non-GAAP financial measure is presented with no more prominence in the document than the most directly comparable financial measure presented in the primary financial statements;
- (c) the document presents the same non-GAAP financial measure for the comparative period; and
- (d) the first time the non-GAAP financial measure appears in the document, the document
 - (i) subject to subsection 4(2), identifies the non-GAAP financial measure as such,
 - (ii) states that the non-GAAP financial measure does not have a standardized meaning under the financial reporting framework used to prepare the financial statements and may not be comparable to similar financial measures presented by other issuers,
 - (iii) explains how the non-GAAP financial measure provides useful information to a reasonable person and explains the additional purposes, if any, for which management uses the non-GAAP financial measure,
 - (iv) subject to subsection 4(3) and section 5, provides a quantitative reconciliation, to the most directly comparable financial measure presented in the primary financial statements, which reconciliation
 - (A) is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items,
 - (B) does not describe a reconciling item as non-recurring, infrequent or unusual when a similar loss or gain is reasonably likely to occur within the next two years or has occurred during the prior two years, and
 - (C) is explained in such a way that it provides a reasonable person an understanding of each reconciling item, and
 - (v) explains the reason for a change, if any, in the label, composition or calculation of the non-GAAP financial measure.

Non-GAAP financial measures that are ratios

- 4 (1)** Paragraph 3(b) does not apply if
- (a) the non-GAAP financial measure is a ratio, and
 - (b) the ratio is presented with no more prominence in the document than similar financial measures presented in the primary financial statements.
- (2)** Subparagraph 3(d)(i) does not apply if
- (a) the non-GAAP financial measure is a ratio for which all financial components are disclosed or presented in the financial statements, or
 - (b) the non-GAAP financial measure is a ratio for which all financial components are disaggregations, calculated in accordance with the accounting policies used to prepare the financial statements, of line items presented in the primary financial statements.
- (3)** Subparagraph 3(d)(iv) does not apply if
- (a) the non-GAAP financial measure is a ratio, and
 - (b) the first time the ratio appears in the document, the document describes how the ratio is calculated and
 - (i) identifies each non-GAAP financial measure used to calculate the ratio and complies with section 3 for each non-GAAP financial measure identified, or
 - (ii) provides a quantitative reconciliation to the ratio as calculated using the most directly comparable financial measures presented in the primary financial statements.

Non-GAAP financial measures that are financial outlooks

- 5 (1)** For the purposes of subparagraph 3(d)(iv), “primary financial statements” must be read as “FOFI” if
- (a) the non-GAAP financial measure is a financial outlook, and
 - (b) FOFI has been disclosed together with the financial outlook in the document.
- (2)** Subparagraph 3(d)(iv) does not apply if
- (a) the non-GAAP financial measure is a financial outlook,
 - (b) FOFI has not been disclosed with the financial outlook in the document, and

- (c) the first time the financial outlook appears in the document, the document
 - (i) presents the equivalent historical non-GAAP financial measure, and
 - (ii) describes
 - (A) each of the material differences between the financial outlook and the most directly comparable financial outlook for which an equivalent historical financial measure is presented in the primary financial statements, or
 - (B) each of the significant components of the financial outlook used in its calculation.

Segment measures

- 6** If an issuer discloses in a document other than the financial statements a total of segment measures that is not a total, subtotal or line item presented in the primary financial statements, the document must,
- (a) the first time the total of segment measures appears in the document, provide a quantitative reconciliation of the total of segment measures to the most directly comparable financial measure presented in the primary financial statements,
 - (b) present the total of segment measures with no more prominence than the most directly comparable financial measure referred to in paragraph (a), and
 - (c) include the presentation of the total of segment measures for the comparative period, if the total of segment measures has been previously disclosed.

Capital management measures

- 7 (1)** This section applies to a capital management measure that
- (a) is disclosed in a document other than the financial statements, and
 - (b) is not
 - (i) a total, subtotal or line item presented in the primary financial statements, or
 - (ii) a disaggregation, calculated in accordance with the accounting policies used to prepare the financial statements, of a line item presented in the primary financial statements.

- (2) If an issuer discloses a capital management measure described in subsection (1) in a document, the document must
 - (a) present the capital management measure with no more prominence than
 - (i) the most directly comparable financial measure presented in the primary financial statements, or
 - (ii) similar financial measures presented in the primary financial statements, if the capital management measure is a ratio,
 - (b) the first time the capital management measure appears in the document,
 - (i) describe how the capital management measure is calculated,
 - (ii) state that the accounting policies used to prepare the financial statements do not specify how the capital management measure is calculated,
 - (iii) explain how the capital management measure provides useful information to a reasonable person and explains the additional purposes, if any, for which management uses the capital management measure, and
 - (iv) provide, except where the capital management measure is a ratio, a quantitative reconciliation of the capital management measure to the most directly comparable financial measure presented in the primary financial statements, and
 - (c) include the presentation of the capital management measure for the comparative period, if the capital management measure has been previously disclosed.

Supplementary financial measures

- 8 If an issuer discloses a supplementary financial measure in a document, the document must,
 - (a) the first time the supplementary financial measure appears in the document,
 - (i) describe how the supplementary financial measure is calculated, and
 - (ii) explain the reason for a change, if any, in the label, composition or calculation of the supplementary financial measure if it has been previously disclosed, and

- (b) include the presentation of the supplementary financial measure for the comparative period, if the supplementary financial measure has been previously disclosed.

**PART 3
EXEMPTION**

Exemption

- 9 (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

- 10 This Instrument comes into force on •, 201•.

Annex B

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 an issuer that discloses non-GAAP financial measures (including non-GAAP financial measures that are ratios or financial outlooks), segment measures, capital management measures and supplementary financial measures.

Compliance with the Instrument does not relieve an issuer from any other obligations under other securities legislation. In particular, an issuer may not present a non-GAAP financial measure or other financial measure in a way that would be misleading.

The Instrument applies to all issuers, including investment funds, with the exception of SEC foreign issuers. The Instrument does apply to an SEC issuer that is not an SEC foreign issuer.

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.

The Instrument uses the terms “disclosed” and “presented” in the context of location within the financial statements. A financial measure is disclosed if it is included in the notes to the financial statements. A financial measure is presented if it is included in the “primary financial statements”, as that term is defined in the Instrument. The definition of a non-GAAP financial measure excludes all measures presented or disclosed within the financial statements.

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”, “cost per ounce”, “adjusted funds from operations” and “earnings before non-recurring items”. Many of these terms lack standard meanings and issuers across a spectrum of industries may use the same term to refer to different calculations.

Accounting policies include an issuer’s presentation, recognition, and measurement under the financial reporting framework used in the preparation of its financial statements (often referred to as Generally Accepted Accounting Principles (“GAAP”)). The accounting policies encompass all principles to be applied by an issuer in preparing and presenting its financial statements, not just those which are disclosed in the notes to the financial statements or those selected when the issuer has to make a choice between alternative accounting policies.

Paragraphs 55 and 85 of IAS 1 *Presentation of Financial Statements* require the presentation of additional subtotals when such presentation is relevant to an understanding of the issuer’s financial position or financial performance. An issuer that presents an additional subtotal in the primary

financial statements, such as Earnings Before Interest, Taxes, Depreciation and Amortization (“EBITDA”), would be presenting the subtotal in accordance with the accounting policies used to prepare its financial statements, if it has determined such presentation is relevant to an understanding of its financial performance. That financial statement measure would not meet the definition of a non-GAAP financial measure if it were also disclosed outside the issuer’s financial statements.

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. This 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. However, such measure(s) would meet the definition of a non-GAAP financial measure if the revenue amounts were adjusted in any manner.

Disaggregation of subtotals and totals presented in the primary financial statements are captured by the definition of non-GAAP financial measures. For example, if EBITDA is not presented in the primary financial statements, it would be inappropriate to conclude that it is not a non-GAAP financial measure on the basis that it is a disaggregation of profit as presented in the statement of profit or loss. Likewise, a measure calculated by combining numbers disaggregated from different line items would also meet the definition of a non-GAAP financial measure, unless that measure is separately disclosed in the notes to the financial statements, for example, when expenses in the statement of profit and loss are presented by function and then also presented by nature in the notes to the financial statements.

A financial outlook is a non-GAAP financial measure unless an equivalent measure is presented in the primary financial statements. A financial measure is equivalent to a financial outlook if the two were prepared on a consistent basis. For example, if revenue is presented on a forward-looking basis using consistent accounting policies applied by the issuer in its latest set of financial statements (i.e. revenue as presented in the financial statements adjusted only for assumptions about future economic conditions and courses of action) it would not be a non-GAAP financial measure.

For clarity, the definition of a non-GAAP financial measure is not intended to include non-financial information such as:

- 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 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 as long as the titles are in compliance with the financial reporting framework used in the preparation of the issuer’s financial statements. For example, an issuer may use the title “statement of comprehensive income” instead of “statement of profit or loss and other comprehensive income”, or “balance sheet” instead of “statement of financial position”.

Section 1 – Definition of a supplementary financial measure

An attribute of a supplementary financial measure is that it is disclosed, or is intended to be disclosed, on a *periodic* basis (for example quarterly and/or annually) to present, often in a prominent manner, an aspect of financial performance, financial position or cash flow. Some entities refer to such financial measures as key (financial) performance indicators (“KPIs”). For example, an entity that operates in the retail industry may consider same-store sales a KPI and discloses same-store sales (where same-store sales is a disaggregation calculated in accordance with the accounting policies used to prepare the sales line item presented in the primary financial statements) to periodically report sales performance from period to period. In this case, same-store sales meet the definition of a supplementary financial measure.

For clarity, if an issuer discloses a financial measure that is a disaggregation of a financial statement line item in order to simply 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 because the issuer is not presenting an aspect of its financial performance. For example, if an issuer experienced an unexpected increase in administrative expenses, it may analyze the nature of, and reasons for, changes in administrative expenses, by among other things, disclosing disaggregated information about administrative expenses (where the disaggregation was calculated in accordance with the accounting policies used to prepare the administrative expenses line item presented in the primary financial statements).

Section 2 – Application

The Instrument applies to all documents, including a written communication prepared and transmitted only in electronic form,

- that are required to be filed with the securities regulatory authority, or

- that are not required to be filed with the securities regulatory authority; and
 - that are filed with the securities regulatory authority, or
 - that are filed or required to be filed with a government or an agency of a government under applicable securities or corporate law or with an exchange or quotation and trade reporting system under its bylaws, rules or regulations, or
 - that are any other communication the content of which would reasonably be expected to affect the market price or value of a security of the issuer. We expect that information presented on websites and social media would meet this criteria.

Issuers should not disclose non-GAAP financial measures, segment measures, capital management measures or supplementary financial measures on social media, if character limits would preclude the disclosure of all the required information in accordance with the Instrument (e.g., Twitter).

If an issuer uses social media to provide links to their publications, such publications are in the scope of the Instrument.

The Instrument does not apply to oral statements. However, if a written transcript of an oral statement is provided by the issuer, the issuer must provide the disclosures required by the Instrument. This could be done in an attachment or appendix to the transcript.

Certain “specific financial measures” that are required to be calculated in accordance with prescribed requirements under applicable securities legislation are not subject to the Instrument. Examples of specific financial measures that are not subject to the Instrument include:

- Earnings coverage ratios prescribed by item 9 of Form 41-101F1 *Information Required in a Prospectus*;
- Summary of Quarterly Results prescribed by section 1.5 of Form 51-102F1 *Management’s Discussion & Analysis*;
- Net Present Value of Future Net Revenue prescribed by section 2.1 of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information*; and
- Net Asset Value prescribed by part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

The above list is not exhaustive. While disclosure of a specific financial measure in accordance with other securities legislation is not subject to the requirements of the Instrument, the disclosure is subject to the provisions of that legislation.

The Instrument also does not apply to a financial measure that is disclosed in accordance with the laws of a jurisdiction of Canada. This exclusion is, however, only applicable in situations where a specific financial measure is required to be disclosed and the law specifically defines the measure and the method to be used in its calculation, for example a government payment calculated and disclosed in accordance with the *Extractive Sector Transparency Measures Act* (Canada).

For the purposes of paragraph 3(d), paragraph 4(3)(b) and paragraph 5(2)(c) of the Instrument, the requirements must be applied the first time a non-GAAP financial measure is disclosed in a document. Therefore, this disclosure is not required to be repeated throughout a document even though the financial measure may appear more than once in the document.

The “first time” concept is intended to be applied to each discrete document that relates to a specific period or date.

Paragraph 3(a) – Labelling non-GAAP financial measures

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.

The following are a few examples which we consider would not be in compliance with the labelling requirement in paragraph 3(a) of the Instrument:

- Labels that cause confusion with amounts prepared in accordance with the financial reporting framework used in the preparation of the issuer’s financial statements. Using terms or labels which are the same as, or confusingly similar to, those normally used under the financial reporting framework is misleading. 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 which are purporting to represent “results from operating activities” or a similar title but which 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 or positive (e.g., guaranteed profit or protected returns); and
- Labels that 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 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 3(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 financial reporting framework used in the preparation of the issuer’s financial statements.

Paragraph 3(b) – Prominence of a non-GAAP financial measure

Determining whether a non-GAAP financial measure is presented with no more prominence is a matter of judgment, taking into account the overall disclosure and the facts and circumstances in which the disclosure is made.

We expect that presentation of a non-GAAP financial measure would not in any way confuse or obscure the presentation of financial measures presented in accordance with the financial reporting framework used in the preparation of the issuer’s financial statements.

The following are examples that we view as causing a non-GAAP financial measure to be more prominent than the most directly comparable measure presented or disclosed in the financial statements:

- Presenting a full statement of profit or loss and other comprehensive income of non-GAAP financial measures without presenting it in the form of a reconciliation of each non-GAAP financial measure to the most directly comparable measure, sometimes referred to as a single column approach;
- Omitting the most directly comparable measure from a press 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 or larger font) that emphasizes the non-GAAP financial measure over the most directly comparable measure;
- Describing a non-GAAP financial measure as, for example, “record performance” or “exceptional” without at least an equally prominent descriptive characterization of the most directly comparable measure;
- Multiple non-GAAP financial measures being used for the same purpose thereby obscuring disclosure of the most directly comparable measure;
- Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most directly comparable measures or without including the most directly 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 directly 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 directly 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 disclosed with “no more prominence in the document than the most directly comparable financial measure presented in the primary financial statements”. If the most directly comparable measure is disclosed with “equal or greater prominence” than the non-GAAP financial measure, the requirement under paragraph 3(b) of the Instrument has been met.

Paragraph 3(c) – Comparative information

Paragraph 3(c) of the Instrument requires presentation of the same non-GAAP financial measure for the comparative period. For greater clarity, “same” includes the label, composition, and calculation of the non-GAAP financial measure. If there has been a change in label, composition or calculation from what has been disclosed previously, the requirements of subparagraph 3(d)(v) of the Instrument will apply.

We expect that the disclosure required by paragraph 3(c) of the Instrument would not be feasible only in rare circumstances, such as in the first period of operations where no comparative period exists.

Paragraph 3(d) – First time disclosure requirements

The information required by paragraph 3(d) 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 occurs in the document using a footnote that refers to a separate section within the same document. The requirements in subparagraphs 3(d)(ii), (iii), (iv) and (v) of the Instrument may then be presented in the separate section the footnote referred to.

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, we consider that issuers meet the “first time” objective by, for example, clearly identifying the measure as being a non-GAAP financial measure and providing a link to the other required disclosure.

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

Subparagraph 3(d)(i) – Identification of a non-GAAP financial measure

Non-GAAP financial measures do not have standardized meanings under the financial reporting framework used in the preparation of the issuer’s financial statements. Therefore, it is important that non-GAAP financial measures are identified as such. 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.

We are of the view that the subparagraph 3(d)(i) identification requirement of the Instrument would be met by footnoting the non-GAAP financial measure and at the bottom of the page, including the following or similar wording as part of the footnote, “A non-GAAP financial measure which is defined in the Non-GAAP Financial Measures section of this document”.

Subparagraph 3(d)(iii) – 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 level of detail is a matter of judgment, which takes into account the complexity of the information and how familiar a reasonable person would be with the measure.

The statement satisfying the requirement of subparagraph 3(d)(iii) of the Instrument should:

- not be boilerplate;
- be clear and understandable;
- be specific to the non-GAAP financial measure used, the issuer, the nature of the business and the industry; and
- be specific to the way the non-GAAP financial measure is assessed and applied to decisions made by management.

Issuers should avoid inappropriate or potentially misleading implications about usefulness. The Instrument does not explicitly prohibit certain adjustments. However, if adjustments are not consistent with the usefulness explanation, 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 directly comparable measure but omits negative components. For example, presenting an operating performance measure that excludes normal, recurring, operating expenses necessary to operate an issuer's business could be misleading. Another example is "free cash flow", which is typically calculated as cash flows from operating activities as presented in the statement of cash flows under the financial reporting framework used to prepare the financial statements, less capital expenditures. "Free cash flow" should not be used in a manner that inappropriately implies that the measure represents the residual cash flow available for discretionary expenditures, if issuers have mandatory debt service requirements or other non-discretionary expenditures that are not deducted from the measure.

Subparagraph 3(d)(iv) – Reconciliation of a non-GAAP financial measure

Subparagraph 3(d)(iv) of the Instrument requires a quantitative reconciliation between the non-GAAP financial measure and the most directly comparable financial measure. An issuer may satisfy this requirement by providing a reconciliation in a clearly understandable way, such as a table. An issuer must ensure that its disclosure is not misleading and will have to consider the level of detail required to provide the necessary context.

The Instrument does not define the "most directly comparable financial measure" and therefore the issuer needs to apply judgment in determining the most directly 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 directly 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 directly comparable measure is, consideration should be given to the nature, number and materiality of the reconciling items.

For purposes of presenting the reconciliation, it is permissible to begin with the non-GAAP financial measure or the most directly comparable financial measure presented in the primary financial statements, provided the reconciliation is presented in a comprehensible manner.

The reconciliation should be quantitative, separately itemizing and explaining each significant reconciling item. Disclosure supporting the reconciliation should discuss significant judgments and estimates that management has made in developing the reconciling item.

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

Where a reconciling item is not extracted directly from the issuer's primary financial statements, but is a component of a line item in the issuer's primary financial statements or originates from outside the primary financial statements, the reconciliation should:

- explain how the figure is calculated;
- include a description of the line item of the primary financial statements where the reconciling item originates, if any; and
- discuss significant judgments and estimates, if any, that management has made in developing the reconciling items used in the reconciliation.

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

The level of detail expected in the reconciliation depends on the nature and complexity of the reconciling items. The adjustments made from the most directly comparable financial measure should be consistent with the explanation required by subparagraph 3(d)(iii) 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. For example, an adjustment for impairment of goodwill should be supported by the cause of the impairment.

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 which comprise the category.

Issuers should consider significant reconciling items on an absolute basis. For example, an issuer is expected to separately itemize positive and negative adjustments unless netting is permitted under the financial reporting framework used in the preparation of the issuer's financial statements.

An issuer should disclose any income tax effects of its non-GAAP financial measure depending on the nature of that measures. However, adjustments to arrive at the non-GAAP financial measure should not be presented “net of tax” but should be shown as a separate adjustment and clearly explained.

Where comparative non-GAAP financial measures are presented for a previous period, a reconciliation to the corresponding most directly comparable measure should be provided for that previous period.

An issuer may present adjusted financial information outside the issuer’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 issuer’s accounting policies under the financial reporting framework used in the preparation of the issuer’s most recently completed financial statements. In this case, the adjusted financial information would contain non-GAAP financial measures. Specifically, this would arise if an issuer presents non-GAAP financial measures in a form that is similar to:

- 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 directly comparable GAAP financial measures in a separate column would be considered misleading. However, this information may be presented in the form of a reconciliation of the non-GAAP financial measure to the most directly comparable financial measure if such presentation shows in separate columns each of the most directly 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 issuer’s financial performance, financial position or cash flows with greater prominence than financial measures presented in the primary financial statements, this would be considered not in compliance with the requirement in paragraph 3(b) of the Instrument.

Subparagraph 3(d)(v) – Changes in a non-GAAP financial measure

If the comparative non-GAAP measure presented in accordance with paragraph 3(c) of the Instrument is not the same as that previously presented, the requirement of subparagraph 3(d)(v) of the Instrument would apply. This would be the case when the label, composition, or calculation 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 directly comparable measure constitutes a change in composition or calculation. A clear explanation of the reason for this change is required under subparagraph 3(d)(v) of the Instrument.

A change in magnitude of an individual item would not constitute a change in composition or calculation. 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 either the explanation about the usefulness (in periods where no transaction costs have been incurred) or in presenting the reconciliation, 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 3(d)(iii) of the Instrument was consistent for both measures), the requirement of subparagraph 3(d)(v) of the Instrument would apply.

Section 4 – Disclosure of non-GAAP financial measures that are ratios

Financial ratios may be useful in communicating aspects of an issuer's financial performance, financial position or cash flow. Ratios fall under the definition of a non-GAAP financial measure, unless they are disclosed or presented in accordance with the financial reporting framework used in the preparation of the issuer's financial statements. Specifically, earnings per share disclosed in the statement of profit or loss and other comprehensive income is not a non-GAAP financial measure. However, a working capital ratio or sales per square foot are examples of ratios that would meet the definition of a non-GAAP financial measure. For clarity, ratios include those measures expressed as percentages.

The prominence requirement in paragraph 4(1)(b) of the Instrument for ratios differs from that of other non-GAAP financial measures, however the principle that the presentation of ratios should not confuse or obscure the presentation of the most directly comparable financial measure remains the same. For example, we consider that an issuer does not meet the prominence requirement in paragraph 4(1)(b) of the Instrument 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 which has resulted in a reduction in total profit period over period.

Many ratios do not have a directly comparable financial measure. As such, issuers should consider the disclosure of the ratio in relation to the overall disclosure of similar performance measures that have been presented in the primary financial statements. For example an issuer may calculate a debt to equity ratio (where the debt component is the total liabilities line item as presented in the statement of financial position and the equity component is the total equity line item as presented in the statement of financial position) and use this in its discussion of liquidity, however this discussion should form part of an overall discussion that should include relevant measures from the issuers primary financial statements.

A ratio may be calculated using one or more of the following:

- (a) measures that are presented or disclosed in the issuer's financial statements;
- (b) non-GAAP financial measures; and
- (c) non-financial information.

It is important for investors to understand the calculation of the ratio. For example, if an issuer has disclosed gross margin percentage calculated using total sales minus cost of goods sold, divided by total sales, this method of calculation should be described.

In addition to describing how the ratio is calculated, paragraph 4(3)(b) of the Instrument requires that a reconciliation be completed in one of two ways. If the ratio is calculated using one or more non-GAAP financial measures, an issuer could meet this reconciliation requirement by identifying each of the non-GAAP financial measures and applying subparagraph 4(3)(b)(i) of the Instrument to those identified components. Alternatively, an issuer could reconcile the entire ratio to a ratio calculated using the most directly comparable measures presented in the primary financial statements.

Some issuers may disclose sales per square foot, where the sales figure is extracted directly from the primary financial statements. The sales figure may directly agree to a line item included in the issuer's statement of profit or loss and other comprehensive income, or it may be a disaggregated sales figure calculated in accordance with the issuer's accounting policies under the financial reporting framework used in the preparation of the issuer's financial statements.

The disaggregated sales figure may reflect same-store sales, calculated in accordance with the accounting policies used to prepare the sales line item presented in the primary statements. However, if the sales figure in "same-store sales" is computed on a constant foreign exchange basis rather than under the requirements in IFRS under IAS 21 *The Effects of Changes in Foreign Exchange Rates*, the adjusted sales figure would meet the definition of a non-GAAP financial measure and the reconciliation requirement in subparagraph 4(3)(b)(ii) of the Instrument for the ratio could be met by identifying the adjusted sales figure as a non-GAAP financial measure and applying subparagraph 4(3)(b)(i) of the Instrument to the adjusted sales figure. Alternatively, the reconciliation requirement in subparagraph 4(3)(b)(ii) of the Instrument could be met by reconciling the adjusted sales per square foot to sales per square foot, where sales comes directly from the issuer's statement of profit or loss and other comprehensive income.

If each of the components of the ratio is a line item presented in the primary financial statements, an issuer can meet the requirement in subparagraph 3(d)(iv) of the Instrument by disclosing how the ratio is calculated, for example, when gross margin percentage is calculated and disclosed as being total sales minus cost of goods sold, divided by total sales, where each of sales and cost of sales is a line item in the statement of profit and loss and other comprehensive income.

Subsection 5(1) – Disclosure of non-GAAP financial measure that is a financial outlook and FOFI has been disclosed with the financial outlook

Subsection 5(1) of the Instrument requires that an issuer provide a quantitative reconciliation to the most directly comparable measure presented in the FOFI if the non-GAAP financial measure

is a financial outlook and where FOFI has been disclosed with the financial outlook. This quantitative reconciliation must be prepared following the requirements in subparagraph 3(d)(iv) of the Instrument.

In determining whether FOFI has been disclosed with the financial outlook, as outlined in paragraph 5(1)(b) of the Instrument, there may be situations where an issuer presents or prepares FOFI concurrently or as an add-on to the financial outlook. If an extract or summary of FOFI is disseminated or disclosed, an issuer should consider whether this extract or summary was derived from the complete FOFI and whether the condition in paragraph 5(1)(b) of the Instrument has been met such that the reconciliation requirement in subsection 5(1) of the Instrument should apply.

Issuers are reminded that each material line item presented within the FOFI or the quantitative reconciliation under subsection 5(1) of the Instrument is subject to the disclosure requirements in parts 4A and 4B and section 5.8 of NI 51-102 *Continuous Disclosure Obligations*.

Subsection 5(2) – Disclosure of non-GAAP financial measure that is a financial outlook for which FOFI has not been disclosed with the financial outlook

Subparagraph 5(2)(c)(i) of the Instrument requires an issuer to present the equivalent historical non-GAAP financial measure the first time that the non-GAAP financial measure that is financial outlook is disclosed. The requirements in section 3 of the Instrument, including the quantitative reconciliation requirements in subparagraph 3(d)(iv) of the Instrument, are applicable to the equivalent historical non-GAAP financial measure.

Determining the relevant historical period to satisfy the quantitative reconciliation requirements in subparagraph 3(d)(iv) of the Instrument is a matter of judgment, taking into account the time period covered by the financial outlook, the nature of the issuer's industry and the extent to which the business of the issuer is cyclical or seasonal. For example, where an issuer presents a financial outlook for the 3 months ending March 31, 20X2, the relevant period for the quantitative reconciliation of the equivalent 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 3 months ended December 31, 20X1), 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 3 months ended March 31, 20X1).

The reconciliation requirements for a financial outlook non-GAAP financial measure where FOFI has not been disclosed with the financial outlook, are set out in clauses 5(2)(c)(ii)(A) and (B) of the Instrument.

The reconciliation requirement in clause 5(2)(c)(ii)(A) of the Instrument requires that an issuer provide a description detailing the differences between the financial outlook non-GAAP financial measure and the appropriate financial outlook for which an equivalent historical measure is presented in the primary financial statements. An issuer may satisfy this requirement by providing a reconciliation by schedule or other clearly understandable method. To the extent possible, this

reconciliation should be quantitative; however, regardless of the format of the presentation, an issuer must ensure that its disclosure is not misleading and will have to consider the level of detail required to provide the necessary context. The disclosure should include the significant judgments and estimates that management has made in developing the reconciling items.

Where a reconciliation for a non-GAAP financial measure that is financial outlook is presented in the format outlined in clause 5(2)(c)(ii)(B) of the Instrument, the reconciliation information provided will be primarily driven by the process followed by the issuer with respect to the preparation, derivation or calculation of the financial outlook, and may include:

- (a) a description of each of the significant components of the financial outlook, or
- (b) a description of what was used in the calculation of the financial outlook.

For paragraph (a), the description is expected to include the identification and disclosure of each of the significant components of the financial outlook non-GAAP financial measure. For example, if a gross margin financial outlook has been derived by estimating each of its components, revenue and cost of sales, then the description required under clause 5(2)(c)(ii)(B) of the Instrument should include the quantification of each of the revenue and cost of sales components used in the calculation of the gross margin financial outlook.

For paragraph (b), the description is expected to include the process followed in preparing and reviewing the financial outlook. The description should not be boilerplate and should also disclose the material factors or assumptions relevant to the financial outlook.

Non-GAAP financial measures that are financial outlook ratios are subject to both section 4 and section 5 of the Instrument and issuers may choose to apply the reconciliation requirements in either subsection 4(3) or section 5 of the Instrument.

Section 6 – Disclosure of segment measures

A financial reporting framework used in the preparation of the issuer's financial statements may permit disclosure of a broad category of segment measures, but does not always specify how such measures should be calculated.

Disclosure in the notes to the financial statements of financial measures reported to the chief operating decision maker about an issuer's reportable segments may be determined on a basis that differs from the amounts presented and calculated in the issuer's primary financial statements. When disclosed outside the financial statements, to the extent a total of segment measures is not also disclosed as a line item in the primary financial statements, the accompanying disclosures required by section 6 of the Instrument allow a reader to understand how the measure is calculated and how it relates to the primary financial statements. This would apply in situations where an issuer presents an overall total, or a total for some, but not all, of the segments.

For example, a chief operating decision-maker may review segment-adjusted EBITDA for each of its reportable segments. In preparing financial statements in accordance with the selected financial reporting framework, an issuer is required to reconcile the total of the reportable segment amounts to the corresponding measure for the issuer in total, in this case "entity adjusted EBITDA". Since

the “entity adjusted EBITDA” amount is not disclosed in the primary financial statements, an issuer is required to comply with section 6 of the Instrument.

If an issuer discloses financial information about a segment outside the financial statements that is not disclosed in the issuer’s financial statements and that is not a disaggregation of a line item presented in accordance with the selected financial reporting framework, then that segment information meets the definition of a non-GAAP financial measure and is subject to the requirements in section 3 of the Instrument.

Section 7 – Disclosure of capital management measures

Disclosure of information that enables users of the financial statements to evaluate an issuer’s objectives, policies and processes for managing capital may be required by the financial reporting framework used in the preparation of the issuer’s financial statements.

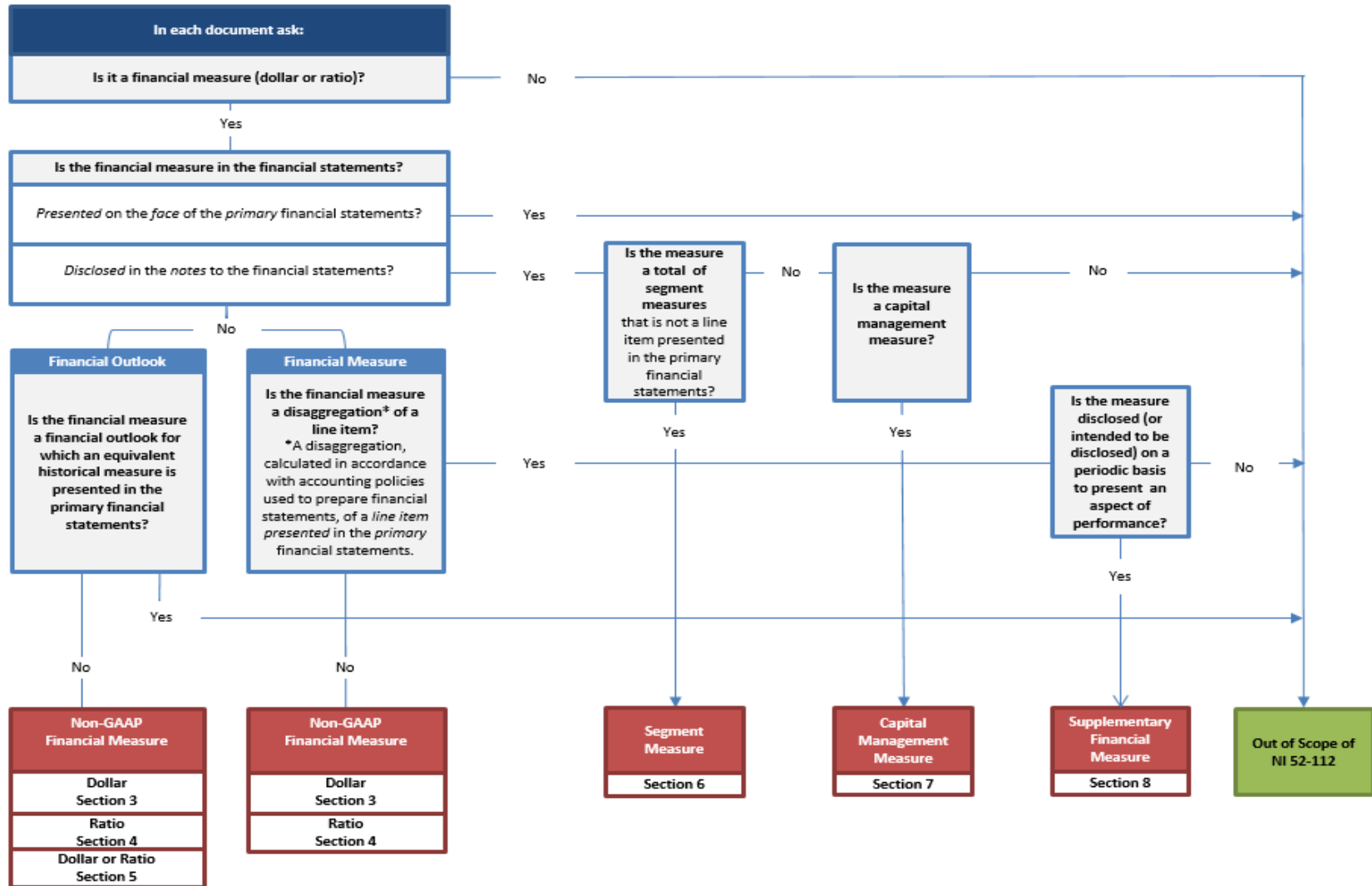
How an issuer manages its capital is issuer-specific and the financial reporting framework used to prepare the issuer’s financial statements might not prescribe a specific calculation. The accompanying disclosure required by section 7 of the Instrument allows a reader to understand how an issuer calculates these measures and how they relate to measures presented in the primary financial statements.

Subparagraph 7(2)(b)(i) of the Instrument requires disclosure of how the capital management measure is calculated. 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 details of the calculations would satisfy the requirement.

In situations where the capital management measure is an aggregation of individual line items presented on the primary financial statements, the requirements of subparagraph 7(2)(b)(iv) of the Instrument can be met by detailing how the measure has been calculated, as required by subparagraph 7(2)(b)(i) of the Instrument.

If the capital management measure was calculated using one or more non-GAAP financial measures, the issuer must comply with section 3 of the Instrument, in respect of each non-GAAP financial measure used.

Annex C



INCLUDES COMMENT LETTERS

Annex D

Consequential Amendments

**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 is amended by replacing the heading “Non-GAAP financial measures” 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

- 3. Form 45-108F1 is amended by replacing the paragraph after the heading “Non-GAAP financial measures” in the Instructions related to financial statement requirements and the disclosure of other financial information of Schedule A with the following:*

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.

- 4. This Instrument comes into force on ●.*

Annex E

Consequential Changes

**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 F

**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 ●.

Annex G

**PROPOSED CHANGE TO COMPANION POLICY 51-105CP 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 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:*
 - (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 ●.

Annex H

**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:*

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 ●.

AASBAuditing and Assurance
Standards Board

Auditing and Assurance Standards Board
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T. 416 204.3240 F. 416 204.3412
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November 20, 2018

The Secretary
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Corporate Secretary
Autorité des marchés financiers
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consultation-en-cours@lautorite.qc.ca

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: Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure and the related proposed Companion Policy, Consequential Amendments and Changes

The Canadian Auditing and Assurance Standards Board (AASB) is pleased to provide its comments on the:

- Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*;
 - Proposed Companion Policy 51-112 *Non-GAAP and Other Financial Measures Disclosure*; and
 - Related proposed consequential amendments/changes,
- collectively referred to as “Rule 52-112” throughout this letter.

Overall comments

We 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 and interest to a variety of stakeholders (including standard setters, management, directors, assurance providers, users, regulators and others). Commentators indicate that there has been an increase in the last several years in company disclosures of, and reliance by users on:

- non-GAAP financial measures;
- other financial measures; and
- non-financial measures or operational measures.

(referred to collectively as “performance measures”)

Rule 52-112 is an important response to concerns raised by some of these commentators.

Overall, we are supportive of the strengthened requirements. In reviewing Rule 52-112, we did not identify any assurance implications resulting from the proposed rule. We did, however, note that Rule 52-112 does not address disclosures of non-financial measures or operational measures. We believe these are measures where there is significant scope for improvements to the quality of information provided to users. 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 also note that current securities regulation does not require any form of independent assurance on information outside the financial statements, such as performance measures. We believe the CSA should 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. As further described below, the AASB has initiated a project to explore the value and impediments of assurance in this area.

The AASB’s initiative

The AASB recognizes that assurance providers also have a role to play in enhancing the trust and credibility of information outside of the financial statements, including performance measures. We began a project in 2017 to assess the potential impact on assurance standards of assurance engagements for this type of information. One of our current activities is a research project conducted jointly with CPA Canada, which will complement the work of the CSA and others in this area.

Research project: The AASB is recruiting multi-stakeholder teams (consisting of a representative from an audit committee, preparer of financial information and auditor) to work with the investor/user community over the next year to:


- enhance the relevance of their financial reporting; and
- explore the value of assurance on information outside the financial statements.

This research initiative will help to gather experience on the practical application of the Accounting Standards Board's recently developed Draft Framework for Reporting Performance Measures and Rule 52-112, as well as inform the AASB on whether guidance and/or changes to standards may be necessary to support assurance engagements on information outside the financial statements.

More information on this initiative can be found online on CPA Canada's website [here](#).

We hope that these comments will be useful to the CSA in determining the appropriate next steps relating to this key project. 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, FCA
Chair, Auditing and Assurance Standards Board (Canada)

c.c. Canadian Auditing and Assurance Standards Board members

December 5, 2018

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
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RE: CSA Notice and Request for Comment – Proposed National Instrument 52-112, Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes

Dear Commissions:

The Committee on Corporate Reporting (CCR) of Financial Executives International Canada (FEI) is pleased to respond to the CSA 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, and Related Proposed Consequential Amendments and Changes (the Proposed Instrument).

FEI Canada is the all-industry professional membership association for senior financial executives. With eleven chapters across Canada and more than 1,600 members, FEI Canada provides professional development, 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 seven thought leadership committees of FEI Canada. CCR is devoted to improving effectiveness, the awareness of issues and educating FEI Canada members on the implications of the issues it addresses and is focused on continually improving the standards and regulations impacting corporate reporting.

Our responses to the questions posed within the Proposed Instrument are included as Appendix to this letter. Thank you for the opportunity to respond to this Proposed Instrument.

Sincerely,



Murray Harris, CPA, CA
Chair, Committee on Corporate Reporting

Appendix

Question 1

Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

We believe that the Proposed Instrument could provide additional clarification on whether certain financial measures are within the scope of the Instrument, including non-GAAP financial measures that are required and defined by another regulatory instrument or agency. We believe that these kinds of non-GAAP measures should be excluded from the scope of this instrument as they are presented on the prescribed basis of the other regulatory instrument or agency. For example, executive compensation disclosure required by other instruments and financial measures including capital ratios required by a regulatory agency such as the Office of the Superintendent of Financial Institutions (OSFI) could be incorporated by reference. This would also support the goal of reducing regulatory burden.

We would also seek clarity whether additional financial measures that are included in the audited financial statements, as notes or otherwise, would be considered GAAP or non-GAAP when they are included in other public documents. We believe that under the current draft of the Instrument, preparers could increase the inclusion of traditional Non-GAAP measures in their financial statements to avoid detailed reconciliation in other public documents. While these reconciliations are primarily intended to reconcile to GAAP measures, they also provide readers with additional details that may not be clearly identifiable in the financial statements.

The proposed instrument makes a distinction between “presented” and “disclosed” in the financial statements. Given that both presentation and disclosure items are integral to the financial statements, and subject to audit, we question whether this distinction is required.

Question 2

Are there any specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

We have not identified any additional disclosures that would significantly improve the overall quality of disclosure and be of benefit to investors.

Question 3

Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

We have noted several concepts in the Proposed Instrument which we believe should be addressed to improve the clarity of the Proposed Instrument:

a) Definition of non-GAAP financial measure

The definition in the Proposed Instrument is silent on whether a disaggregation of a non-GAAP measure also meets the definition of a non-GAAP measure and must therefore comply with all the requirements. It is our opinion that a disaggregation of a non-GAAP financial measure should not be subject to the disclosure requirements included in the Proposed Instrument as it would be unnecessarily burdensome and, in many cases, very difficult to achieve as an issuer may not present the equivalent disaggregated GAAP financial measure in the financial statements. Instead, we propose that the disclosure requirements included in the Proposed Instrument apply only to the highest aggregation of a non-GAAP financial measure. For example, a non-GAAP presentation of project expenditures could be reconciled to capital asset additions in the notes to the financial statements on an aggregate basis however the disaggregation by project would be difficult to reconcile to GAAP since the financial statements disclose asset additions by type, not by project.

b) Describing a non-GAAP financial measure as ‘record performance’ or ‘exception’ without at least an equally prominent descriptive characterization of the most directly comparable measure

It is unclear what statement would qualify as exceptional characterizations. If the intent is to apply this to all characterizations, we disagree on the basis that this dilutes key messages and essentially duplicates descriptions whenever a non-GAAP measure appears. We believe that a descriptive characterization of the most directly comparable measure should be provided only when disclosures are unclear, for example in situations where non-GAAP and GAAP measures do not align. We believe that as long as disclosures are consistent in definition over time, then disclosures are balanced, and descriptive words are appropriately applied to non-GAAP measures.

c) Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most directly comparable measures or without including the most directly comparable measures in the same table or graph

We have the same comment as note b) above regarding usefulness of these additional disclosures.

d) Full statement of profit or loss of non-GAAP financial measures

It is unclear what the Proposed Instrument considers as a full statement of profit or loss. If a table contains consolidated highlights with several non-GAAP financial measures, would it be considered a full statement of profit or loss of non-GAAP financial measures if the table ultimately reconciles to the GAAP net income?

e) Non-GAAP measures that are ratios

The requirements state that paragraph 3(b) does not apply if “the ratio is presented with no more prominence in the document than similar financial measures presented in the primary financial statements”. It is unclear whether a non-GAAP financial ratio, e.g. Core EPS, can be presented in the MD&A without presenting the GAAP financial measure (EPS) in the MD&A, if the GAAP financial measure (EPS) is presented with similar prominence in the primary financial statements.

f) Definition of capital management measure

A capital management measure is defined as a “financial measure that is disclosed in the notes to the financial statements...”. However, section 7 requirements apply to a capital financial measure that “is not a total, subtotal or line item presented in the primary financial statements”. This would imply that all capital management measures are subject to the disclosure requirements since, by definition, capital management measures are not presented in the primary financial statements, but rather in the notes. The requirements in section 7 are inconsistent given that all disclosure requirements proposed are already included in the notes to the financial statements, thereby creating duplicate disclosure.

g) Materiality

No concept of materiality has been applied in this Proposed Instrument. The prominence criteria would unnecessarily burden disclosure in situations where the conclusions drawn from a non-GAAP financial measure and a GAAP financial measure would be substantially the same due to an immaterial difference between the two. In such a case, doubling the disclosures (by presenting both GAAP and non-GAAP) can lead to confusion and dilute key messages.

h) Language

The language used in the Proposed Instrument is difficult to read in places and may cause confusion. We recommend simplifying the wording and using plain English throughout the Proposed Instrument and the Companion Policy.

i) Interpretation guidance or webinar

Does the CSA intend to provide further interpretation guidance or a webinar on this Proposed Instrument? Given the confusion and clarifications surrounding some of the definitions and disclosure requirements, providing further interpretation guidance or a webinar could ensure that all issuers apply the requirements in the Proposed Instrument consistently.

Question 4

Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We note that as the Proposed Instrument is substantially in-line with the requirements of the SEC, the exemption is appropriate since SEC foreign issuers would already be presenting the required disclosures.

Question 5

Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

We agree with the exclusion of oral statements from the scope of the Proposed Instrument. However, we believe that it would be beneficial to include additional guidance with respect to the disclosures required when written transcripts of oral statements are provided by an issuer. Specifically, can the issuer refer to existing public documents such as MD&A that already contain the required disclosures rather than re-creating the disclosures specially for the transcript and if so, what is the required structure of the references to the existing disclosures?

Question 6

Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

We agree with the inclusion of all the documents outlined within the Proposed Instrument. However, we believe this could lead to significant duplication of information and risk of confusion if the same non-GAAP measure is presented in multiple disclosures. We recommend that the Proposed Instrument allow the issuer to cross-reference existing public documents, such as the MD&A, that already contains the required disclosure. For example, if the press release refers to highlights of the quarterly results including non-GAAP measures, the press release would then reference the non-GAAP measures section of the MD&A or the specific page within the MD&A where the information is presented instead of representing the same information in multiple places. We suggest that clarity be provided on what form this reference may take, i.e. is a note directing the reader to 'see the non-GAAP measures section of the MD&A' sufficient or must there be electronic links to the electronic version of the MD&A where an organization has the technical capability to provide that option. We caution that mandating duplication of information or the extensive linking of electronic documents could cause

substantial regulatory burden, especially for smaller filers that do not have the web-based capabilities of larger companies.

We noted that the Proposed Instrument provided limited guidance on social media formats such as Twitter, LinkedIn, etc. which many Companies are now using to communicate with the public. It is not clear as to how the criteria of this Proposed Instrument would be met in a limited character posting especially if the Company has limited web-based capabilities.

Nicholas P. Fader
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Our File No.: 023330.2

December 11, 2018

By Email

The Secretary
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Corporate Secretary
Autorité des marchés financiers
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Re: Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

Alberta Securities Commission
British Columbia 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:

We commend the Canadian Securities Administrators (“CSA”) on their effort to update CSA Staff Notice 52-306 (Revised) – *Non-GAAP Financial Measures* (“**Staff Notice 52-306**”) and appreciate the opportunity to provide feedback on *Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* (the “**Proposed Instrument**”) dated September 6, 2018.

December 11, 2018

Page 2

Bennett Jones LLP is a premier Canadian business law firm with Canadian offices in Calgary, Toronto, Ottawa and Vancouver. We routinely have occasion to provide advice to issuers, large and small, with respect to securities law matters in general and the use of Non-GAAP financial measures in particular.

The Proposed Instrument solicits feedback on six specific questions. We have responded to three of those inquiries in the following paragraph (#'s 4, 5 and 6). We have not provided direct answers to your other inquiries (which are, in large measure, accounting-centric), but have, instead, provided general feedback on several other points. Please note that our comments are not made on behalf of any specific Bennett Jones LLP client or group of clients.

We note our agreement with the decision to exempt SEC foreign issuers and oral statements from the Proposed Instrument's application. As well, in our view, it is unnecessary to repeat, in full, the content of Non-GAAP cautionary statements in every document in which Non-GAAP financial measures are presented. We think issuers should include Non-GAAP cautionary statements in certain core documents (primary offering documents, AIF's and MD&A), but should be permitted to rely upon cross-referencing in other documents (to the extent Non-GAAP financial measures are presented). We are concerned that the proposed approach would result in undue compliance costs to issuers with little added benefit to readers.

We encourage CSA to reconsider the language of Section 2(2), which is very broad and, if retained, could cause the final instrument to apply to a very wide array of documents and written communications. While we recognize that Staff Notice 52-306 does not confine itself to disclosure by reporting issuers, in our view, the final instrument should apply to: (i) reporting issuers; and (ii) non-reporting issuers that disseminate Non-GAAP financial measures in the context of securities distributions. We do not perceive a compelling need to extend the requirements of the final instrument to private issuers in situations where the relevant information will not be relied upon to make an investment decision and worry that doing so will cause private issuers to restrict the disclosure of certain categories of information that they would otherwise be inclined to make available to their shareholders (including in response to shareholder requests).

If CSA retains, in Section 2(2), the expansive language of the Proposed Instrument ("in a document ... that is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction, whether or not filed under securities legislation"), we would encourage you to consider providing guidance with respect to the "public". That term has specialized meaning in the context of prospectus exemptions (as noted in the Companion Policy to National Instrument 45-106 – *Prospectus Exemptions*), which may be unnecessarily broad in the context of the Proposed Instrument. In our view, the final instrument should only apply in circumstances where the relevant information is made widely available to members of the public, as opposed to being made available to only a limited number of persons who may, vis-à-vis the issuer, be considered members of the public (in the prospectus exemption sense). Query whether the concept noted in National Policy 51-201 – *Disclosure Standards* regarding dissemination broadly to the investing public (Section 1.1(1)) may be a more appropriate standard.



December 11, 2018

Page 3

We perceive a potential source of ambiguity in the Proposed Instrument regarding what constitutes a "segment" (as that term is used in the definition of "segment measure"). The Proposed Companion Policy refers to "reportable segments" and it appears that the term "segment" is intended be synonymous with "reportable segment"; if that is the case, the Proposed Instrument should clearly state that intention. Otherwise, whether a "segment" is a business unit, a profit centre, a cost centre, a division or all or none of these, could be unclear.

Section 2(3) of the Proposed Instrument excludes any "specified document" from its application. We encourage CSA to consider whether the list of specified documents should be expanded to include third-party materials filed by issuers (particularly in circumstances where such disclosure is compelled by securities laws). For example, if an issuer is required to file a prior valuation prepared by a third party firm, we do not believe the issuer should be required to include Non-GAAP cautionary language in relation to that document.

We hope you will find our comments to be of assistance.

If you have any questions concerning the foregoing, please contact the undersigned directly at your convenience.

Yours truly,

BENNETT JONES LLP

Nicholas P. Fader
Partner

AB:bff



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December 5, 2018

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
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The Secretary
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 consultation-en-cours@lautorite.qc.ca

RE: Request for Comment on Proposed National Instrument 52-112, Proposed Companion Policy 52-112 and Related Proposed Consequential Amendments or Changes

This letter is submitted in response to the Notice and Request for Comment dated September 6, 2018 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.

We have first provided general comments for your consideration, followed by comments that are responsive to certain of the specific questions set out in the Notice and Request for Comment (with the relevant questions reproduced for ease of reference). These comments are those of the writers noted below and do not necessarily reflect the views of clients or others in our firm.



GENERAL COMMENTS

Scope

Application to Issuers vs. Reporting Issuers

It appears that the Proposed Instrument would apply to all “issuers” (not just reporting issuers under Canadian securities laws), other than SEC foreign issuers, who disclose non-GAAP financial measures, segment measures, capital management measures or supplementary financial measures (the “**Covered Financial Measures**”) in a document that is intended to be, or is reasonably likely to be, made available to the public in the local jurisdiction (i.e., a Canadian jurisdiction), subject to certain, narrow exceptions. The term “issuer”, as defined in Canadian securities law, is very broad – in Ontario, it is defined as “a person or company who has outstanding, issues or proposes to issue a security”. If it is indeed the CSA’s intention that the Proposed Instrument apply to issuers who are not reporting issuers in Canada, it seems that the Proposed Instrument may apply to a broad range of issuers including:

- Canadian issuers that are not reporting issuers, that have issued debt securities in private placements and that may disclose non-GAAP financial measures or other Covered Financial Measures on their websites or in annual reports or other reports to bondholders or other stakeholders (for example, utility companies such as Ontario local hydro distribution companies);
- Public-Private Partnerships that have issued bonds in private placements to institutional investors and may disclose non-GAAP financial measures or other Covered Financial Measures to their bondholders;
- Possibly, municipalities or other government agencies (at least, those that are organized as corporations of some kind) that have issued debt securities;
- U.S. issuers or funds (whether public in the U.S. or not) who are not “reporting issuers” in Canada, who may issue securities to Canadian investors on a private placement basis, and disclose non-GAAP financial measures or other Covered Financial Measures either in an offering memorandum (usually based on a U.S. disclosure document) relating to the initial investment, on a website or to their investor base generally; and
- Other foreign issuers or funds who may issue securities to Canadian investors on a private placement basis, and disclose Covered Financial Measures either in an offering memorandum (likely based on a foreign disclosure document) relating to the initial investment, on a website or to their investor base generally.

With regard to U.S. issuers, in particular, we note that the exemption for SEC foreign issuers would not apply to a U.S. issuer unless the issuer is a reporting issuer in Canada, since being a “foreign reporting



issuer” is an element of the definition of “SEC foreign issuer” under National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (“**NI 71-102**”).

In our view the scope of application of the Proposed Instrument is overly broad and could result in unintended consequences, in particular for Canadian private placement markets, and uncertainty as to application. For example:

- Whether or how the Proposed Instrument is intended apply to municipalities or other government agencies, and financial disclosures they may make, is not entirely clear.
- Would the Proposed Instrument apply to a U.S. issuer that is not a reporting issuer in Canada, and has not issued securities in a primary distribution to Canadians, but that may have Canadian securityholders that purchased those securities over a U.S. exchange, if it discloses Covered Financial Measures on its website or in filings with the U.S. Securities and Exchange Commission?
- We submit that the Proposed Instrument should not apply to U.S. issuers that are U.S. SEC registrants, but not reporting issuers in Canada, and that are parent issuers or credit supporters under Part 13 of National Instrument 51-102 – *Continuous Disclosure Obligations*. The financial disclosure obligations of such issuers are essentially governed entirely by U.S. securities law rules and that should remain the case.
- The regulatory objective, if there is one, of applying the Proposed Instrument to non-reporting issuers, who are generally not otherwise subject to Canadian financial statement or management’s discussion and analysis (“**MD&A**”) disclosure rules, is not clear to us. There are currently no rules relating to disclosure of financial information generally, in an offering memorandum used by an issuer for a private placement in Canada in reliance on the accredited investor exemption, minimum amount exemption and certain other exemptions from the prospectus requirement. There are also no ongoing financial disclosure requirements under securities laws for non-reporting issuers who have privately placed securities in Canada in this manner. If non-reporting issuers (whether Canadian, U.S. or other foreign issuers) who issue securities on a private placement basis in reliance on such exemptions are not subject to Canadian securities laws relating to historical financial statement disclosure or continuous disclosure, either at the time they issue the securities or thereafter, it is not clear to us why they should become subject to rules regarding their disclosure of Covered Financial Measures. We are concerned that applying the Proposed Instrument to these issuers could cause a significant reduction, in particular, in the willingness of foreign issuers to extend private placement investment opportunities to Canadian investors.

We suggest that the regulatory focus in this area should be on reporting issuer disclosures and, accordingly, we submit that the application of the Proposed Instrument should be limited to reporting issuers.



“Made Available to the Public”

The term “the public” is not defined in Canadian securities law. The concept has been considered in various cases, but can be a difficult one to apply in practice. It may not be clear, for example, that a group of potential Canadian investors, even a small group of highly sophisticated Canadian accredited investors, would not be considered “the public” and therefore non-reporting issuers making a private placement to those investors may be subject to the Proposed Instrument (i) if using an offering memorandum containing Covered Financial Measures, and (ii) thereafter, if they include Covered Financial Measures in a document posted on their website or even, potentially, provided only to that limited group of sophisticated investors who invested in the issuer’s securities.

Again, it seems illogical that such issuers would not be subject to Canadian securities rules relating to periodic financial statement disclosure, but would become subject to a Canadian rule relating to the Covered Financial Measures if they chose to disclose such measures, even potentially to a small group of sophisticated investors. Limiting the application of the Proposed Instrument to reporting issuers, as we suggest above, would largely alleviate the above difficulties.

Content of Covered Financial Measures

The Proposed Instrument does not appear, on its face, to limit its scope to Covered Financial Measures relating to an issuer’s own financial results. It seems that the Proposed Instrument might apply to Covered Financial Measures of other issuers that an issuer might disclose including, for example, Earnings Before Interest, Taxes, Depreciation and Amortization (“**EBITDA**”) of an acquisition target, or EBITDA, Free Cash Flow or a capital management measure of other comparable issuers in a comparison format in an investor presentation. As one may expect, the requirements of the Proposed Instrument may be difficult, if not impossible, for an issuer to comply with in such circumstances. We suggest that the Proposed Instrument should state that it applies to an issuer’s own Covered Financial Measures.

With respect to comparative period information, the Proposed Instrument requires presentation of comparative period information for non-GAAP financial measures, however, for segment measures, capital management measures and supplementary financial measures, the Proposed Instrument only requires presentation of comparative period information “if the ... measure has been previously disclosed”. The reason for such distinction is not immediately apparent to us and we would suggest that the non-GAAP financial measures provision be aligned with the other provisions to limit the requirement to present comparative period information only where such non-GAAP financial measure has been previously disclosed.

Reconciliation of Forward-Looking Non-GAAP Financial Measures

We understand that, in the United States, the rules regarding non-GAAP financial disclosures (known as Regulation G) require a quantitative reconciliation to the most comparable GAAP financial measure “to the extent available without unreasonable efforts, for forward-looking information...”. We suggest that the CSA should introduce such a concept to the Proposed Instrument.



Specific Financial Measures Exclusion

The Proposed Instrument, as drafted, would not apply to a specific financial measure disclosed in accordance with a requirement of Canadian securities legislation or the laws of a jurisdiction of Canada. It seems that compliance with the laws of a foreign issuer's home jurisdiction with respect to a disclosed financial measure (or for that matter, compliance by a Canadian issuer required to report such a measure under a foreign law) would not be exempted from application of the Proposed Instrument. We suggest such disclosures should similarly be exempted from the application of the Proposed Instrument.

Required Clarifications

Segment Measures

Section 6 of the Proposed Instrument repeatedly references disclosure of "a total of" segment measures. It is unclear to us what is meant by "a total of" and no guidance is provided in the Proposed Companion Policy. We suggest that the CSA consider whether such references should simply be to "segment measures" rather than "a total of" segment measures. Alternatively, additional clarity should be provided regarding the reference to or meaning of "a total of".

LTM Information

Issuers sometimes disclose financial information for a last twelve months, or "LTM", period, using information from prior historical interim and annual financial statements (for example, a six month period ended June 30, 2018 added to a six month period ended December 31, 2017 (derived from annual financial information for the year ended December 31, 2017, less interim financial information for the six month period ended June 30, 2017) to show results for the LTM period ended June 30, 2018). Although the components of the LTM information may be GAAP measures and derived from two sets of the issuer's financial statements, the aggregated LTM information itself will not be disclosed or presented in any financial statements.

It appears that such LTM information might be a non-GAAP financial measure under the definition in the Proposed Instrument. *Section 1 – Definition of a non-GAAP financial measure* in the Proposed Companion Policy states that "a measure calculated by combining numbers disaggregated from different line items would also meet the definition of a non-GAAP financial measure". It is not clear to us whether this sentence would apply to LTM information that is a combination of GAAP line items (or disaggregations therefrom) from financial statements for two separate periods. It is also not clear to us whether such information would be considered a "disaggregation" of information from the financial statements (rather, it seems like an "aggregation" of amounts taken from financial statements that cover different periods).

It seems to us unusual that such LTM financial information would be considered a non-GAAP financial measure. We suggest that the Proposed Instrument should provide that LTM or other presentations of financial information that are comprised of GAAP or IFRS measures derived from historical financial statements, added together, will not be non-GAAP financial measures; or at least that the CSA should



provide some commentary on this type of information in the Proposed Companion Policy to clarify the status and treatment of such information.

SPECIFIC RESPONSES

1. Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

A non-GAAP financial measure is defined in the Proposed Instrument and Proposed Companion Policy to include a financial measure that is not disclosed or presented in the “financial statements” (i.e., either the “primary financial statements” (as defined in the Proposed Instrument) or the notes to the financial statements) and that is not a disaggregation of a line item presented in the “primary financial statements” (i.e., not including the notes to the financial statements). It is not clear to us why the disaggregation concept refers only to a line item in the “primary financial statements”, but not an item found in the notes to the financial statements. We submit that the CSA should reconsider this aspect of the definition, or provide guidance that disaggregations of items in financial statement notes will be considered disaggregations of primary financial statement items (if that is the case).

The potential application of the Proposed Instrument to fourth quarter financial information is not entirely clear. The Proposed Companion Policy cites as an example of specific financial measures that are not subject to the Proposed Instrument, the Summary of Quarterly Results prescribed by section 1.5 of Form 51-102F1 – *Management’s Discussion and Analysis* (“**Form 51-102F1**”) which will include certain fourth quarter information. However, this section only refers to three measures: (i) total revenue, (ii) profit or loss from continuing operations attributable to owners of the parent and (iii) profit or loss attributable to owners of the parent. Some, if not most, issuers disclose much more fourth quarter information, either in narrative discussion of fourth quarter results under section 1.10 of Form 51-102F1 or in a full or partial financial statement-type presentation. We believe such fourth quarter financial information should be a disaggregation of information from the annual financial statements and should not be considered a non-GAAP financial measure. In this regard, we suggest the CSA should specify or clarify:

- Whether (or what type of) fourth quarter financial information is considered to be a disaggregation of financial information presented in the issuer’s annual financial statements (and therefore not a non-GAAP financial measure); and
- Whether and how the Proposed Instrument might apply when fourth quarter financial information is published by an issuer before the annual financial statements for the fiscal year are published.



3. Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

“Additional Subtotals” and EBITDA

The Proposed Companion Policy in referring to “additional subtotals” required under paragraphs 55 and 85 of IAS 1 – *Presentation of Financial Statements*, provides an example where EBITDA is presented in the “primary financial statements” (but not the notes to the financial statements) “in accordance with the accounting policies used to prepare [the issuer’s] financial statements.” The Proposed Companion Policy says that such a financial measure “would not meet the definition of a non-GAAP financial measure if it were also disclosed outside the issuer’s financial statements”.¹

The example in the Proposed Companion Policy refers to EBITDA presented in the “primary financial statements”. We are aware of a number of issuers that may present EBITDA, adjusted EBITDA or other measures or “sub-totals” that do not have prescribed GAAP or IFRS meanings in the financial statements (on a consolidated basis and/or, in particular, for operating segments in the financial statement notes). Issuers often state that these measures are non-GAAP or non-IFRS measures and/or that they do not have a standardized meaning under GAAP or IFRS (indicating that such measures are not standardized GAAP or IFRS measures, although nevertheless shown in the financial statements). These issuers also typically refer to and discuss these measures in corresponding MD&A as non-GAAP or non-IFRS measures.

Is it intended that measures labelled by some issuers as “EBITDA” (or other measures now typically considered non-GAAP measures) will not be considered a non-GAAP financial measure under the Proposed Instrument (if they are able to be presented or disclosed in the financial statements), but measures labelled by other issuers as “EBITDA” will be considered non-GAAP financial measures (if they do not appear in the financial statements and only appear in the issuers’ MD&A or another document)? We suggest this will be very confusing and that the CSA should give this further consideration. We request that the CSA provide further clarification in the Proposed Instrument or Proposed Companion Policy in this regard.

Compliance not Feasible

The Proposed Companion Policy² seems to recognize there may be circumstances in which compliance with paragraph 3(c) (comparative period presentation of non-GAAP financial measures) of the Proposed Instrument would not be feasible, but states that this would be “only in rare circumstances, such as in the first period of operations where no comparative period exists”. However, there is no guidance on what is required of an issuer if it is unable to present a comparative period (for example, would it be necessary to apply for an exemption?). Clarity should be provided in the Proposed Companion Policy. We would also suggest that a “not feasible” or “not applicable” concept be introduced to the Proposed Instrument itself as we expect difficulties with comparative period presentations may arise in the course of an issuer preparing its financial statements and MD&A,

¹ See “Section 1 – Definition of a non-GAAP financial measure”, third paragraph.

² See “Paragraph 3(c) – Comparative information”.



making it unrealistic or impossible to obtain exemptive relief in a short period of time when facing a financial statement filing deadline. This may be the case particularly in the context of issuers making acquisitions of different businesses or operating segments.

Non-GAAP Financial Measures/Ratios that are Financial Outlooks

If a non-GAAP financial measure is both financial outlook and a ratio, the Proposed Companion Policy provides that the issuer may choose to apply the alternate reconciliation requirements either for financial outlook or a ratio. However, the Proposed Instrument itself does not provide an exemption from compliance with both provisions. Such an exemption must be in the Proposed Instrument, not the Proposed Companion Policy.

Section 5(2)(c)(i) of the Proposed Instrument would require presentation of the “equivalent historical non-GAAP financial measure” for exemption from the quantitative reconciliation requirement, but does not allow for a situation where there is no such equivalent. The Proposed Instrument should be amended to introduce a concept of “if applicable”, or “...if such equivalent measure has been previously disclosed”.

In addition, the Proposed Instrument says, at section 5(2)(c)(ii)(B): “Subparagraph 3(d)(iv) does not apply if, the first time the financial outlook appears in the document, the document describes [...] each of the significant components of the financial outlook used in its calculation”. However, the Proposed Companion Policy bifurcates the last segment of the above into two distinct alternatives, inconsistent with the Proposed Instrument: “Where a reconciliation for a non-GAAP financial measure that is financial outlook is presented in the format outlined in clause 5(2)(c)(ii)(B) of the Instrument, the reconciliation information provided will be primarily driven by the process followed by the issuer with respect to the preparation, derivation or calculation of the financial outlook, and may include: (a) a description of each of the significant components of the financial outlook, or (b) a description of what was used in the calculation of the financial outlook.” [emphasis added]. This should be corrected or clarified.

Departures from Existing Guidance in Staff Notice 52-306

We are also of the view that the Proposed Companion Policy should be clearer that it is a departure from the existing guidance in some significant ways, including:

- Financial measures previously not considered to be non-GAAP measures will now be non-GAAP financial measures under the Proposed Instrument. For example, “sales per square foot” was listed in Staff Notice 52-306 – *Non-GAAP Financial Measures* among other performance measures as being “not considered to be non-GAAP financial measures”. However, such measure would become a non-GAAP financial measure under the Proposed Instrument (unless the ratio is presented or disclosed in the issuer’s financial statements), even if the “sales” amount is the same amount as included as a line item in the issuer’s “primary financial statements”.



- As a departure from past guidance and changes requested in comment letters from the CSA, the Proposed Companion Policy provides for a new safe harbour for prominence of any discussion and analysis of a non-GAAP financial measure by noting “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 directly comparable measure contemporaneously. For example, within the previous, same or next page of the document.”

In addition, guidance should also be provided as to how one applies the Proposed Instrument, if at all, to directional disclosures lacking a specific quantitative component (for example, that an acquisition is expected to be accretive to adjusted funds from operations).

4. Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We support the proposed exemption for SEC foreign issuers. We submit that the CSA should reconsider whether the proposed exemption for SEC foreign issuers is too narrow. The appropriateness of applying the Proposed Instrument to designated foreign issuers is not clear to us. As with SEC foreign issuers, NI 71-102 largely defers to a designated foreign issuer’s home jurisdiction financial statement and MD&A disclosure requirements. If designated foreign issuers’ home jurisdiction requirements for disclosure relating to financial statements and MD&A are felt to be sufficient, and such issuers are accordingly not required to follow the corresponding Canadian requirements, why should they now be made subject to Canadian rules relating to disclosure of Covered Financial Measures (but SEC foreign issuers are not)? We believe this would be very confusing and cumbersome for such issuers.

6. Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

Many issuers use non-GAAP financial measures as goals, targets, criteria or conditions for the purposes of determining executive compensation. Accordingly, as required under Form 51-102F6 – *Statement of Executive Compensation* (“**Form 51-102F6**”), such measures are required to be referred to in compensation discussion and analysis disclosure to fulfill the requirements of Form 51-102F6 to describe and explain the significant elements of compensation paid to Named Executive Officers. Such references to non-GAAP financial measures are not for the purposes of disclosing to investors such measures but rather to fulfill the requirements of Form 51-102F6 relating to executive compensation disclosure. Under the Proposed Instrument, it would appear that all of the requirements of the Proposed Instrument relating to non-GAAP financial measures would apply to references included in executive compensation disclosure pursuant to Form 51-102F6. As the purpose of the disclosure of non-GAAP measures in this context is not to actually disclose the measures but to describe and explain executive compensation in accordance with the requirements of Form 51-102F6, and the non-GAAP financial measures would be subject to the new proposed requirements where they



generally appear (such as MD&A disclosure), applying the Proposed Instrument to such disclosure and requiring compliance with the proposed prominence, reconciliation and all of the related proposed provisions would not serve the purposes of the Proposed Instrument as such disclosure would be provided elsewhere and would significantly detract from executive compensation disclosure.

Additionally, issuers may refer to non-GAAP financial measures when engaging with shareholders, or proxy advisory services, as to executive compensation policies and practices, in accordance with shareholder engagement practices promoted by good corporate governance advocates. Accordingly we would propose that the non-GAAP financial measures provisions of the Proposed Instrument should not apply in respect of executive compensation disclosure and related disclosure.

* * * * *

If you have any questions concerning these comments, please contact Brendan Reay at 416.863.5273 or brendan.reay@blakes.com, Matthew Merkley at 416.863.3328 or matthew.merkley@blakes.com, or David Bristow at 416.863.5829 or david.bristow@blakes.com.

Sincerely,

(signed) "*Brendan Reay*"

(signed) "*Matthew Merkley*"

(signed) "*David Bristow*"

December 5, 2018

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

RE: CSA Notice and Request for Comment – Proposed National Instrument 52-112, Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes

Dear Commissions:

The Committee on Corporate Reporting (CCR) of Financial Executives International Canada (FEI) is pleased to respond to the CSA 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, and Related Proposed Consequential Amendments and Changes (the Proposed Instrument).

FEI Canada is the all-industry professional membership association for senior financial executives. With eleven chapters across Canada and more than 1,600 members, FEI Canada provides professional development, 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 seven thought leadership committees of FEI Canada. CCR is devoted to improving effectiveness, the awareness of issues and educating FEI Canada members on the implications of the issues it addresses and is focused on continually improving the standards and regulations impacting corporate reporting.

Our responses to the questions posed within the Proposed Instrument are included as Appendix to this letter. Thank you for the opportunity to respond to this Proposed Instrument.

Sincerely,



Murray Harris, CPA, CA
Chair, Committee on Corporate Reporting

Appendix

Question 1

Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

We believe that the Proposed Instrument could provide additional clarification on whether certain financial measures are within the scope of the Instrument, including non-GAAP financial measures that are required and defined by another regulatory instrument or agency. We believe that these kinds of non-GAAP measures should be excluded from the scope of this instrument as they are presented on the prescribed basis of the other regulatory instrument or agency. For example, executive compensation disclosure required by other instruments and financial measures including capital ratios required by a regulatory agency such as the Office of the Superintendent of Financial Institutions (OSFI) could be incorporated by reference. This would also support the goal of reducing regulatory burden.

We would also seek clarity whether additional financial measures that are included in the audited financial statements, as notes or otherwise, would be considered GAAP or non-GAAP when they are included in other public documents. We believe that under the current draft of the Instrument, preparers could increase the inclusion of traditional Non-GAAP measures in their financial statements to avoid detailed reconciliation in other public documents. While these reconciliations are primarily intended to reconcile to GAAP measures, they also provide readers with additional details that may not be clearly identifiable in the financial statements.

The proposed instrument makes a distinction between “presented” and “disclosed” in the financial statements. Given that both presentation and disclosure items are integral to the financial statements, and subject to audit, we question whether this distinction is required.

Question 2

Are there any specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

We have not identified any additional disclosures that would significantly improve the overall quality of disclosure and be of benefit to investors.

Question 3

Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

We have noted several concepts in the Proposed Instrument which we believe should be addressed to improve the clarity of the Proposed Instrument:

a) Definition of non-GAAP financial measure

The definition in the Proposed Instrument is silent on whether a disaggregation of a non-GAAP measure also meets the definition of a non-GAAP measure and must therefore comply with all the requirements. It is our opinion that a disaggregation of a non-GAAP financial measure should not be subject to the disclosure requirements included in the Proposed Instrument as it would be unnecessarily burdensome and, in many cases, very difficult to achieve as an issuer may not present the equivalent disaggregated GAAP financial measure in the financial statements. Instead, we propose that the disclosure requirements included in the Proposed Instrument apply only to the highest aggregation of a non-GAAP financial measure. For example, a non-GAAP presentation of project expenditures could be reconciled to capital asset additions in the notes to the financial statements on an aggregate basis however the disaggregation by project would be difficult to reconcile to GAAP since the financial statements disclose asset additions by type, not by project.

b) Describing a non-GAAP financial measure as ‘record performance’ or ‘exception’ without at least an equally prominent descriptive characterization of the most directly comparable measure

It is unclear what statement would qualify as exceptional characterizations. If the intent is to apply this to all characterizations, we disagree on the basis that this dilutes key messages and essentially duplicates descriptions whenever a non-GAAP measure appears. We believe that a descriptive characterization of the most directly comparable measure should be provided only when disclosures are unclear, for example in situations where non-GAAP and GAAP measures do not align. We believe that as long as disclosures are consistent in definition over time, then disclosures are balanced, and descriptive words are appropriately applied to non-GAAP measures.

c) Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most directly comparable measures or without including the most directly comparable measures in the same table or graph

We have the same comment as note b) above regarding usefulness of these additional disclosures.

d) Full statement of profit or loss of non-GAAP financial measures

It is unclear what the Proposed Instrument considers as a full statement of profit or loss. If a table contains consolidated highlights with several non-GAAP financial measures, would it be considered a full statement of profit or loss of non-GAAP financial measures if the table ultimately reconciles to the GAAP net income?

e) Non-GAAP measures that are ratios

The requirements state that paragraph 3(b) does not apply if “the ratio is presented with no more prominence in the document than similar financial measures presented in the primary financial statements”. It is unclear whether a non-GAAP financial ratio, e.g. Core EPS, can be presented in the MD&A without presenting the GAAP financial measure (EPS) in the MD&A, if the GAAP financial measure (EPS) is presented with similar prominence in the primary financial statements.

f) Definition of capital management measure

A capital management measure is defined as a “financial measure that is disclosed in the notes to the financial statements...”. However, section 7 requirements apply to a capital financial measure that “is not a total, subtotal or line item presented in the primary financial statements”. This would imply that all capital management measures are subject to the disclosure requirements since, by definition, capital management measures are not presented in the primary financial statements, but rather in the notes. The requirements in section 7 are inconsistent given that all disclosure requirements proposed are already included in the notes to the financial statements, thereby creating duplicate disclosure.

g) Materiality

No concept of materiality has been applied in this Proposed Instrument. The prominence criteria would unnecessarily burden disclosure in situations where the conclusions drawn from a non-GAAP financial measure and a GAAP financial measure would be substantially the same due to an immaterial difference between the two. In such a case, doubling the disclosures (by presenting both GAAP and non-GAAP) can lead to confusion and dilute key messages.

h) Language

The language used in the Proposed Instrument is difficult to read in places and may cause confusion. We recommend simplifying the wording and using plain English throughout the Proposed Instrument and the Companion Policy.

i) Interpretation guidance or webinar

Does the CSA intend to provide further interpretation guidance or a webinar on this Proposed Instrument? Given the confusion and clarifications surrounding some of the definitions and disclosure requirements, providing further interpretation guidance or a webinar could ensure that all issuers apply the requirements in the Proposed Instrument consistently.

Question 4

Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We note that as the Proposed Instrument is substantially in-line with the requirements of the SEC, the exemption is appropriate since SEC foreign issuers would already be presenting the required disclosures.

Question 5

Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

We agree with the exclusion of oral statements from the scope of the Proposed Instrument. However, we believe that it would be beneficial to include additional guidance with respect to the disclosures required when written transcripts of oral statements are provided by an issuer. Specifically, can the issuer refer to existing public documents such as MD&A that already contain the required disclosures rather than re-creating the disclosures specially for the transcript and if so, what is the required structure of the references to the existing disclosures?

Question 6

Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

We agree with the inclusion of all the documents outlined within the Proposed Instrument. However, we believe this could lead to significant duplication of information and risk of confusion if the same non-GAAP measure is presented in multiple disclosures. We recommend that the Proposed Instrument allow the issuer to cross-reference existing public documents, such as the MD&A, that already contains the required disclosure. For example, if the press release refers to highlights of the quarterly results including non-GAAP measures, the press release would then reference the non-GAAP measures section of the MD&A or the specific page within the MD&A where the information is presented instead of representing the same information in multiple places. We suggest that clarity be provided on what form this reference may take, i.e. is a note directing the reader to 'see the non-GAAP measures section of the MD&A' sufficient or must there be electronic links to the electronic version of the MD&A where an organization has the technical capability to provide that option. We caution that mandating duplication of information or the extensive linking of electronic documents could cause

substantial regulatory burden, especially for smaller filers that do not have the web-based capabilities of larger companies.

We noted that the Proposed Instrument provided limited guidance on social media formats such as Twitter, LinkedIn, etc. which many Companies are now using to communicate with the public. It is not clear as to how the criteria of this Proposed Instrument would be met in a limited character posting especially if the Company has limited web-based capabilities.



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December 5, 2018

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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Response to the CSA Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

Dear Sir/ Madam,

We welcome the opportunity to respond to the Proposed National Instrument 52 - 112 *Non-GAAP and Other Financial Measures Disclosure* (the Proposed Instrument) as well as the associated Proposed Companion Policy 52 – 112 *Non-GAAP and Other Financial Measures Disclosure* (the Proposed Companion Policy).

British Columbia Investment Management Corporation (BCI) is an asset manager with more than \$150 billion Canadian dollars in assets under management, making it one of the largest institutional investors in Canada. Our investment activities help finance the pensions of approximately 554,000 people in our province. On behalf of these pension beneficiaries, we provide long term capital to companies around the world that we believe will provide strong and stable financial returns.

As a long-term investor, BCI relies on well-functioning capital markets. We see it as our responsibility to contribute to the overall stability of the financial system. As an active participant in the capital markets, we address systemic risks with the expectation that our efforts will lead to greater stability and integrity within the markets. We regularly engage with regulators and advocate for legal and regulatory changes to ensure that principles of good governance are integrated into the regulatory framework.

As a starting point, BCI would support the assertion made by the Canadian Securities Administrators (CSA) that investors are increasingly concerned with the problematic disclosure practices surrounding non-GAAP financial measures. Our investment professionals in Public Markets have watched this trend grow over the years and we see various levels of disclosure that would be consistent with that suggested by the CSA Staff Notice 52 – 306 (Revised) *Non-GAAP Financial Measures* (SN 52 – 306).

In BCI's view, the increasing quantity and variety of non-GAAP disclosure represents a systemic issue within the capital markets and we encourage the CSA to remain active in the dialogue to resolve it. This is particularly important at a time when several stakeholders continue to weigh in with voluntary standards or guidance on non-GAAP disclosure. Given the potential confusion as noted by the CSA, multi-stakeholder dialogue is critical.

BCI would like to offer our views on the specific questions posed by the CSA while also offering some additional comments for consideration.

Commentary on Specific Questions

In general, BCI views the definitions outlined in the Proposed Instrument and the Proposed Companion Policy to be reasonable. The proposed definitions capture the disclosures that we believe are the most problematic, such as adjusted financial measures which can present financial results in a different way from the audited financial statements. The CSA definition of non-GAAP essentially captures the numbers being presented to investors that have not undergone the scrutiny of an auditor, or numbers that we cannot link back to audited line items.

In terms of additional requirements, we would note that the Proposed Instrument and the Proposed Companion Policy do not provide comparability to investors. While codifying SN52-306 may shed additional light on how companies are arriving at their non-GAAP disclosures, investors will still need to investigate in detail to compare amongst a peer group of companies.

As for clarity, the detailed descriptions and examples found in the Proposed Companion Policy are most helpful and should provide support for issuers when implementing the Proposed Instrument. The exemptions noted for SEC Foreign Issuers and for oral statements also appear to be reasonable, in our view. Both exemptions reduce the overall regulatory burden and provide a practical solution to what could be problematic to enforce.

BCI agrees with the CSA on an application that covers all documents, since investors do not rely on a single source of regulatory filings when making investment decisions. One filing that is not included and may require specific consideration, is the Information Circular. This document contains disclosure on executive compensation, which, by our observation, regularly includes non-GAAP financial performance measures that incorporate several adjustments. The degree to which adjustments are being made and

the rationale for such adjustments are often not transparent to investors. While Canada lacks a mandatory advisory vote on compensation, it should be noted that many issuers provide such a vote voluntarily. Where an advisory vote on compensation is absent, investors may incorporate compensation analysis into director elections. We would encourage the CSA to consider providing further guidance that is specific to the information circular as this document informs investors' voting decisions.

Additional Considerations

As stated earlier, while we support and see the benefits of the CSA's efforts, we believe the consequences of escalating this issue from a Staff Notice to the Proposed Instrument may be more material than initially contemplated. In theory, the Proposed Instrument does not increase the disclosure burden due to its alignment with SN52-306; however, it is apparent that issuers are often not adopting the guidance outlined or the Proposed Instrument would not be necessary. The unintended consequence of this could be a decrease in actual disclosure for investors which we have come to rely on in the capital markets.

If issuers decrease levels of disclosure to avoid enforcement action under the Proposed Instrument, the capital markets will suffer unintended consequences. BCI would encourage the CSA to further assess this and consider an implementation approach that avoids such outcomes.

Finally, as noted at the outset of this letter, many stakeholders are proposing solutions to the problem of non-GAAP reporting. BCI does not believe the introduction of the Proposed Instrument fully resolves this problem. Therefore, we encourage the CSA to remain engaged in dialogue going forward and continue to welcome opportunities for conversation on this topic. BCI appreciated the opportunity to speak directly to representatives of the Alberta Securities Commission and the Ontario Securities Commission during this consultation period.

We appreciate the opportunity to offer our thoughts on the Proposed Instrument and the Proposed Companion Policy and hope they will assist in your discussions.

Please feel free to contact Jennifer Coulson, BCI's Vice President, ESG at jennifer.coulson@bci.ca as you consider these comments, or if you require further clarification.

Regards,



Daniel Garant

Senior Vice President, Public Markets

Burnet,
Duckworth
& Palmer LLP
Law Firm

December 5, 2018

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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Attention:

The Secretary
Ontario Securities Commission
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22nd Floor
Toronto, Ontario M5H 3S8
E-Mail: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
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E-Mail: consultation-en-cours@lautorite.qc.ca

Ladies and Gentlemen:

Re: CSA Notice and Request for Comment Re: Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosures and related documents (the "Proposed Instrument")

*We are writing in response to your request for comment dated September 6, 2018 (the "**Request**") regarding the Proposed Materials (as defined in the Request). Capitalized terms used in this letter have the meaning given to them in the Request.*

Please note that the comments provided herein are those of certain members of our firm and should not be taken to represent the position of the firm generally or any of our clients. Subject to any comments below, we believe the guidance and examples provided in the Proposed Materials will be useful in assisting issuers in complying with the Proposed Instrument.



1. Definitions

Given that NI 52-112 will be a rule, we believe it essential that the definition of non-GAAP financial measure and other critical definitions be clear and that appropriate guidance be provided in the Companion Policy to remove any doubt about what is included. For instance, we understand that certain performance measures used by oil and gas issuers are not non-GAAP financial measures such as finding and development costs, which, while regulated by NI 51-101 as an oil and gas metric if disclosed, will continue to not be considered a non-GAAP financial measure. Current CSA Staff Notice 52-306 is instructive in this regard as it provides as follows:

Some issuers disclose performance measures that are calculated without using financial measures (for example, number of units or number of subscribers). Some issuers disclose performance measures that are calculated using financial information presented in the financial statements (for example, sales per square foot, where the sales figure is extracted directly from the financial statements). In both of the preceding scenarios, such performance measures are not considered to be non-GAAP financial measures.

We note that in the Companion Policy to the Proposed Instrument, the definition of non-GAAP financial measure is not intended to include non-financial information such as: number of units, number of subscribers, etc.(bottom of p. 18 of Request). We note, however, that the list provided does not include any performance measures calculated using financial information and it does not include the above guidance specifically related to calculation of measures that include financial information which we consider appropriate and helpful. We would suggest this be included as it clarifies this issue.

We suggest the Proposed Instrument or Companion Policy clarify exactly what a "financial measure" is given that the concept forms the starting point for all the critical definitions used in the Proposed Instrument. For example, the first box used in Annex C suggests that a financial measure is "...a financial measure (dollar or ratio)". If any disclosed dollar or ratio is a "financial measure" and is not presented or disclosed in the financial statements, then such characterization or interpretation would, in our view, have broad and unintended consequences. Some examples for oil and gas and other issuers that would be treated as financial measures under this interpretation include cash costs, drill and complete costs, finding and developments costs, capital expenditures, property acquisition costs, recycle ratio, enterprise value, and total capitalization to name just a few.

As a further example, we note that Section 2 of the Companion Policy lists Net Present Value of Future Net Revenue as an example of a "specific financial measure" which would be excluded from the application of the Proposed Instrument because it is required to be calculated in accordance with prescribed requirements under applicable securities legislation. The implication of this is that if not calculated in accordance with applicable securities legislation it would be a financial measure subject to the Proposed Instrument. We are unclear why this is would be characterized as a financial measure subject to the Proposed Instrument in any event given it is only a calculation of the net present value of an oil and gas issuer's reserves and not a financial measure of financial performance, financial position or cash flow. A similar comment would apply to the inclusion of reference to Net Asset Value in this section. Again, the guidance as applied to these examples implies that a numerical measure is a "financial measure" of financial performance, financial position or cash flow under the Proposed Instrument simply because it has a dollar sign in front of it."

Whether our interpretation is correct or not, it would be of assistance to provide a definition of "financial measure" or provide guidance as to the interpretation thereof.

2. Application

(a) Private Issuers

We would encourage the CSA to reconsider the application of the Proposed Instrument to private issuers, which appears to be inconsistent with policy decisions made regarding other disclosure requirements. We note that many disclosure obligations imposed on reporting issuers are not extended to private issuers and would question the rationale for doing so in this case. For example, disclosure obligations and standards under NI 51-101 in the case of oil and gas issuers only apply to reporting issuers, including disclosure requirements for oil and gas metrics. Disclosure requirements under NI 51-102, including those relating to disclosure of forward looking information, financial outlooks and FOFI, only apply to reporting issuers. In fact, liability for misrepresentations under the secondary market liability provisions do not apply to private issuers.

Furthermore, the application of the Proposed Instrument to private issuers would likely have a disproportionate impact on private issuers who tend to have less resources and processes dedicated to financial reporting functions compared to reporting issuers.

(b) Exclusions for disclosures required by law

*We note that disclosure of a non-GAAP financial measure, segment measure, capital management measure or supplementary financial measure in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada would not fall within the scope of the Proposed Instrument. That rule would exclude the application of the Proposed Instrument to many of the disclosures that oil and gas issuers are required to make under National Instrument 51-101 – Standards of Disclosure for Oil and Gas Activities and Form 51-101F1 – Statement of Reserves Data and Other Oil and Gas Information ("**Form 51-101F1**"), such as operating costs, development costs, abandonment and reclamation costs, and quarterly disclosure for prices received, royalties paid, production costs and the resulting netback. However, many oil and gas issuers choose to disclose such measures and other similar measures on a periodic basis in documents other than their Form 51-101F1 or Annual Information Form on a voluntary basis and not because they are required to do so under securities legislation or the laws of a jurisdiction of Canada. When they choose to make voluntary disclosures of such measures, and, in doing so, calculate such measures in accordance with the applicable securities legislation or the laws of a jurisdiction of Canada, we believe that such disclosures should be excluded from the application of the Proposed Instrument under this rule even though such disclosures are not "required" by law. We would suggest that the Proposed Companion Policy be revised as it is confusing and unclear on this matter.*

3. Usefulness

Section 3(d) of the Proposed Instrument requires an explanation of how the non-GAAP financial measure provides useful information to a reasonable person and explains the additional purposes, if any, for which management uses the non-GAAP financial measure. We note that the Companion Policy in fact states that 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. In other words, it is management's beliefs, not an objective standard, that is relevant for these purposes and combining the subjective and objective elements in this manner only creates confusion. We suggest this be addressed.

Furthermore, we suggest it should not be necessary to meet an objective test for the usefulness of the information, which may simply give rise to unproductive disagreements between the regulators and the issuers; which has been our experience. If the purpose of providing the measure is stated, the reader can judge the usefulness to him or her. This is similar to the approach taken in Section 4B.3 of NI 51-102 with respect to disclosure of FOFI or a financial outlook, where disclosure of the purpose of the FOFI or financial outlook is required to be disclosed without any requirement to satisfy a reasonable person test.

4. Cross Referencing

To avoid undue burden, an issuer that discloses a non-GAAP financial measure in a press release or other document should be able to cross reference to the required reconciliation in another document that is publicly filed on SEDAR. This would be in line with the cross referencing permitted for disclosures in Section 5.9(3) of NI 51-101 and we believe it should be adequate for this purpose. Concern that cross referencing is inadequate runs contrary to the entire current system of disclosure. For example, while more involved than mere cross referencing, incorporation by reference of the issuer's public record, as required by Item 11 of NI 41-101, is sufficient for a short form prospectus filing.

5. Bank Covenants

The Proposed Instrument is clear that it does not apply to material contracts that are filed on SEDAR, including credit agreements or similar documents. However, as drafted, the definition of a Non-GAAP Financial Measure in the Proposed Instrument would capture disclosure of financial covenants mandated by a credit agreement if they were disclosed in a document other than the credit agreement or similar document.

We agree, as the Proposed Companion Policy states, that disclosure of financial covenants from material contracts should include appropriate labelling to identify them as such. We do not feel that a reconciliation should be required nor that it is relevant. This is disclosure of a contractual term which just happens to be in numerical form. Such financial covenants are included by issuers to provide investors with information concerning, among other things, the issuer's liquidity and capital resources and to comply with disclosure obligations. The disclosure is not being provided to highlight results, where comparability to other issuers and standardized measures is a concern. We think that a reconciliation to the financial statements would more likely confuse the issue and make it appear to be more like a financial metric, which it is not.

6. Is the proposed exclusion of oral statements to the application appropriate?

We believe that the inclusion of oral statements would be impractical and we note that the secondary market liability provisions regarding misrepresentations would still apply to any "public oral statements". Consider whether an explicit statement to this effect should be included.

7. Cost/Benefit Considerations

We understand that the CSA, in proposing new regulatory initiatives, considers the cost and benefit of application of the new initiative and that various initiatives are underway to reduce regulatory burden. In the case of the Proposed Instrument, we would similarly hope that consideration be given to the scope and quantum of administrative costs that issuers will incur in complying with the new disclosure requirements relating to segment measures and capital management measures, costs that we believe will extend well beyond the first reporting period and continue, albeit to a lesser extent, on an ongoing basis in the future. For example, we believe that implementation of the Proposed Instrument will require more detailed understanding and involvement of legal counsel of the detail of the financial statements, including segment measures and supplementary measures, in order to properly advise an issuer on compliance.

Thank you for the opportunity to provide comments on the Proposed Materials. If you have any questions on our comments or if we can clarify any of them, please feel free to contact Shannon Gangl, Kelsey Clark, Bronwyn Inkster or Riley O'Brien of our office.

Yours truly,

BURNET, DUCKWORTH & PALMER LLP

(Signed) "Burnet, Duckworth & Palmer LLP"



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December 4, 2018

Submitted by e-mail to comments@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 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) Notice and Request for Comment, "Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure", issued in September 2018.

Our process

As part of developing our response for these proposals, we consulted with our [User Advisory Council](#) and our [Academic Advisory Council](#). We took into account the results of this outreach when developing this letter.

Our views

The AcSB appreciates the opportunity to comment on the Proposed National Instrument. We commend the CSA's continuing efforts to improve the quality of financial information that Canadian investors rely on to make decisions through initiatives such as the Proposed National Instrument. One of our objectives is to establish financial reporting standards that improve the quality of information reported by Canadian entities. To accomplish this objective, we set accounting standards or issue voluntary guidance such as our Framework for Reporting Performance Measures. While the AcSB's and CSA's mandates and stakeholders are somewhat different, we each work to improve the quality of financial information Canadian investors rely on to make decisions. Moreover, while the CSA's Proposed National Instrument identifies the comprehensive disclosures issuers must provide about non-GAAP financial measures and other financial measures, our voluntary Framework for Reporting Performance Measures can act as complementary guidance to support entities in developing processes and establishing governance procedures that can assist them in complying with the CSA requirements.

Consistent information in Canada and abroad

Our outreach with financial statement users has indicated that:

- financial information is most useful when it is comparable; and
- investing is a global activity.

As such, we strongly support global comparability in financial reporting. With that said, we think that the scope of the CSA's disclosure requirements in the Proposed National Instrument are broader than what other international securities regulators require, including the proposed additional disclosures required for segment and capital management measures when such measures are disclosed outside of the financial statements. Therefore, while we commend the CSA for taking a leadership position to improve disclosure outside the financial statements, we encourage you to consider weighing the benefits of leading in this area against increasing the regulatory disclosure burden on Canadian issuers beyond that of other jurisdictions. Accordingly, we encourage the CSA to:

- closely consider the requirements of other global securities regulators to ensure that Canadian issuers are providing comparable information to issuers in other jurisdictions; and
- work with regulators in other jurisdictions to ensure that Canadian issuers are not at a competitive disadvantage when compared to their international peers as the result of the proposed increase in disclosure requirements.

We also urge the CSA to work with and encourage securities regulators in other jurisdictions to make changes, similar to those included in the Proposed National Instrument, to their disclosure requirements.

Clarifying the distinction between non-GAAP and GAAP information

Segment measures are disclosed in financial statements in accordance with the requirements of IFRS 8 *Operating Segments* (or the US GAAP equivalent) and capital management measures are disclosed to comply with the requirements of IAS 1 *Presentation of Financial Statements*. Both of these measures are GAAP measures because they comply with specific IFRS or US GAAP requirements. We think that there is a risk that requiring additional disclosures, when these GAAP measures are disclosed outside of the financial statements, will create confusion or a perception that the CSA considers these measures to be non-GAAP because the disclosure requirements in the Proposed National Instrument appear similar for both GAAP and non-GAAP measures. Therefore, we encourage the CSA to be more explicit by indicating that the additional disclosures required by the Proposed National Instrument are not intended to suggest that segment and capital management measures are non-GAAP. As such, the CSA may consider adding an introductory paragraph that explicitly acknowledges that:

- segment and capital management measures are GAAP measures;
- the additional disclosures are required only when these GAAP measures are disclosed outside of the financial statements;
- the additional required disclosures are intended to provide enhanced information around these measures; and
- that such disclosures do not mean that the measures are non-GAAP.

Our responses to your questions

The [Appendix](#) to this letter responds to the questions posed in the Request for Comments and expands on the points raised above.

We would be pleased to elaborate on our comments in more detail if you require. If so, please contact me or, alternatively, Lester Cheng, Director, Accounting Standards (+1 (416) 204-3476 or email lcheng@acsbcanda.ca) or Andrew White, Senior Principal, Accounting Standards (+1 (416) 204-3487 or awhite@acsbcanda.ca).

Yours truly,



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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.

APPENDIXQuestion #1

Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

The proposed definition

1. We think that the definition of a non-GAAP financial measure in the Proposed National Instrument may be unclear as we think that it suggests that certain measures may be GAAP when in fact, they may not. For example, the Proposed Companion Policy refers to Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) as being a GAAP measure if the subtotal is presented by an issuer 'in accordance with the accounting policies used to prepare its financial statements.' Paragraph 99 of IAS 1 *Presentation of Financial Statements* requires an entity to 'present an analysis of expenses recognized its profit or loss using a classification based on either the expense's nature or their function'. When applying paragraph 99 of IAS 1, depreciation expense is illustrated differently on an entity's statement of income dependent on whether the entity presents expenses based on their nature or function. Accordingly, when an entity presents its expenses based on their:

- (a) Nature, depreciation expense will be shown as a separate line item; or
- (b) Function, depreciation expense will be allocated to all functional line items to which it relates.

As such, an entity's ability to present EBITDA as a subtotal on its statement of income will be dependent on how they have presented expenses (nature or function) in accordance with paragraph 99 of IAS 1. Therefore, we encourage the CSA to clarify the following sentence from the Proposed Companion policy with a footnote explaining that "these policies would include the policy choice to present expenses by nature under paragraph 99 of IAS 1."

"An issuer that presents an additional subtotal in the primary financial statements, such as Earnings Before Interest, Taxes Depreciation and Amortization ("EBITDA"), would be presenting the subtotal in accordance with the accounting policies used to prepare its financial statements."

2. In our experience, during the development of financial reporting standards, we have sometimes heard from stakeholders that our proposals are unclear. To address these concerns, we have found it useful to field test such proposals to better understand:
- (a) which elements of our proposals are unclear; and
 - (b) to what degree that could result in divergence in practice.

Therefore, we encourage the CSA to conduct field testing to get broader input on Proposed National Instrument's definition of a non-GAAP financial measure.

Segment and capital management measures

3. Segment measures are disclosed in financial statements in accordance with the requirements of IFRS 8 *Operating Segments* (or the US GAAP equivalent) and capital management measures are disclosed to comply with the requirements of IAS 1 *Presentation of Financial Statements*. Both of these measures are GAAP measures because they comply with specific IFRS or US GAAP requirements. We think there's a risk that requiring additional disclosures, when these GAAP measures are disclosed outside of the financial statements, will create confusion or a perception that the CSA considers these measures be non-GAAP because the disclosure requirements in the Proposed National Instrument appear similar for both GAAP and non-GAAP measures. Therefore, we encourage the CSA to be more explicit that the additional disclosures required by the Proposed National Instrument are not intended to suggest that segment and capital management measures are non-GAAP. As such, the CSA may consider adding an introductory paragraph that explicitly acknowledges that:

- a) segment and capital management measures are GAAP measures;
- b) the additional disclosures are required only when these GAAP measures are disclosed outside of the financial statements;
- c) the additional required disclosures are intended to provide enhanced information around these measures; and
- d) that such disclosures do not mean that the measures are non-GAAP.

4. We are concerned that any perception that the CSA may consider these measures to be non-GAAP may have the unintended consequence of creating a perceived conflict between the Proposed National Instrument and IFRS or US GAAP about whether these measures are GAAP measures. Moreover, issuers monitored by the CSA may choose to limit or otherwise not disclose segment or capital management measures outside the financial statements that could enhance or expand on disclosures around matters such as:

- (a) business performance;
- (b) liquidity; or
- (c) other matters

due to the additional disclosure requirements of the Proposed National Instrument.

Question #2

Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors?

Please explain using concrete examples.

5. National Instrument 52-109 requires management to certify the operating effectiveness of its internal controls over financial reporting and disclosure controls and procedures for its annual and interim filings. Therefore, we think that reinforcing the linkage between an issuer's disclosure controls and procedures under 52-109 and its non-GAAP and other financial measures disclosed outside of its financial statements may increase the effectiveness of the application of the Proposed National Instrument. As such, we encourage the CSA to consider whether National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* need be consequentially amended as the result of the Proposed National Instrument.

Question #3

Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

6. Overall, we think that the Proposed Companion Policy is consistent with the Proposed National Instrument and that it provides useful guidance for the Proposed National Instrument. However, we think that some aspects of the Proposed Companion Policy are unclear given the use of technical or complex language. During the development of our financial reporting standards, we've heard from our stakeholders that it is challenging to understand our requirements when they are written using technical or complex language. Therefore, we encourage the CSA to:

- (a) maximize the use of plain language in the Proposed National Instrument and Proposed Companion Policy; and

- (b) define certain terms as opposed to simply providing examples.

For example, we recommend that the CSA define terms such as "reasonable person" or "confusingly similar" to better clarify their meaning.

Question #4

Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

Consistent information in Canada and abroad

7. Our outreach with financial statement users has indicated that:

- (a) financial information is most useful when it is comparable; and
- (b) investing is a global activity.

Consequently, we strongly support global comparability in financial reporting as we think comparability provides users with more useful information. As such, we question the appropriateness of exempting SEC foreign issuers from the Proposed National Instrument as we think requiring different information to be presented for Canadian issuers and SEC foreign issuers will reduce comparability of the information being provided by these issuers to users. Therefore, we encourage the CSA to:

- a) look for opportunities to increase the comparability of information provided by Canadian issuers to issuers in other jurisdictions; and
- b) align its requirements with those of the SEC and other regulators so that issuers will provide users with comparable information regardless of what jurisdiction they are domiciled.

Understanding the application of the exemption

8. We understand based on our outreach, that some stakeholders find the term 'SEC foreign issuer' to be unclear with some stakeholders not distinguishing the difference between a SEC foreign issuer and a SEC foreign private issuer. As such, we are concerned that some Canadian foreign private issuers may misread the Proposed National Instrument and think that they are exempt from its guidance. Therefore, we encourage the CSA to clarify the scope of this exception and include an explicit explanation that the exception does not apply to Canadian foreign private issuers.

Question #5

Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

9. We agree with the CSA's proposal to exclude oral statements from the application of the Proposed National Instrument because we think that:
- (a) it will be onerous for issuers to communicate numerical information orally, including the reconciliation of non-GAAP measures to the nearest GAAP measure; and
 - (b) issuers may change the information that they would provide orally if they were required to apply the proposals to oral statements.
10. Furthermore, we also think that it will be difficult for users to understand numeric information that is provided only orally, therefore reducing the benefit of receiving such information.

11. With that said, the stakeholders we consulted were unclear whether certain transcriptions of oral statements may fail to meet the exclusion, including the transcription of oral statements:
- (a) to brail; and
 - (b) by external parties (including Bloomberg) that are subsequently made publicly available.
12. Therefore, we encourage the CSA to clarify what is meant by an oral statement and provide additional guidance as to which types of transcriptions may not meet the proposed exclusion of oral statements.

Question #6

Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

13. We agree that for the Proposed National Instrument to be effective, that it should apply to a broad range of financial oriented documents. However, we are concerned that the broad application of the Proposed National Instrument to 'all documents' may have the unintended consequence of the requirements being applied to more or less documents than the CSA intended. Therefore, we encourage the CSA to consider field testing the term 'all documents' to determine how issuers may apply it, and whether this application is consistent with the CSA's intent.

December 5, 2018

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
Nunavut Securities Office

The Secretary
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Me Anne-Marie Beaudoin
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consultation-en-cours@lautorite.qc.ca



Dear Madam/Sir:

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

We have reviewed the CSA Notice and Request for Comment Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure and Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure (the "Proposals") released September 6, 2018 and 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 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. While CCGG is focused on governance, our member institutional investor organizations are also, of course, more broadly interested in the integrity of financial reporting generally and that it reflects economic and business reality, given that investors rely on financial reporting and management's representations of such financial information to make investment and voting decisions. CCGG also seeks to improve Canada's regulatory framework to promote the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

General Comments

We welcome the CSA's attention to the matter of disclosure of non-GAAP and other financial measures and are encouraged to see comprehensive guidance in this area. We believe the Proposals, if adopted, will improve financial reporting in Canada. We also believe that enacting the Proposals in the form of a rule rather than a staff notice will allow for better enforcement capability.

The clarity and reliability of all financial information publicly released by issuers is of the utmost importance to investors, since this is the basis chiefly relied on by investors for their investment and voting decisions. Because CCGG's mandate is to improve the corporate governance of Canadian issuers, we primarily focus on disclosure in management information circulars ("Circulars") released by issuers in connection with their annual general meetings. Circulars are

not specifically referred to in the Proposals as documents covered by the Proposals, but the Proposals are highly relevant to Circulars because of the disclosure found therein under the Compensation Discussion & Analysis (CD&A) regarding executive compensation. CD&A disclosure often includes reference to non-GAAP financial measures when describing the corporation's executive compensation programs and payouts, an important area of shareholder focus.

All the issues associated with the disclosure of non-GAAP measures that are described in the Proposals apply to CD&A disclosure as well and CCGG is currently undertaking its own research on the prevalence and nature of non-GAAP measures used in connection with executive compensation. Accordingly, CCGG is pleased that the CSA is reviewing the issues associated with the disclosure of non-GAAP and other financial measures. It can be challenging for investors to understand and assess the quality of executive compensation decisions based on non-GAAP measures unless Circulars include, at the very least, the board's views on why the use of a non-GAAP financial measure was preferred over the most comparable GAAP financial measure and why each material adjustment which was made to the most comparable GAAP financial measure to arrive at the non-GAAP financial measure was necessary. The ability to assess executive compensation decisions is vitally important to shareholders in part because they serve as a proxy for reviewing the quality of board oversight of management, one of the board's most important functions. Guidance to elucidate the use of non-GAAP measures in this area is therefore essential.

In particular, CCGG is pleased to see that under the Proposals:

- The onus is on the issuer to explain (hopefully in plain language) how a non-GAAP financial measure provides useful information and why each material adjustment (or reconciling item) was necessary
- An adjustment (or reconciling item) cannot be called nonrecurring, infrequent or unusual when a similar loss or gain is reasonably likely to occur within the next two years or has occurred during the prior two years.
- Issuers will be required to justify changes to the definition of a non-GAAP measure.

Specific questions

1. *Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using examples.*

We believe that the proposed definition captures the specific financial measures that should be captured.

2. *Are there any specific additional disclosures not considered in the Proposed instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.*

The CSA should consider requiring additional disclosure to capture issuers that excessively use one-directional (usually positive) adjustments to GAAP financial figures, namely, to explain why doing so makes sense. For example, while an issuer would not need to explain why it makes frequent adjustments for two-directional factors, such as removing foreign exchange gains and losses from an earnings figure, an issuer would be required to explain in plain language why they frequently use one-directional adjustments such as “restructuring costs”. Disclosure could be triggered by adjustments occurring, for example, in two of five succeeding years.

Further, CCGG supports disclosing how the non-GAAP measures used in compensation are related to disclosure of the measures in other documents, for example whether adjusted EBITDA used in the Management Discussion & Analysis is defined differently than adjusted EBITDA used for compensation calculations.

We would also like to see a requirement that issuers disclose the approval or vetting process for adjustments. For example:

- whether adjustments above a certain threshold must be approved by the board
- whether the audit committee, or the entire board if there is no audit committee, has considered and confirmed:
 - the appropriateness of the adjustments and that they are representative of the company’s financial performance
 - that non-GAAP financial measures provide an enhanced view of the company’s financial performance compared to the closest GAAP measures.
 - that changes to definitions have been clearly explained in a way that a reasonable person would understand

3. *Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?*

No.

4. *Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.*

No comment.

5. *Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.*

To the extent that oral statements are relied upon for investment or voting decisions, such oral statements should be covered by the guidance and not excluded from the application of the Proposals. Investors who rely on the contents of earnings calls or investor road shows or presentations should expect the same quality of disclosure regarding non-GAAP measures to apply.

6. *Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.*

The inclusion of all documents is appropriate given the purpose of the Proposals of avoiding misleading disclosure. Investors and the public receive their information from various types of written public disclosure at different times and for different reasons and it defeats this purpose if all public sources of information are not included.

We suggest that because of the importance of the management information circular to investors, in particular the CD&A disclosure related to executive compensation and the common use of non-GAAP measures in this type of disclosure, management information circulars be added to the explicit list of documents to be included.

In addition, as we state in the previous item, oral statements that can reasonably be expected to be relied upon for investment or voting decisions should be covered as well.

Conclusion

In summary, we believe that the Proposals will go a long way towards solving the issues raised for investors by the use of non-GAAP and other financial measures, especially as they relate to governance concerns associated with executive compensation decisions based on those measures.

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 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,



Marcia Moffat
Chair of the Board
Canadian Coalition for Good Governance

CCGG Members – June 2018

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund (ATRF)
Archdiocese of Toronto
BlackRock Asset Management Canada Limited
BMO Asset Management Inc.
BNY Mellon Asset Management Canada Ltd.
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
Electrical Safety Authority (ESA)
Fiera Capital Corporation
Franklin Templeton Investments Corp.
Galibier Capital Management Ltd.
Greystone Managed Investments Inc.
Healthcare of Ontario Pension Plan (HOOPP)
Hillsdale Investment Management Inc.
Investment Management Corporation of Ontario (IMCO)
Industrial Alliance Investment Management Inc.
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel
Lincluden Investment Management Limited
Mackenzie Financial Corporation
Manulife Asset Management Limited
NAV Canada
Northwest & Ethical Investments L.P. (NEI Investments)
OceanRock Investments Inc.
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
Pier 21 Asset Management Inc.
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.
State Street Global Advisors, Ltd. (SSgA)
Sun Life Institutional Investments (Canada) Inc.
TD Asset Management Inc.
Teachers' Retirement Allowances Fund
UBC Investment Management Trust Inc.
University of Toronto Asset Management Corporation
Vestcor Inc.
Workers' Compensation Board - Alberta
York University

INCLUDES COMMENT LETTERS



CANADIAN PUBLIC ACCOUNTABILITY BOARD
CONSEIL CANADIEN SUR LA REDDITION DE COMPTES

November 23, 2018

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba 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
20 Queen Street W.
19th Floor, Box 55
Toronto, ON
M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^e étage
Montréal, QC
H4Z 1G3

Re: Proposed National Instrument 52-112 Non-GAAP and other financial measures disclosure

The Canadian Public Accountability Board (CPAB) is pleased to respond to the *Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* as issued by the Canadian Securities Administrators in September 2018.

CPAB is Canada's independent audit regulator responsible for overseeing firms that audit Canadian reporting issuers. Our mandate is to promote high-quality independent auditing that contributes to the public confidence in the integrity of reporting issuers' financial reporting. We accomplish our mandate by inspecting the audit firms and audit working paper files which provides us with insights into the application of auditing standards and how they might be improved.

General comments

In general, we are supportive of the comprehensive disclosure requirements outlined in the Proposed Instrument and believe that the definition of non-GAAP financial measures used throughout the framework is appropriate. The changes to promote consistency of measures from period to period address a concern we have heard from investors and audit committees.

Scope of the national instrument

We believe investors could also benefit from improvement in the reporting of non-financial metrics due to the widespread use of these measures. We encourage the CSA to consider whether it would be feasible to increase the scope of the proposed National Instrument to include certain of these measures.

Improving the reliability of financial and non-financial measures

Finally, we also encourage the CSA to consider whether and how the reliability of certain performance measures can be improved which may include implementation of appropriate controls and processes at reporting issuers and/or to consider how auditors can provide assurance over the calculation of these measures.

We appreciate the opportunity to provide input on the *Proposed National Instrument 52-112 non-GAAP and other financial measures disclosures*.

We would be pleased to discuss further any of the above comments.

Yours very truly,



Carol Paradine, CPA, CA
Chief Executive Officer

December 5, 2018

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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consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames,

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 Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the Proposed Instrument) and the accompanying Proposed Companion Policy 52-112 published on September 6, 2018 (the Proposed Companion Policy, and together with the Proposed Instrument, the Proposal).

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. We appreciate the clarifications in certain areas and find the

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.

examples useful for financial statement 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 to investors are clear and concise, avoiding complex disclosures which provide limited 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:** The Proposed Companion Policy requires an issuer to present non-GAAP requirements in a separate section within the same document. This implies that cross referencing between documents is not permitted under the Proposal, which we believe would be overly burdensome for issuers, duplicative and inconsistent with the CSA's general assent to cross referencing. For example, if the adjusted efficiency ratio is referenced in multiple documents, requiring a detailed explanation of how the ratio is calculated within the document would not necessarily be more useful in comparison to a cross-reference to a filed securities document, such as an issuer's report to shareholders. We believe cross-referencing should be explicitly allowed between documents in order to avoid duplicative disclosures, and to ensure that the disclosure process is practical for shorter documents (i.e. press releases, investor presentations, etc.). We also note that the CSA specifically allows for cross-referencing in other contexts and documents, including an issuer's annual information form, which is a core disclosure document.
- **Jurisdictions:** The Proposed Instrument is not applicable to "specific financial measures in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada." 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 Canada (ie. Tier-1 capital and liquidity ratios). We believe that the CSA should expand the exception in section 2(2) of the Proposed Instrument to disclosures recommended under any applicable system of regulation regardless of jurisdiction, which would be consistent with other securities regulators' approach to non-GAAP financial measures, including the US Securities and Exchange Commission (SEC).
- **Written transcripts:** Although oral statements are exempted from the Proposed Instrument, the Proposed Companion Policy scopes in written transcripts of oral statements. While oral statements and written transcripts are different forms of communication, they hold the same message and should be treated the same. If issuers are required to comply with the proposed requirements with respect to written transcripts, the Proposal could serve as a disincentive for making transcripts available. Accordingly, we request that the CSA specifically scope out written transcripts from the Proposal. Alternatively, if cross referencing is permitted, the scoping in of written transcripts would be appropriate.
- **Scope:** Section 2(2) of the Proposed Instrument is overly broad and it is not sufficiently clear how section 2(2) of the Proposed Instrument interplays with section 2 of the Proposed Companion Policy. For example, it is not clear whether a non-GAAP financial measure captured by section 2(2) of the Proposed Instrument would be exempted from application if the content presented in the document would not reasonably be expected to affect the market price or value of an issuer's security. We believe that the qualifier in section 2 of the Proposed Companion Policy should exempt a document from application under section 2(2) of the Proposed Instrument, however, we would appreciate confirmation from the CSA. 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 also believe that the "market price or value" qualifier is critical and should

be in the Proposed Instrument rather than the Proposed Companion Policy. We recommend that section 2(2) of the Proposed Instrument be more comprehensive and outline all the qualifiers for application with the Proposed Companion Policy providing examples of documents that could reasonably affect an issuer's market price or value. In addition, the criteria for application set out in the current Proposal do not take into account the purpose of the document, the intended reader or the usefulness of the information required by the Proposal for such reader. We request that the CSA consider limiting the Proposed Instrument 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 be expecting the data to be in accordance with IFRS standards.

- **Transition Period:** Given the breadth and scope of the Proposal, issuers will need time to ensure that processes are in place to enable compliance. Accordingly, we ask that the CSA consider a one-year transition period.

Please refer to Appendix I for our responses to the specific questions outlined in the CSA's "Request for Comments".

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

Sincerely,



Appendix I

Specific questions raised in the CSA Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

1. ***Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.***
 - Section 2(2) of the Proposed Instrument states “this Instrument applies to any non-GAAP financial measure, segment measure, capital management measure or supplementary financial measure that an issuer discloses in a document and that is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction, whether or not filed under securities legislation, **unless the issuer discloses a specific financial measure in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada.**” A number of our disclosures, however, are required or recommended by regulators other than securities regulators and other than through laws or legislation in Canada (ie. Tier-1 capital, Risk-weighted assets, leverage ratio, liquid assets). We presume that the Proposal is not intended to apply to financial measures defined by regulations such as the Enhanced Disclosures Task Force (EDTF) and Basel Pillar 3, for example, however, this is unclear. Such disclosures are calculated using complex models which cannot be practically reconciled to a financial statement line item. Similar to the SEC’s regulation S-K, which exempts financial measures required by SEC rules or a system of regulation of a government or government authority or self-regulatory organization, we request that the CSA expand the exception in section 2(2) to (1) requirements from any jurisdiction to which the issue is subject and (2) financial measures required (or recommended) by any applicable system of regulation
 - Segment measures within the audited financial statements would be scoped out of the Proposed Instrument, however, there are a number of instances where we may provide more granular financial information to enable analysts and users to better understand certain areas of focus. For example, the residential mortgages of Segment A by geography. We feel that these financial measures should not be scoped in as a non-GAAP measure if amounts are calculated in accordance with the accounting policies used to prepare the financial statements. As such, we request that the CSA consider revising Section 6, Disclosure of segment measures, of the Companion Policy to clarify that financial measures disclosed in accordance with accounting policies used to prepare the financial statements would be not subject to the Section 3 requirements in the Proposed Instrument. We would like to make a similar request for Section 8, Supplemental financial measures, in the Proposed Instrument. Requiring reconciliations to the financial statement line items would also add complexities, which would not necessarily be useful to the reader and may result in confusion of acceptable accounting disclosures.
2. ***Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.***

We have not identified any additional disclosures.

3. ***Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?***

- Section 3(c) of the Proposed Instrument requires issuers to present the same non-GAAP financial measure for the comparative period yet the Proposed Companion Policy implies that compliance is not required where it would not be feasible, noting that this would be “only in rare circumstances, such as in the first period of operations where no comparative period exists.” There are a number of other instances, however, where a comparative period would not be appropriate, such as a non-GAAP financial measure that excludes specified items like a gain on a sale of a business. These instances would not necessarily be “rare”. Accordingly, we request that the CSA delete the reference to “rare circumstances” as feasibility is a sufficient qualifier. Alternatively, we request that the CSA provide further examples of when it would not be feasible or appropriate to present the same non-GAAP financial measure for a comparative period.
- We note that the CSA has adopted the concept of “reasonable person” under section 3(d) and 7(2) of the Proposed Instrument. However, in the Proposed Companion Policy, the CSA refers to the concept of “investors” in addition to “reasonable person”. We note that the previous CSA guidance on non-GAAP measures referred to “investors” which is consistent with the non-GAAP rules and guidance issued by the SEC. While it is not clear if the CSA intended to make a distinction between an “investor” and a “reasonable person”, in our view, the adoption of the latter could cause confusion as to how issuers think about their disclosure obligations as it deviates from the previous standard (this is especially true in light of the fact that the “reasonable person” standard is prevalent in common law tort cases as opposed to securities law matters). We request that the CSA revert to the concept of “investors” to be consistent with previous CSA and SEC guidance.

4. *Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.*

- The exemption for SEC foreign issuers is appropriate. Similarly, SEC Regulation G and Item 10(e) do not apply to filers that use Form 40-F under the Multi-Jurisdictional Disclosure System (which applies to eligible Canadian issuers).

5. *Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.*

- Yes, we consider that the proposed exclusion of oral statements is appropriate. Although oral statements are exempted from the Proposed Instrument, Section 2 of the Proposed Companion Policy scopes in written transcripts of oral statements. While oral statements and written transcripts are different forms of communication they hold the same message and should be treated the same. In addition, written transcripts are typically posted shortly after oral statements are made and allow the investors and analysts to review management’s statements in greater detail. This could not be achieved efficiently or expediently if issuers are required to comply with the Proposal requirements, which could serve as a disincentive for making transcripts available to investors. We request that the CSA specifically scope out written transcripts from the Proposed Instrument and Proposed Companion Policy. Alternatively, if cross referencing is permitted, the scoping in of written transcripts would be appropriate.

6. *Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.*

- The inclusion of the documents in Section 2(2) of the Proposed Companion Policy is too broad and insufficiently clear, particularly with respect to those that are not required to be filed with the securities regulatory authority (i.e., any other communication, including information presented on websites and social media) the content of which would be reasonably expected to affect the market price or value of a security of the issuer. It will be very difficult to determine whether a particular

document would reasonably be expected to affect the market price or value of a security of the issuer. For example, information related to the launch of new products, peer analysis (issued by third parties), market studies, and employee communications would be particularly difficult to assess. In addition, the criteria for application set out in the current Proposal does not take into account the purpose of the document, the intended reader or the usefulness of the information required by the Proposal for such reader. We request that the CSA consider limiting the Proposal to documents that are intended to be used by the investment and/or analyst community (i.e. IR material, external reporting material, prospectuses and other regulatory filings) as it would be inappropriate to include unrelated documents, such as marketing documents, the users of which would not be expecting the data to be in accordance with generally accepted accounting standards. We note that if the Proposal's scope is too broad, this could create issues with respect to ensuring compliance. Practically speaking, issuers will have to significantly broaden their disclosure controls, which will be overly burdensome and costly.

- Furthermore, executive compensation disclosures are scoped into the Proposal because they are filed with the securities regulatory authority, however, we ask that executive compensation disclosures be explicitly scoped out as the non-GAAP disclosure requirements would not be useful to a reader and compliance would be overly burdensome for issuers.



December 5, 2018

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
 Superintendent of Securities, Northwest Territories
 Superintendent of Securities, Yukon
 Superintendent of Securities, Nunavut

RE: CSA Notice and Request for Comment – Proposed National Instrument 52-112 “Non-GAAP and Other Financial Measures Disclosure” and 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”) 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”).

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 West Africa. Our shares are publicly traded on the Toronto Stock Exchange and the New York Stock Exchange.

As a general comment, we note that the purpose of Management’s Discussion and Analysis (“MD&A”) is to provide a narrative explanation, through the eyes of management, of how the company performed during the period covered by the financial statements. If non-GAAP measure requirements are too restrictive, there is a risk that management may opt not to disclose these measures at all or revert to boilerplate disclosures, depriving the reader of the

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

ability to understand different measures that are of importance to management. In addition, we found the wording of the Proposed Instrument is often difficult to follow and to tie to the Proposed Companion Policy, which may result in inconsistent interpretation by issuers. To the extent practical, we encourage the CSA to simplify the wording in the Proposed Instrument to improve readability and understandability prior to issuing the final Instrument and Companion Policy. Answers to the specific questions posed by the CSA are included in the attached Appendix.

If you would like to discuss our comments further, please do not hesitate to contact the undersigned.

Sincerely,

“SIGNED”

Corey B. Bieber
Chief Financial Officer &
Senior Vice-President, Finance

“SIGNED”

Ron Kim
Vice-President, Finance - Corporate

Appendix

Question 1

Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

We have not identified any non-GAAP financial measures that are not captured by the proposed definition.

Question 2

Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

We have not identified any additional disclosures not considered in the Proposed Instrument.

Question 3

Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

In our review of the Proposed Instrument and Proposed Companion Policy, we found that the wording is often difficult to follow, and that it was often difficult to tie the rules in the Proposed Instrument with the guidance in the Proposed Companion Policy and the general overview in Annex C. This may result in inconsistent interpretation by issuers. To the extent practical, we encourage the CSA to simplify the wording in the Proposed Instrument to improve readability and understandability prior to issuing the final Instrument and Companion Policy

The disclosures and reconciliations required for Segment Measures, Supplementary Financial Measures, Disaggregation and Capital Management are newly introduced requirements in the Proposed Instrument that were not included in previous guidance issued by the CSA. As such, we believe that preparers and users will benefit from additional guidance to fully understand the concept and how to apply the requirements. This should include illustrative examples of disclosures to demonstrate the application of the guidance and best practice expected by the CSA. In the absence of clarification as described above, issuers may default to providing unnecessary additional disclosures in instances where they are not required, or omitting the previous non-GAAP or other financial measure disclosure entirely, even though it provides useful information.

Financial Outlooks are often given as a range due to uncertainties inherent in predicting the future. It is unclear from the guidance how to reconcile a range to a specific amount identified as the most directly comparable financial measure and how such forward looking information is to be disclosed for the comparative period under paragraph 3.(c).

Question 4

Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We agree with the proposed exemption for SEC foreign issuers as these issuers file in accordance with the requirements of the SEC, which we understand are substantially similar to the Proposed Instrument. For Canadian issuers that also file documents with the SEC, issuing a comparison with SEC rules may be beneficial.

Question 5

Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

We agree with the proposed exclusion of oral statements from the scope of the Proposed Instrument.

However, we believe that it would be beneficial to include additional guidance regarding the form of the disclosures provided (i.e. can the transcript disclosures refer to existing disclosures already provided in other documents or is the issuer required to create separate disclosures specifically for the transcript?). Also, it would be beneficial to provide guidance to clarify an issuer's requirements for disclosures with respect to transcripts prepared by organizations other than the issuer.

We believe that the Proposed Instrument should specifically indicate that the issuer is only responsible for disclosures made by the issuer and not for statements made, or information provided, by subsequent users of issuer information.

Question 6

Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

We agree with the inclusion of the documents in the Proposed Instrument. However, the inclusion of identical required reconciliations and disclosures in multiple documents within a reporting period contradicts previous initiatives of the CSA to reduce duplication of disclosures.

We suggest that the ability to incorporate by reference to a singular source for the description of non-GAAP measures would eliminate duplication of disclosure.



CASSELS BROCK
LAWYERS

December 4, 2018

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 and Mesdames:

CSA Notice and Request for Comments dated September 6, 2018 – 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

This letter is in response to the Notice and Request for Comments published by the Canadian Securities Administrators (the “CSA”) regarding 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, on September 6, 2018 (the “Request for Comments”).

Summary of our Comments

We commend the CSA for its initiative to propose securities legislative requirements in connection with the disclosure of non-GAAP financial measures and other financial measures, based largely on the disclosure guidance in CSA Staff Notice 52-305 (Revised) *Non-GAAP Financial Measures*, in order to provide clear, authoritative Canadian securities legislative requirements for all issuers across all industries in disclosing non-GAAP financial measures and other financial measures.

We recognize the delicate balance required in ensuring consistency and transparency in financial measures disclosure across all issuers and industries, while allowing for financial measures disclosure that meets each issuer’s particular circumstances and that are adaptable to evolving communications practices.

Our general comments, outlined below, relate specifically to the impact of the CSA’s proposals in connection with social media and online disclosure. In addition, we have provided our comments on the specific questions outlined by the CSA in the Request for Comments, in the section following our general comments below.

General Comments Related to Social Media and Online Disclosure

With respect to social media and other online disclosures, we ask the CSA to consider certain characteristics of online social networks and the implications of same in formalizing its proposals.

In particular:

- Platforms such as Twitter have become go-to news sources for an increasing portion of market participants and other stakeholders. As such, discussion related to the performance of many publicly listed issuers occurs in a public sphere, irrespective of the issuer’s engagement on a given network.
- Certain non-GAAP measures are part of the broader online discussion by market participants and other stakeholders, and issuers require flexibility to provide accurate information within the constraints of particular social media platforms.
- The comparison of an issuer’s financial performance to consensus estimates is an increasing driver of share price fluctuations, versus the impact of the issuer’s absolute performance. This is relevant as consensus estimates are often non-GAAP measures such as “adjusted earnings per share” and “cash flow per share”. These consensus estimates are commonly referenced on social media and, thus, form the basis of the online conversation related to an issuer’s financial performance.
- False news spreads more rapidly and more widely than fact-based news. Researchers from MIT found that “falsehood diffused significantly farther, faster, deeper, and more



- broadly than truth in all categories of information.” (Source: <http://science.sciencemag.org/content/359/6380/1146>)
- We note that the proposals limit the disclosure that can be made on social media. For example, Section 2 (– Application) of the Proposed Companion Policy states that: “Issuer’s should not disclose non-GAAP financial measures, segment measures, capital management measures or supplementary measures on social media, if character limits would preclude the disclosure of all the required information in accordance with the Instrument (e.g., Twitter)”. In our view, if an issuer’s use of non-GAAP measures on social media is consistent with the use of such measures in other publicly filed disclosure documents (such as a press release) and the issuer provides linking to such other applicable source for the full required disclosure, we believe that this should satisfy the applicable disclosure requirements. Users requiring additional details have then been provided with links to where they can find the fulsome required disclosure, which should be acceptable practice as it applies to using non-GAAP measures on social media and online platforms where character spacing is restricted.
 - We note that there appears to be differing interpretations being taken with respect to the whether issuers are required to provide a cross reference to the relevant footnote description **each time** the same non-GAAP financial measure is presented, versus only the first time a particular measure is presented. It is our view that each non-GAAP measure should only require a cross-reference to the applicable footnote the first time it is presented, and we believe this is the intention of the CSA in the proposals; however, given the feedback on issuer’s mixed interpretations on this point, we suggest that it be further clarified by the CSA. For example, the use of the non-GAAP metric of cash costs per ounce of gold may be presented as “Cash Costs per Ounce of Gold” with the definition and required disclosures elsewhere in the document if it has followed the requirements for the first time the non-GAAP financial measure appears.

As demonstrated through the above-noted examples, issuers are often required to be active participants in online discussions to manage their brand and attempt to ensure accurate information related to the issuer’s performance is available to stakeholders within the constraints of various social media platforms, and, thus, issuers must be provided commercially reasonable flexibility in order to do so.

Responses to Specific Questions Outlined in Request for Comments

The CSA has invited comments on specific questions regarding the Proposed Instrument and Proposed Companion Policy. For ease of reference, each of those questions is set out above the comments we are providing in response.

1. *Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.*



We note that the definition of “non-GAAP financial measure” includes “a financial measure of financial performance”. It is our view that financial performance may be broadly interpreted to include current share price, credit rating and any other external financial measures used to evaluate an issuer. If the intent of the CSA is to capture adjusted operating measures of performance from those presented in the Statement of Operations, it is suggested that this be defined as “financial operating performance”.

2. *Are there any specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.*

Other than as noted in our comments and considerations provided above under the heading “*General Comments Related to Social Media and Online Disclosure*”, we believe that the disclosures currently considered in the Proposed Instrument should significantly improve the overall quality of disclosure and be of benefit to investors.

3. *Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?*

Other than as noted in our comments made above under the heading “*General Comments Related to Social Media and Online Disclosure*”, the specific content in the Proposed Companion Policy is not unclear, or inconsistent with the Proposed Instrument.

4. *Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.*

It is our view that it is not appropriate to exempt SEC foreign issuers from the application of the Proposed Instrument as, given such issuers are also reporting issuers in Canada and the CSA’s focus is to create more transparency and provide investors with an ability to better analyze different financial measures within an industry or among different industries. SEC foreign issuers should be included for comparison/analysis purposes amongst companies that are reporting issuers in Canada.

5. *Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.*

In our view, seldom are any oral statements unsupported by a press release or other written disclosure that is required to be publicly filed by an issuer, which written disclosure document would include all of the required disclosures under the Proposed Instrument. Therefore, we believe that the proposed exclusion of oral statements to the application is appropriate.



6. *Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.*

It is our view that the proposed inclusion of all documents to the application is appropriate as an investor may rely on one specific written document without referring to any others. Accordingly, for purposes of complying with the Proposed Instrument, all documents should be considered on a stand-alone basis, but with the permissible cross-references to other documents that are easily accessible and contain all of the relevant and required financial measures disclosure. Additionally, with the widespread availability and common use of technology, it is our view that the use of an online site address or hyperlink to a website that contains all the relevant disclosures should be sufficient to provide access to users of the information. In the case of written transcripts, in the event that the transcript is presented as a package with a presentation or other written communication (whether or not formally “appended” or “annexed” to the transcript), or the transcript makes specific cross-reference to a written communication that includes all of the required financial measures disclosures under the Proposed Instrument (even if not appended or annexed), it is our view that an issuer should not be required to repeat the required financial measures disclosures in the transcript itself (whether by way of attachment or appendix).

We trust that our comments will be of assistance to the CSA in advancing its objectives under the Proposed Instrument, Proposed Companion Policy and Related Proposed Consequential Amendments and Changes. Should you wish to discuss any of these comments with us, please do not hesitate to contact Andrea FitzGerald at (416) 846-3531, or by e-mail at afitzgerald@casselsbrock.com.

Yours very truly,

(Signed) CASSELS BROCK & BLACKWELL LLP

December 5, 2018

The Secretary
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Corporate Secretary
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Re: *Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure*

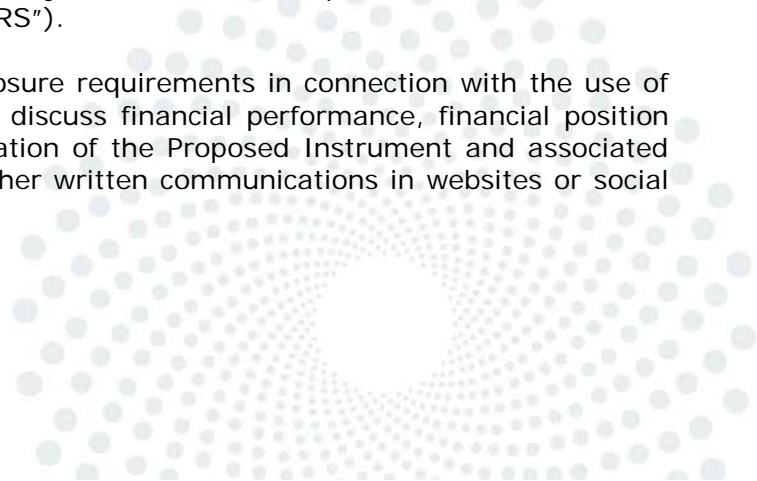
Alberta Securities Commission
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers (Québec)
Financial and Consumer Services Commission (New Brunswick)
Superintendent 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 pleased to provide comments on *Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* (the "Proposed Instrument") dated September 6, 2018.

Cenovus is a leading Canadian integrated oil company, listed on both the Toronto and New York stock exchanges, with a market capitalization of approximately \$12 billion. We report our financial results under International Financial Reporting Standards ("IFRS").

While Cenovus agrees with the need for certain disclosure requirements in connection with the use of non-GAAP financial measures by reporting issuers to discuss financial performance, financial position and cash flows, we strongly disagree with the application of the Proposed Instrument and associated disclosure requirements to all documents including other written communications in websites or social media.



INCLUDES
COMMENTS
LETTERS

Cenovus acknowledges that the disclosure requirements noted in the Proposed Instrument should apply to a reporting issuer's core filing documents of Management's Discussion & Analysis ("MD&A"), Annual Information Form ("AIF") and Prospectuses. However, we believe that it is sufficient and reasonable that other documents, including news releases, supplemental information on an issuer's website, transcripts of conference calls and social media, clearly identify the non-GAAP or other financial measures used and provide a cross reference to where additional information (in satisfaction of requirements under the Proposed Instrument) may be found in the reporting issuer's core filing documents or Financial Statements.

It is our view that in order to promote efficiency and reduce duplication, reference to the document containing the required disclosures (Financial Statements, MD&A, AIF or Prospectuses), is more than adequate for these other written documents. We note that the ability to cross-reference information in disclosure documents is common in securities legislation and, in fact, the short form prospectus system is predicated on filing a capital raising document (a short form prospectus) that leverages other continuous disclosure information filed by a public company. In addition, the oil and gas disclosure rules permit reference to important investor information filed in other disclosure documents (see Items 6.3 and 6.6 in Form 51-101F1).

One of the key functions of disclosure requirements in securities regulations is to ensure clarity, transparency and accountability to the investing public. It is our view that the Proposed Instrument will add extensive disclosure to advisories that are already lengthy and complex. We draft advisories with the intention of having our readers understand the critical assumptions and risks with each piece of disclosure. Our concern is that the additional disclosure will detract from the advisory's clarity, causing readers to gloss over what is otherwise relevant and issue-specific disclosure. A cross reference to the detailed disclosure required under the Proposed Instrument will allow readers to know where to go for further details, without reducing the impact of the other critical information in the advisory.

We suggest that the Proposed Instrument be aligned with the short form prospectus system and permit a similar approach of clearly highlighting the non-GAAP or other financial measure, identifying it as being associated with additional important information, and providing a cross reference to where that additional information can easily be found in a core document. This approach avoids duplication, ensures the additional information is consistent for all disclosures, avoids potential confusion in the marketplace, ensures the emphasis remains on other critical disclosures of assumptions and risks currently required to be included in advisories and reduces the burden to reporting issuers of compliance with the Proposed Instrument.

Finally, while the Proposed Instrument provides some guidance on the disaggregation of a line item, Cenovus believes further clarification is necessary around how the disaggregation of a line item(s) in the primary financial statements or the notes to the financial statements applies to non-GAAP, capital management, segment and supplemental financial measures. The use of examples may be the best way to achieve this clarity.

Detailed responses to the questions asked in the Proposed Instrument are attached as Appendix A.

Thank you for the opportunity to comment on this important area of Canadian securities regulations.

Yours truly,

Cenovus Energy Inc.

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

APPENDIX A

Question 1 – Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

In Cenovus's opinion the proposed definition of a non-GAAP financial measure in most cases appropriately captures those measures that should be captured. However, we do not believe there is adequate clarity between how the disaggregation criteria applies to non-GAAP measures, segment measure and supplemental financial measures. We believe providing further clarity is critical to achieving the goals as outlined by the Proposed Instrument.

For example, Cenovus uses the measure "operating margin" to describe the financial performance of its operating segments as defined by International Financial Reporting Standards ("IFRS"). Operating margin by segment is reported in note 1 of the financial statements and, as required by IFRS, is reconciled to the consolidated statement of earnings (part of the primary financial statements). Operating margin is defined clearly in both the note to the financial statements and the MD&A as gross sales less royalties, transportation and blending, operating expense, production and mineral taxes and realized risk management gains/losses. The components of operating margin are the disaggregation of line items in the primary financial statement calculated in accordance with accounting policies used to prepare the financial statements. We have concluded it would meet the definition of a segment measure. In our MD&A, we use a disaggregation of the segment operating margin measure to further analyze our operating segment at a product level (crude oil and natural gas). The disaggregation of operating margin by product does not appear to meet the definition of a segment measure; therefore we would conclude that it meets the definition of a non-GAAP measure as it is not disclosed or presented in the financial statements and it is not a disaggregation of a single line item presented in the primary financial statements. We believe clarity needs to be provided on the disaggregation criteria specifically when a measure is a disaggregation of multiple line items within the primary financial statements and when it is a disaggregation of a segment measure.

The current definition of a non-GAAP financial measure captures some financial measures that should not, in our respectful submission, be captured. For example, section 2.1(4) of Form 51-102F6 *Statement of Executive Compensation* ("Form F6") requires disclosure of performance goals or similar conditions that are based on objective, identifiable measures, such as the company's share price or earnings per share. If such performance goals or similar conditions are non-GAAP financial measures, Form F6 requires an explanation of how such measures were calculated from the financial statements. The disclosure requirements required under the Proposed Instrument, in addition to the disclosure requirements required under Form F6, would be repetitive and excessive. We strongly suggest that for any disclosure measures for which securities legislation requires an explanation as to how the measure was calculated, the issuer be permitted to refer to such disclosure consistent with the system in place that allows for the filing of short form prospectuses rather than being required to replicate it and the measure be excluded from the definition of non-GAAP measure.

Question 2 – Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

Cenovus believes there are no additional disclosures that need to be considered.

However, we believe the quantitative reconciliation in the Proposed Instrument for segment measures should not be required as it will result in redundant duplicate disclosure between the financial statements and the other documents.

We have interpreted the definition of a segment measure to be consistent with the definition of an “operating segment” under IFRS (IFRS 8 paragraph 5) as follows:

An operating segment is a component of an entity:

- (a) that engages in business activities from which it may earn revenues and incur expenses (including revenues and expenses relating to transactions with other components of the same entity),*
- (b) whose operating results are regularly reviewed by the entity’s chief operating decision maker to make decisions about resources to be allocated to the segment and assess its performance, and*
- (c) for which discrete financial information is available.*

When reporting operating segment information, IFRS requires an entity to reconcile the totals of segment revenues, segment profit and loss, assets and liabilities to the entity’s total of these items.

For example, Cenovus uses the segment measure “operating margin” to discuss the financial performance of its operating segments. The reconciliation of the components of operating margin is included in note 1 of Cenovus’s financial statements. This financial statement note would need to be replicated in other documents to meet the disclosure requirements of the Proposed Instrument.

The Proposed Instrument suggests that the disclosure requirements, including any quantitative reconciliation, must be included in all other documents including those on websites and in social media. While Cenovus agrees with the importance of clearly defining non-GAAP, capital management, segment and supplemental financial measures, we believe the quantitative disclosure requirements can be met by specific reference to the Financial Statements, MD&A or AIF and an entity should not be required to repeat this information in all written communications including news releases or supplemental information posted on an entity’s website or on social media.

Question 3 – Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

Cenovus has not noted specific content in the Proposed Companion Policy that is inconsistent with the Proposed Instrument. Please see our response to Question 1 for an area in which the Proposed Companion Policy is unclear regarding disaggregation.

Question 4 – Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

No comment.

Question 5 – Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

Yes, the exclusion of oral statements to the application of the Proposed Instrument is appropriate.

Question 6 – Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

We do not believe the proposed disclosures should apply to all documents. We suggest that the full disclosure requirements should be included in the core filing documents of the MD&A, AIF and Prospectuses. In addition, we do not believe a quantitative reconciliation for a segment measure should be required in the core filing documents as it would result in redundant and duplicate disclosure.

Cenovus believes it is important to identify and define financial measures used in other documents such as news releases, supplemental information on an entity's website, investor presentations and social media. However, we believe an exclusion from the quantitative reconciliation requirement should be provided for news releases, supplemental information on an entity's website and investor presentations not required to be filed under applicable securities laws and social media. We believe that for these documents it is sufficient, appropriate (and permitted under current securities regulations) to reference, by way of a footnote, the core filing documents (Financial Statements, MD&A, AIF and Prospectuses) for the quantitative reconciliations required by the Proposed Instrument. We note that the ability to cross-reference information in disclosure documents is common in securities legislation and the short form prospectus system is predicated on filing a capital raising document (a short form prospectus) that leverages other continuous disclosure information filed by a public company. The oil and gas disclosure rules permit reference to important investor information filed in other disclosure documents (see Items 6.3 and 6.6 in Form 51-101F1). In addition, the inclusion of the proposed disclosure requirements in all documents appears to conflict with other initiatives of the Canadian Securities Administrators ("CSA") notably the Consultation Paper 51-404 "*Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*" (the "Consultation Paper"). In light of feedback received on the Consultation Paper, it is our understanding that a CSA policy project will be initiated to review certain continuous disclosure requirements, with a view to reducing the burden of disclosure on issuers, while enhancing its usefulness and understandability for investors. Topics such as the elimination of duplicative disclosure among the financial statements, MD&A and other NI 51-102 forms will be considered as well as reducing the volume of information in annual and interim filings.

One of the key functions of disclosure requirements in securities regulations is to ensure clarity, transparency and accountability to the investing public. It is our view that the Proposed Instrument will add extensive disclosure to advisories that are already lengthy and complex. We draft advisories with the intention of having our readers understand the critical assumptions and risks with each piece of disclosure. Our concern is that the additional disclosure will detract from the advisory's clarity, causing readers to gloss over what is otherwise relevant and issue-specific disclosure. A cross reference to the detailed disclosure required under the Proposed Instrument will allow readers to know where to go for further details, without reducing the impact of the other critical information in the advisory.

In regard to social media, a requirement to include all disclosure mandated under the Proposed Instrument would effectively eliminate the use of certain channels for communicating this information to investors as the additional information cannot be accommodated. We respectfully submit that providing a reference to the information would adequately inform investors without removing existing and useful avenues of communication with investors.



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December 4, 2018

c/o

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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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Dear Sirs/Mesdames:

RE: CSA 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 proposals) and the accompanying Proposed Companion Policy (collectively the Proposed Materials).

We support the CSA's efforts to expand and formalize disclosure expectations related to non-GAAP and other financial measures and view this as an important step toward enhancing investor confidence.

CPA Canada is one of the largest national accounting organizations in the world, representing more than 210,000 members. CPA Canada conducts research into current and emerging business issues and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations and government. CPA Canada also issues guidance and thought leadership on a variety of technical matters, publishes professional literature and develops education and professional certification programs.

In formulating our response on the Proposed Materials, we have drawn on our knowledge of corporate reporting practices and challenges 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. We consulted with approximately 75 highly qualified, experienced professionals, including our Canadian Performance Reporting Board. We have also conducted a limited amount of field testing to better understand how the proposals might actually be applied by an issuer.

The following are some key themes that emerged from our work and outreach and on which there was general consensus:

- We did not find any objection to the development of a rule in this area.
- There is consensus on the need for improvements in the reporting of non-GAAP and other financial information.
- We found a consensus that the proposals are unclear and difficult to understand.
- We also discovered high levels of uncertainty and conflicting views on how the proposals would be applied.
- There are concerns about unintended consequences, anomalous results, and undesirable outcomes.
- There are concerns with a lack of consistency with U.S. Securities and Exchange Commission (SEC) requirements and the related consequences.
- There is a need for a significant amount of application guidance.
- There is concern that a significant amount of additional disclosure might be required compared to what is required now.
- In some areas, the additional disclosures required would not be helpful.
- The proposals on non-GAAP financial measures that are financial outlooks raised the most concerns related to complexity, the possibility of significant additional disclosure and questions of usefulness.
- There is also concern the additional requirements could discourage the reporting of certain measures considered important to users.

We note that in the Request for Comments, the CSA expects that issuers will incur only some additional immaterial administrative costs. We found significant concerns that this may not be the case and that there may be a substantial increase in regulatory burden. This burden may disproportionately fall on the large number of smaller issuers we have in Canada.

We recognize the inherent conflict between improving disclosure and increasing regulatory burden. More work needs to be done to establish proposals that achieve the most appropriate balance between them.

We believe it is essential that the CSA conduct extensive field testing of the proposals. Our impression is that many preparers are not considering the proposals with the level of depth necessary to identify the issues that need to be considered. We are concerned that they are looking only at high-level summaries

of the proposals published by service providers that may suggest minimal changes from current practice will be required. We found that users have been unable to complete an in-depth review of the proposals because of their complexity.

We elaborate on some of our preceding concerns and provide additional comments for your consideration below. Responses to your specific questions are included in the Appendix to this letter.

1) Objectives of the Proposed Instrument

The proposals now have a much broader focus than existing Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (CSA Staff Notice 52-306). This new focus raises questions about the objectives of the proposals and how to best accomplish them. Some discussion of the objectives of the proposals and what the requirements are intended to achieve would be helpful.

The reporting landscape has changed dramatically since securities commissions first started addressing the disclosure of non-GAAP measures. In addition to the continuing proliferation of non-GAAP measures as currently defined, we have seen increased reporting of other customized performance measures. These include key performance indicators (KPIs), non-financial information, and other operating and industry measures for which there are no rules governing their construction and disclosure. This has led to varied reporting of these measures, even among entities in the same industry, which has led users to call for standardization and more transparency. As a result, we believe there is need for more consideration of what requirements should be in place regarding all types of performance measures. We have developed guidance to help enhance reporting practices in this area.

We note the CSA has attempted to deal with the increased use and broader range of financial measures by expanding the definition of non-GAAP financial measures. This has contributed significantly to the confusion related to the application of the proposals and raises a number of fundamental questions:

- What is the common attribute of a “non-GAAP financial measure”? Does “non-GAAP” now just mean all financial measures reported outside of the financial statements?
- Is the term “non-GAAP financial measures” still appropriate? Non-GAAP financial measures have a generally well understood definition today – they are derivations of financial statement amounts which adjust their GAAP counterpart in some way. The scope now includes many more financial measures than what are currently considered non-GAAP measures.
- Should the disclosure requirements be the same for all financial measures? Under the proposals, why are the disclosure requirements different for different types of financial measure based on somewhat arbitrary distinctions?
- Why are the disclosure requirements related to capital management measures different from non-GAAP financial measures? Should the same principles not apply to all capital management measures reported outside of the financial statements, regardless of whether they are disclosed in the financial statements?
- Are the disclosure requirements for supplementary financial measures sufficient? These measures are growing in number and significance and many argue should be subject to a greater degree of transparency.

We believe there is a need for broader consideration of the strategic aspects of the proposals.

If you wish to proceed with an approach similar to what you have proposed, we believe it would be better to work more closely with the existing approach in CSA Staff Notice 52-306. This could be accomplished

by, for example, keeping the existing definition of non-GAAP financial measures and developing requirements for new categories of measures that are separate and distinct. We found that the existing staff notice is clear and well understood. Such an approach would make it more clear what incremental requirements go beyond what would be necessary for compliance with SEC requirements, which is important to our large population of Canadian SEC registrants. With the high degree of integration in the North American capital markets, it seems differences from SEC requirements should only be created when there is a compelling reason to do so. There is still, however, a concern that Canadian issuers may be at a competitive disadvantage relative to their U.S. counterparts because of the additional Canadian requirements.

2) Readability of the Proposed Instrument

We heard that the Proposed Instrument is difficult to read, in particular because of dense text, awkward wording, and too frequent use of negative phrasing. This is exacerbated by the need to frequently jump from one part to another to understand how to apply the requirements.

We identified a number of inconsistencies in the wording of requirements for issues that are similar if not identical. For example, in paragraph 3, the requirements are focused on whether the non-GAAP financial measure should be disclosed whereas in paragraphs 7 and 8 the focus is on the disclosures that must be provided for capital management measures and supplementary financial measures.

For the most part we found the Proposed Companion Policy more readable and easier to understand than the Proposed Instrument but believe that is not sufficient or the appropriate way to rectify issues with the Proposed Instrument.

We also heard that a summary of key differences between the Proposed Instrument and CSA Staff Notice 52-306 would be helpful.

3) Proposed definitions

The existing definition of non-GAAP financial measures is generally considered to be clear, understandable and capable of consistent application. Most of the proposed definitions are lacking in one or more of these respects. For example,

- Capital management measure
 - It is not clear what constitutes such a measure. For example, would it capture all the measures disclosed in a note required by IFRS[®] standards on capital management? We believe the Proposed Companion Policy should provide guidance on this matter. It is not always evident what kind of disclosure is required in the financial statements as a result of capital management disclosure requirements as opposed to other disclosure requirements such as those related to long-term debt or a note dealing with going concern issues.
- Non-GAAP financial measure
 - The material on “disaggregation” is complex, unclear and counter intuitive even after consideration of what is included in the Proposed Companion Policy.
 - It is not clear what is meant by an issuers’ “accounting policies.” Is this only applicable to measures defined within IFRS standards or does it extend more broadly? Non-GAAP measures are by their nature not determined in accordance with an issuer’s accounting policies.

- The addition of reference to a financial outlook seems to unnecessarily complicate the definition. Requirements related to a financial outlook perhaps might be better addressed with the existing requirements on forward looking information.
- Segment measure
 - The definition in paragraph 1 is inconsistent with what is said in paragraph 6. The former deals broadly with segment measures while the latter deals with totals of segment measures. The Proposed Companion Policy is unclear and seems to contradict the definition.
- Supplementary measures
 - It is not clear how to apply the “periodic basis” attribute, particularly in relation to differences between interim and annual reporting.

Below are some examples of financial measures for which we heard questions regarding classification:

- available liquidity
- a ratio derived from supplementary financial measures
- sales order backlog (in dollars, average selling price)
- sustaining and maintenance capital expenditures
- more detailed financial disclosure of a subsequent event disclosed in the financial statements.

4) Application of the disclosure requirements

In general, we find applying the disclosure requirements challenging and question the usefulness of some disclosures in certain instances. We offer some high-level comments below.

- Reconciliation of a non-GAAP financial measure

A number of measures (e.g., KPIs) might be captured under the proposed non-GAAP financial measure definition for which it is difficult to identify and provide a quantitative reconciliation to the most directly comparable GAAP measure as required under paragraph 3.

- Comparative periods

There are a number of issues related to different approaches to reporting comparative information. For example, it is not clear what is required to be disclosed when an issuer includes information in its Management’s Discussion & Analysis (MD&A) for its preceding quarter when no financial statements are provided for that quarter.

For supplementary measures, it is not clear what the expectations are for comparative period disclosures.

- Non-GAAP financial measures that are financial outlooks

Issuers we consulted expressed the most concerns regarding the proposals on non-GAAP financial measures that are financial outlooks, how they would be operationalized and whether all the additional disclosures required would be helpful to users. We find this area particularly in need of clarification, application guidance and field testing.

- Capital management measures

There are concerns that the application of the disclosure requirements for capital management measures could result in excessive disclosures of little value to users. In particular, it is not clear what level of detail is expected for descriptions of calculations where such measures are calculated in accordance with complicated formulas prescribed by lending agreements.

- Segment measures

It is not clear how to apply the quantitative reconciliation requirement — what is the directly comparable measure for a total of segment measures? How are the differing IFRS reporting requirements for interim and annual periods addressed — should disclosure in an interim MD&A differ from disclosure in an annual MD&A because of this?

- Supplementary financial measures

There are questions about the usefulness of the qualitative disclosures for supplementary financial measures. Transparency around the calculation of supplementary measures is important and there are concerns that compliance with the Proposed Instrument may result in only boilerplate and non-detailed disclosure. We heard that users would like to see in detail the composition of the supplementary measures and not just a description of how they are calculated.

It is also not clear what would constitute a change in “composition.” For example, would it include matters such as having a current portion of long-term debt included in one period and not in another because there is no current portion in a period? It seems having more guidance in the Proposed Companion Policy would be helpful.

- Specific measures

As part of our limited field testing, we focused in some depth on particular measures. Two of those are Average Revenue Per User (ARPU) and Return on Capital Employed (ROCE). We offer some observations based on our analysis:

- Average Revenue Per User
 - We were not sure how to classify the measure.
 - We were not sure how to apply the “disaggregation” criteria. We were not sure how to interpret the “calculated in accordance with the entity’s accounting policies” criterion.
 - We observed that issuers are currently not providing reconciliations or detailed breakdowns of this number.
 - Assuming the non-GAAP financial measure classification is appropriate, a significant amount of additional disclosure may be required.
 - Assuming the supplementary measure classification is appropriate, it may not be necessary to do anything different and we question whether keeping the status quo on these important measures is helping users.
- Return on Capital Employed
 - We noted inconsistency between the definition of a capital management measure and the application requirements in paragraph 7(1)(b); it is not clear what would constitute a

“disaggregation” in relation to capital management measures. There is no discussion on this in the Proposed Companion Policy.

- It is not clear why disclosure requirements differ for this measure depending on whether it is included in the notes to the financial statements; might this create incentives for disclosing the information in a particular location in the financial statements?
- We do not see issuers treating this information in the way they would treat non-GAAP information. As a result, it appears that a significant amount of additional disclosure may be required.
- There are also issues in how a quantitative reconciliation would be done. There is no definition for “capital.”

5) Non-financial information

Investors are increasingly relying on a variety of non-financial information to make investment decisions. These measures are often viewed as more unreliable than financial measures.

While we agree these measures should not be within the scope of the Proposed Instrument, we encourage the CSA to review the adequacy of disclosure requirements related to non-financial information and address disclosure expectations in a separate project.

6) Disclosure controls and procedures and audit committee responsibilities

We encourage the CSA to consider whether the Proposed Companion Policy should also emphasize the need for governance and internal controls surrounding the reporting of non-GAAP and other financial measures. Clarifying that such reporting should be subject to appropriate disclosure controls and procedures¹ would be helpful. We suggest the CSA may wish to encourage issuers to establish a written disclosure policy related to non-GAAP reporting that takes into account the guidelines on establishing a corporate disclosure policy set out in National Instrument 51-201 *Disclosure Standards*.

Given the wide recognition of the benefits of increased audit committee oversight and involvement with non-GAAP reporting, we also recommend the Proposed Companion Policy clarify that non-GAAP reporting falls within the responsibilities of the audit committee as described in NI 52-110 *Audit Committees*.²

7) Transition

Given the number of measures and documents to which the Proposed Instrument would apply, we believe significant implementation effort will be required by preparers. The CSA should consider a longer transition period to ensure the Proposed Instrument is implemented as intended.

We also encourage the CSA to explore practical approaches to adopting the Proposed Instrument to reduce the implementation burden. Several issuers we consulted proposed staggering the adoption dates for different documents and communications.

¹ As defined in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

² Section 2.3(6)

We appreciate the opportunity to participate in this important consultation. Given the extensive number and nature of our findings, we have only been able to report some of them. We would be pleased to discuss our findings in greater detail and answer any questions you may have. Please contact Rosemary McGuire, Director, Research, Guidance and Support (rmcguire@cpacanada.ca).

Yours truly,



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

Appendix A

Please find below our responses to the six questions in the Request for Comments.

- 1) Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.**

As outlined in our letter, we found the proposed definitions and requirements unclear and challenging to apply so it is difficult to answer this question. It appears that financial measures appearing in financial statement notes dealing with long-term debt, going concern and likely other ones, perhaps because they are required for fair presentation, and then disclosed outside the financial statements are not caught by the proposals. We do not believe this result is consistent with your intent.

- 2) Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.**

We identified the following for consideration:

- Restatement of comparative periods

We note paragraph 3 (d)(v) requires an issuer to explain “the reason for a change, if any, in the label, composition or calculation of the non-GAAP financial measure.” We recommend that in such cases the issuer restate any comparative periods presented. This is consistent with current disclosure practices and CSA Staff Notice 52-306.

- Identification of non-GAAP and other financial measures

We note the Proposed Companion Policy indicates a non-GAAP financial measure be identified as such only the first time it appears in a document.

Given the diverse ways users access information, we believe non-GAAP financial measures need to be clearly identified as such throughout the document with cross references to the appropriate section containing all the required disclosures. We note that this is consistent with existing disclosure practices for many issuers.

We also note that there is no requirement to identify supplementary financial measures, segment or capital management measures as such throughout the document and cross reference to the required disclosures. We believe such identification is important to users.

We also recommend the CSA review the MD&A material and determine whether consequential changes are necessary as a result of the Proposed Instrument.

- 3) Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?**

In addition to the matters we have identified in our letter, we have identified instances where the Proposed Companion Policy is unclear or inconsistent with the Proposed Instrument. We have provided a few specific examples below:

- What is the definition of a “reasonable person” and how does this differ from “reasonable investor”?
- The material in the Proposed Companion Policy on disaggregation of a line item introduces the concept of “disaggregation of subtotals and totals” which is inconsistent with the Proposed Instrument.
- In relation to the “periodic basis” attribute included in the supplementary financial measure definition, why is disclosure different depending on the frequency with which it is reported? In addition, it is not clear how intent should be determined and why intent is relevant. It is not clear that an absence of intent to disclose in future should negate the requirements for disclosure.
- There appears to be an inconsistency between sections 2 and 3(d) of the Proposed Companion Policy with regard to social media disclosures. Section 2 indicates that non-GAAP financial measures should not be disclosed if the full disclosure requirements are unable to be met (e.g., Twitter) however, section 3(d) appears to allow it if a link to the additional disclosures is included.

4) Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We have no comment on the proposed exemption for SEC foreign issuers. During our outreach, there was significant confusion as to what constitutes an SEC foreign issuer and we recommend including the definition in the Proposed Instrument or Proposed Companion Policy.

5) Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

From a practical perspective, we agree that oral statements should be excluded from the scope of the Proposed Instrument, however, several questions have been raised as to the applicability of the Proposed Instrument where a third party provides a written transcript. We encourage the CSA to clarify its expectations in these circumstances.

6) Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

During our consultations, we heard it would be helpful if the CSA clarified the specific documents to which the Proposed Instrument applies.

We also encourage the CSA to review references to “documents” in other related materials and consider whether amendments are necessary to align definitions with the Proposed Instrument.

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December 5, 2018

BY EMAIL

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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
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Dear Sirs/Mesdames:

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

We are writing in response to CSA 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 that current disclosure practices surrounding non-GAAP financial measures vary among issuers, and support the CSA's overall objective of mandating disclosure requirements to ensure transparency and context in circumstances where it is necessary to prevent disclosure of these measures in a manner that is misleading to investors. However, 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, we think it is critical to assess: (i) whether all of the additional disclosure which is mandated under the Proposed Instrument is necessary in order to ensure that the investing public is not misled; and (ii) whether issuers may have difficulty complying with elements of the new rules, particularly as the scope of the Proposed Instrument encompasses measures not previously addressed in SN 52-306.

It is also important that the CSA take a balanced and measured approach to ensure that the new framework does not result in an increased regulatory burden on issuers that is disproportionate to, or otherwise unnecessary to achieve, the objective of that framework. As part of this balance, the CSA should consider whether an alternative and more practical approach could achieve the CSA's objective without the associated burden. We note that the Canadian securities regulators are currently focused on initiatives to reduce burdens on issuers involving disclosure obligations.¹ This objective of streamlining and modernizing Canadian disclosure obligations should be respected in establishing a new regime for the disclosure of non-GAAP financial measures.

Requirement to Present All of the Prescribed Disclosure in the Same Document

As drafted, the Proposed Instrument would apply to all documents that are intended to be, or are reasonably likely to be, made available to the public in Canada² with a narrow exception for specified and supporting documents and material contracts. Accordingly, in addition to regularly scheduled (or 'periodic') reports (e.g., Management's Discussion and Analysis) and other "core documents"³ of an issuer (e.g., prospectuses), the Proposed Instrument would apply to all current disclosures (such as press releases and written transcripts) and other written disclosures (such as investor presentations and other marketing materials) contained in documents whose timely release and focused messaging is critical for efficient markets. We acknowledge that the prescribed disclosures for non-GAAP financial

¹ For example, 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.

² We note there is a typographical error, and that the "and" after the word "document" should be deleted since it is the public availability of the document (not the measure) that triggers application of the disclosure required by this rule. For clarity, we suggest defining what constitutes a "document" within the Proposed Instrument. Further, we suggest correcting the Proposed Companion Policy, which has imported the definition of "document" that is used in the Ontario Securities Act's provision governing civil liability for secondary market disclosure (section 138.1). This is inconsistent with subsection 2(2) of the Proposed Instrument, which refers to documents that are reasonably expected to be made available to the public. No policy objective is served by expanding the application of the Proposed Instrument to documents that are simply filed with a governmental authority if there is no intention or expectation that the document will be publicly available to the investors that the prescribed disclosure of the Proposed Instrument is designed to protect.

³ As defined in section 138.1 of the Ontario Securities Act.

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measures may be appropriate in many circumstances in order to meet the policy objective of the Proposed Instrument; however, to serve that policy objective, we do not believe it is necessary or appropriate that all of the detailed disclosure prescribed by paragraphs 3(c) and 3(d) of the Proposed Instrument be presented in every document publicly released by an issuer that contains non-GAAP financial measures if such disclosure is already contained in one of the issuer's "core documents".

Reconciliations of non-GAAP financial measures can be a detailed and complex process which necessitates the involvement and oversight of key members of an issuer's accounting and finance teams, and can give rise to multiple pages of additional disclosure. In the context of preparing periodic reports, issuers can allocate the necessary time and resources to ensure that these reconciliation calculations are properly prepared to provide meaningful disclosure to investors. In contrast, issuers are often under significant time pressures to issue a press release or other documents containing event driven or other current disclosure in a timely manner. In these cases, the requirement to include detailed reconciliation tables, footnotes and schedules is often a significant burden, and difficult to justify where that disclosure is already included elsewhere in periodic reports that are easily accessible to the investing public. Additionally, management's explanation of why it believes specific non-GAAP financial measures are useful and the purposes for which they are used is also often lengthy and detailed disclosure. The requirement to include all of this detailed disclosure in press releases and other non-core documents can unduly complicate and obscure the more critical disclosure in the document. The end result is that an issuer may have to delay the release of a time sensitive disclosure document in order to include all of the detailed disclosure prescribed by paragraph 3(c) or 3(d) of the Proposed Instrument, or risk having errors in such prescribed disclosure in order to get the more critical disclosure within the document disseminated in a timely manner. In our view, 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.

To address these concerns, we propose an accommodation for all documents (other than transcripts which we discuss separately below) that are not "core documents", which clearly and appropriately label non-GAAP financial measures as such (when they first occur in the document). In these circumstances, an issuer should be allowed to satisfy the other disclosure requirements of paragraphs 3(c) and 3(d) of the Proposed Instrument (such as reconciliations and management's explanations of the rationale for using non-GAAP financial measures) through a footnote or endnote that cross-references to the required disclosure in the issuer's existing Management's Discussion and Analysis or another "core document" of the issuer filed on SEDAR, or through a hyperlink to the relevant "core document" posted on the issuer's website. As a practical matter, an investor is almost certain to access a press release through the Internet. It should follow, therefore, that accessing the additional prescribed disclosure (whether from SEDAR or the issuer's website) would require just another 'click'. In any event, given the extremely high levels of Internet penetration in Canada,⁴ this disclosure will be readily available to all investors. Canadian short form prospectus rules, which allow

⁴ The CIA World Factbook estimated internet penetration in Canada in July 2016 at approximately 89.8%, more than 13% higher than the United States (76.2%), where online disclosure is already considered by the SEC to satisfy the requirement for public dissemination. See: <https://www.cia.gov/library/publications/the-world-factbook/fields/2153.html>.

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the incorporation of documents (and the critical material contained therein) by reference, evidence that the CSA is already comfortable that investors have the ability to, and do in fact, access SEDAR for critical additional information in incorporated documents. Also notable is the CSA's acknowledgment in the Proposed Companion Policy that, in certain circumstances (for example, websites and social media), it is sufficient to provide a link to the required information in paragraph 3(d) (excluding 3(d)(i)). Ultimately, our proposed accommodation simply acknowledges the reality of modern capital markets, and the role played by technology in making disclosure more efficient and accessible, while reducing the regulatory burden without compromising investor protection.

Finally, in respect of transcripts specifically, we believe that requiring compliance with the Proposed Instrument is inconsistent with the underlying purpose of a transcript (to provide an accurate and unaltered transcription of what was said during a call or presentation). By mandating the overlay of the disclosure required by the Proposed Instrument, the transcript would cease to be a true reproduction of what was said, thereby defeating its purpose. In our view, it should be sufficient, where applicable, to include a disclaimer on the cover of any transcript which states that the transcript may contain non-GAAP financial measures and include a reference to the appropriate "core document" where the disclosure mandated by the Proposed Instrument may be found. This preserves the integrity of the transcript while providing the reader with the appropriate warning regarding the treatment of non-GAAP financial measures.

Requirement to Present the "Same" Measure for Comparative Periods

We note that paragraph 3(c) of the Proposed Instrument requires that the "same" non-GAAP financial measures be presented for the comparative period. In contrast, 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, and that the instrument should contain a general exception from this requirement to the extent that it is impractical to comply and the issuer has included sufficient disclosure to clearly identify any substantive difference in constructing that measure as between comparative periods. Disclosure of the same non-GAAP financial measure in a prior period may even be impossible in certain circumstances (such as in an issuer's first period of operations where no comparative period exists), in which case the Proposed Instrument should provide that no comparative period disclosure is required pursuant to paragraph 3(c). Absent exceptions for circumstances where it is either impractical or impossible to comply, an issuer could be in breach of paragraph 3(c) of the Proposed Instrument in circumstances where the issuer should be exempt from compliance. Requiring the issuer to apply for exemptive relief in these circumstances is an unnecessary administrative burden and may also have unintended timing implications, particularly in the context of event driven or other current disclosure.

We disagree with the CSA's observation in the Proposed Companion Policy that the disclosure required by paragraph 3(c) of the Proposed Instrument "would not be feasible only in rare circumstances". In our experience, there are a number of common scenarios where it would not be considered feasible or practical for issuers to present disclosure on exactly the same basis for comparative periods. For example, following a material acquisition (or series of acquisitions that, in the aggregate, are material), an issuer may choose to present financial measures (both GAAP and non-GAAP) on a pro forma basis that gives effect to the acquisition(s) in both the current and comparative period in

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order to help investors understand other changes in the issuer's results on a comparable (or 'apples to apples') basis. However, it is often the case that the acquired entity's historical financial information is not sufficient to construct a non-GAAP measure on exactly the same basis as the issuer's presentation of that measure, because the acquired entity did not account for certain reconciling items in the same way as the issuer (or at all), or the accounting record of the acquired entity that is available to the issuer is otherwise insufficient. Similarly, in order to reflect changes in its business or industry, an issuer may replace a non-GAAP financial measure that it had historically reported with a new non-GAAP financial measure that is more relevant or otherwise more appropriate for understanding the issuer's performance. In these circumstances, the issuer may not have the necessary historical data to present the new non-GAAP financial measure for a prior period on exactly the same basis. Notably, the Proposed Instrument⁵ and SN 52-306⁶ both expressly contemplate circumstances where an issuer might change a previously reported non-GAAP financial measure.

Finally, and in addition to the above, we believe that a separate exception from paragraph 3(c) of the Proposed Instrument should be available for an issuer that presents a non-GAAP measure on a "LTM", or last twelve month, basis. 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. In the context of a prospectus offering, preparing such a prior twelve-month period would require the use of financial information that predates the financial statements included in the prospectus. This would give rise to administrative burden for which there is no corresponding investor benefit.

Requirement to Explain Quantitative Reconciliation of Non-GAAP Measure

We suggest deleting the requirement in clause (C) of subparagraph 3(d)(iv) of the Proposed Instrument. The Proposed Instrument already requires an issuer to disaggregate the reconciliation in a manner that "provides a reasonable person an understanding of the reconciling items." We also suggest deleting the guidance in the Proposed Companion Policy that an issuer should include, for each reconciling item that is not extracted directly from an issuer's primary financial statements, an explanation of how that item is calculated and the line item of the primary financial statements from which it originates. In our view, this proposed disclosure would impose an unnecessary burden in the absence of any reasonable concern that an investor may be misled without the disclosure. In practice, there are many reconciling items that are clear on their face without further explanation despite not being extracted directly from an issuer's primary financial statements. Requiring disclosure for each of these items will not benefit investors and may in fact have the opposite effect of obscuring critical detail in respect of items where further explanation is warranted (for example, the significant judgments or estimates, if any, that management has made in developing the item).

⁵ See subparagraph 3(d)(v) of the Proposed Instrument.

⁶ See item #7 of paragraph III of SN 52-306.

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As an alternative, we would suggest modifying paragraph (C) of subparagraph 3(d)(iv) of the Proposed Instrument as follows (and applying corresponding changes to the Proposed Companion Policy) to be clear that this clause does not require an explanation of a reconciling item where a reasonable investor would not otherwise be misled in the absence of the explanation:

“[...] is explained in such a way that it provides a reasonable person an understanding of each reconciling item where, absent such explanation, there is a reasonable likelihood that the investor would be misled as to its nature or source.”

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

Unlike SN 52-306, the Proposed Instrument distinguishes and separately regulates certain other financial measures which 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 there is not currently a separate regulatory framework for these Other Financial Measures, there is a significant risk that introducing prescriptive rules will lead to confusion among investors as to their meaning and non-compliance by issuers. This risk is exacerbated by an absence of clarity in respect of these Other Financial Measures in the Proposed Instrument and the Proposed Companion Policy.

To avoid this result, we believe that the regulation of these Other Financial Measures would benefit from further consideration by the CSA and recommend that they be removed from the Proposed Instrument and instead be addressed exclusively through guidance in the Proposed Companion Policy. This approach would allow the CSA and market participants to monitor issuers’ disclosure in respect of these Other Financial Measures in practice, thus allowing the CSA to gather more information before establishing a formal set of prescriptive rules.

With respect to such guidance, the Proposed Companion Policy should suggest that where an issuer elects to disclose any Other Financial Measure, the issuer should include any additional disclosure necessary to ensure that it is not misleading to investors. This additional disclosure could include: (i) the disclosure required by section 8 of the Proposed Instrument; and (ii) in the case of Capital Management Measures, a statement that GAAP does not specify how to calculate such Other Financial Measure. Such guidance could also indicate that in certain scenarios it may be appropriate for an issuer to include a reconciliation (as currently provided by section 6(a) and 7(b)(iv) of the Proposed Instrument), but only where such a reconciliation is necessary to ensure that disclosure of these Other Financial Measures does not mislead investors. Finally, the guidance could also state that, where applicable, the Other Financial Measure should not feature more prominently than its directly comparable GAAP financial measure or similar financial measure contained within the issuer’s financial statements.

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Application to SEC Issuers and SEC Foreign Issuers

As drafted, the exception in the subsection 2(1) of the Proposed Instrument does not include “SEC issuers”⁷ that are not “SEC foreign issuers”⁸. We believe that this exception should be broadened so that the Proposed Instrument does not apply to any SEC issuer, provided that such issuer complies with prescribed U.S. disclosure requirements in respect of non-GAAP financial measures. In the U.S., there is a well-established framework for non-GAAP financial disclosure pursuant to Regulation G⁹ and Regulation S-K¹⁰. Although the regulation of non-GAAP financial measures in the U.S. under Regulation G and Regulation S-K is similar to the current approach under SN 52-306 (as well as the new approach under the Proposed Instrument), the regimes are not identical. To avoid duplication of efforts, and the associated administrative burden and cost, we do not believe it is necessary or appropriate to require any SEC issuers to comply with the Proposed Instrument if they are already otherwise in compliance with the disclosure requirements prescribed by the SEC. This is consistent with other Canadian disclosure obligations which may already be satisfied by SEC issuers who comply with the equivalent U.S. disclosure requirement. For example, “MD&A” is defined in National Instrument 51-102 *Continuous Disclosure Obligations* to include an SEC issuer’s MD&A prepared in accordance with Item 303 of Regulation S-K. Further, exemptions are available to SEC issuers from the requirements of National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* by complying with the equivalent U.S. requirements.

⁷ As defined in both National Instrument 51-102 *Continuous Disclosure Obligations* and National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

⁸ As defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

⁹ Specifically, §244.100 of Regulation G, adopted by the U.S. Securities and Exchange Commission (“SEC”) under the *Sarbanes-Oxley Act of 2002*.

¹⁰ Specifically, §229.10 (Item 10(e)) of Regulation S-K, adopted by the SEC under the *Securities Act of 1933*, as amended, and the *Securities Exchange Act of 1934*, as amended.

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The following lawyers at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

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RE: Proposed National Instrument 52-112 (the "Proposed Instrument"), Proposed Companion Policy 52-112 (the "Proposed Companion Policy"), Related Proposed Consequential Amendments and Changes

Dear Sirs/Mesdames,

We are pleased to provide our comments on the Proposed Instrument, related companion policy and consequential amendments and changes. Overall, our firm is 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.

Our response to the questions posed in the Request for Comment are as follows:

1. Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

Yes, we believe that the proposed definition is generally appropriate. However, we believe the definition of non-GAAP ratio as provided under the Proposed Instrument subparagraph 4(2) creates an inconsistency in application. For example, working capital is a non-GAAP measure based on the proposed definition. However, working capital ratio (using the exact same

numbers as used in the determination of working capital) would not be identified as a non-GAAP measure. As such, we recommend that CSA staff reconsider or clarify the requirements and exceptions that are provided throughout the Proposal to remove any perceived inconsistencies.

2. Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

No, but we believe this is a question best addressed by preparers and investors.

3. Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

No.

4. Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

Yes, as the proposed exemption is consistent with the exemptions set out in other National Instruments including within NI 51-102 and NI 71-102. However, it is evident to us that there appears to be an inconsistency in the securities rules such that an SEC Form 10-K filer domiciled in Canada would be treated differently than 10-K filer domiciled in any other jurisdiction because the Canadian domiciled entity would not meet the definition of an SEC foreign issuer.

5. Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

Yes, we support the clarification of the scope to exclude oral statements.

However, the Proposed Companion Policy states, "... if a written transcript of an oral statement is provided by the issuer, the issuer must provide the disclosures required by the Instrument. This could be done in an attachment or appendix to the transcript." In such case, we suggest that the Proposed Instrument allow for reporting issuers to cross-reference to another continuous disclosure document in order to meet the disclosure and reconciliation requirements of the Proposed Instrument instead of having to include those disclosures and reconciliations within the transcript itself. Accordingly, the oral statement and the transcript of the oral statement will then provide the same level of disclosure.

6. Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

Yes, we believe the proposed inclusions of all documents is appropriate.

Additional comments:

Further to the questions set out in the Request for Comment, we would like to make the following suggestions for CSA to consider:

- While we understand that the National Instruments are a part of the Canadian securities law and are written in legal terms, the Proposed Instrument seems to be unnecessarily difficult to understand and apply. We believe the Proposed Instrument would benefit from the inclusion of clear interpretative guidance including concrete examples that demonstrate and interpret the application of the disclosure requirements using various, practical financial measures. Further, we believe that the requirements for financial outlook measures that are considered non-GAAP financial measures should be further clarified. Specifically, it may be helpful if there was an example included in the Proposed Instrument to demonstrate how an issuer would comply with the requirements when a quantitative reconciliation cannot be provided.

- As currently drafted, the Proposed Instrument creates some differences between the required disclosures for entities in Canada and the United States. While they may not be significant differences, the existence of such differences may create undue confusion in the Canadian marketplace. Two specific noted differences are as follows:
 - Total segment measures are considered non-GAAP under the SEC rules (Regulation G and Item 10(e) of Regulation S-K) but viewed as a 'segment measure', a newly introduced measure under the Proposed Instrument. Given the different classification under the two jurisdictions, entities who are subject to both Canadian and US regulations (i.e. Canadian 20-F and 10-K filers) may not be compliant with the appropriate rules. Further users of such information could be confused when comparing such entities.
 - The Proposed Companion Policy states, "For purposes of presenting the reconciliation, it is permissible to begin with the non-GAAP financial measure or the most directly comparable financial measure presented in the primary financial statements, provided the reconciliation is presented in a comprehensible manner." While this allows the issuers an option for their reconciliations, it may lead to a creation of diversity in practice. We suggest that all reconciliations begin with the GAAP measure as required under the current Staff Notice 52-306.
- Although non-financial information has been specifically excluded from the scope of this Proposed Instrument, we would like to recommend that the CSA consider the use of non-financial information in a separate proposal as we observe the increasing use of such information by issuers and its perceived importance to investors. We are concerned that while there is increasing use, there is a lack of consistency and comparability in the definition and use of this information in practice. Therefore, without clear guidance on definition of such information, it may be unintentionally misleading and confusing as users may assume such information is comparable from issuer to issuer. As such, we believe that the CSA consider whether specific disclosure rules and guidance regarding non-financial information (e.g. volumetric information in a period) should also be developed in an effort to improve the quality of disclosure.

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

Yours truly,

The signature is written in a cursive, handwritten style in black ink. It reads "Deloitte LLP".

Chartered Professional Accountants,
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5 December 2018

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Dear Mme Anne-Marie Beaudoin

CSA Request for Comment - Proposed National Instrument 52-112

We are pleased to provide our comments to the Canadian Securities Administrators (CSA) 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.

The CSA have consistently commented on deficiencies in disclosure of Non-GAAP measures over the past few years and we support the concept of issuing a Proposed Instrument that has the force of law to improve the consistency and transparency of disclosures for stakeholders, including investors and analysts.

Work effort and transition requirements

While the Proposed Instrument replicates much of the guidance in Staff Notice 52-306, the instrument in its current form also introduces certain new concepts and categories of measures. Reporting Issuers will need to carefully understand the proposed scope and associated requirements with respect to these items, identify measures falling under the new definitions and ensure compliance with the new rules when they come into effect. The scope of the Proposed Instrument is very broad, applicable to all publicly filed documents and any other communication the content of which would be reasonably expected to affect the market price, including use of social media. The effort required for reporting issuers to comply with the new requirements will not be insignificant and it is possible that for some issuers more substantial work effort will be required. While the Proposed Instrument is silent on transition provisions we believe appropriate time should be provided from

when the Proposed Instrument is finalized to enable effective implementation. In our view the Proposed Instrument should be first made effective at the end of a fiscal year so that the comparisons in the next year's interim periods can be made back to the year end measures.

Application guidance

We understand it may not be appropriate to include illustrative examples in the Proposed Instrument and although the proposed Companion policy does provide additional guidance, it would seem that some additional more specific guidance may be useful especially as the Proposed Instrument will be mandated by law (e.g. in the form of FAQs outside the Proposed Instrument that could be updated periodically). For example, more guidance on determining and disclosing the GAAP equivalent of a Ratio or Forward looking measure or application of the Instrument to Key Performance Indicators (KPIs) would seem useful.

Based on feedback we have received from reporting issuers additional application guidance would be helpful on applying the concept of disaggregation, disclosure of segment measures and how the Proposed Instrument should be applied to social media communications. For example, we propose for social media communications that links to relevant disclosures for Non-GAAP and Other Financial Measures be permitted. There is also some concern that there may be repetitive disclosures of the same reconciliations so consideration could be given to allowing for more cross-referencing between documents to reduce duplicative disclosures whilst at the same time protecting the public interest.

Canadian reporting issuers that are also SEC registrants will have to carefully consider how the proposals and existing SEC requirements to which they are subject will apply to them as the proposals are not fully aligned with SEC requirements. This is another topic that we suggest could be incorporated into an FAQs document to assist with implementation.

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



Chartered Professional Accountants
Licensed Public Accountants

December 5, 2018

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

RE: CSA Notice and Request for Comment – Proposed National Instrument 52-112, Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes

Dear Commissions:

The Committee on Corporate Reporting (CCR) of Financial Executives International Canada (FEI) is pleased to respond to the CSA 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, and Related Proposed Consequential Amendments and Changes (the Proposed Instrument).


FEI Canada is the all-industry professional membership association for senior financial executives. With eleven chapters across Canada and more than 1,600 members, FEI Canada provides professional development, 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 seven thought leadership committees of FEI Canada. CCR is devoted to improving effectiveness, the awareness of issues and educating FEI Canada members on the implications of the issues it addresses and is focused on continually improving the standards and regulations impacting corporate reporting.

Our responses to the questions posed within the Proposed Instrument are included as Appendix to this letter. Thank you for the opportunity to respond to this Proposed Instrument.

Sincerely,



Murray Harris, CPA, CA
Chair, Committee on Corporate Reporting

Appendix

Question 1

Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

We believe that the Proposed Instrument could provide additional clarification on whether certain financial measures are within the scope of the Instrument, including non-GAAP financial measures that are required and defined by another regulatory instrument or agency. We believe that these kinds of non-GAAP measures should be excluded from the scope of this instrument as they are presented on the prescribed basis of the other regulatory instrument or agency. For example, executive compensation disclosure required by other instruments and financial measures including capital ratios required by a regulatory agency such as the Office of the Superintendent of Financial Institutions (OSFI) could be incorporated by reference. This would also support the goal of reducing regulatory burden.

We would also seek clarity whether additional financial measures that are included in the audited financial statements, as notes or otherwise, would be considered GAAP or non-GAAP when they are included in other public documents. We believe that under the current draft of the Instrument, preparers could increase the inclusion of traditional Non-GAAP measures in their financial statements to avoid detailed reconciliation in other public documents. While these reconciliations are primarily intended to reconcile to GAAP measures, they also provide readers with additional details that may not be clearly identifiable in the financial statements.

The proposed instrument makes a distinction between “presented” and “disclosed” in the financial statements. Given that both presentation and disclosure items are integral to the financial statements, and subject to audit, we question whether this distinction is required.

Question 2

Are there any specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

We have not identified any additional disclosures that would significantly improve the overall quality of disclosure and be of benefit to investors.

Question 3

Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

We have noted several concepts in the Proposed Instrument which we believe should be addressed to improve the clarity of the Proposed Instrument:

a) Definition of non-GAAP financial measure

The definition in the Proposed Instrument is silent on whether a disaggregation of a non-GAAP measure also meets the definition of a non-GAAP measure and must therefore comply with all the requirements. It is our opinion that a disaggregation of a non-GAAP financial measure should not be subject to the disclosure requirements included in the Proposed Instrument as it would be unnecessarily burdensome and, in many cases, very difficult to achieve as an issuer may not present the equivalent disaggregated GAAP financial measure in the financial statements. Instead, we propose that the disclosure requirements included in the Proposed Instrument apply only to the highest aggregation of a non-GAAP financial measure. For example, a non-GAAP presentation of project expenditures could be reconciled to capital asset additions in the notes to the financial statements on an aggregate basis however the disaggregation by project would be difficult to reconcile to GAAP since the financial statements disclose asset additions by type, not by project.

b) Describing a non-GAAP financial measure as ‘record performance’ or ‘exception’ without at least an equally prominent descriptive characterization of the most directly comparable measure

It is unclear what statement would qualify as exceptional characterizations. If the intent is to apply this to all characterizations, we disagree on the basis that this dilutes key messages and essentially duplicates descriptions whenever a non-GAAP measure appears. We believe that a descriptive characterization of the most directly comparable measure should be provided only when disclosures are unclear, for example in situations where non-GAAP and GAAP measures do not align. We believe that as long as disclosures are consistent in definition over time, then disclosures are balanced, and descriptive words are appropriately applied to non-GAAP measures.

c) Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most directly comparable measures or without including the most directly comparable measures in the same table or graph

We have the same comment as note b) above regarding usefulness of these additional disclosures.

d) Full statement of profit or loss of non-GAAP financial measures

It is unclear what the Proposed Instrument considers as a full statement of profit or loss. If a table contains consolidated highlights with several non-GAAP financial measures, would it be considered a full statement of profit or loss of non-GAAP financial measures if the table ultimately reconciles to the GAAP net income?

e) Non-GAAP measures that are ratios

The requirements state that paragraph 3(b) does not apply if “the ratio is presented with no more prominence in the document than similar financial measures presented in the primary financial statements”. It is unclear whether a non-GAAP financial ratio, e.g. Core EPS, can be presented in the MD&A without presenting the GAAP financial measure (EPS) in the MD&A, if the GAAP financial measure (EPS) is presented with similar prominence in the primary financial statements.

f) Definition of capital management measure

A capital management measure is defined as a “financial measure that is disclosed in the notes to the financial statements...”. However, section 7 requirements apply to a capital financial measure that “is not a total, subtotal or line item presented in the primary financial statements”. This would imply that all capital management measures are subject to the disclosure requirements since, by definition, capital management measures are not presented in the primary financial statements, but rather in the notes. The requirements in section 7 are inconsistent given that all disclosure requirements proposed are already included in the notes to the financial statements, thereby creating duplicate disclosure.

g) Materiality

No concept of materiality has been applied in this Proposed Instrument. The prominence criteria would unnecessarily burden disclosure in situations where the conclusions drawn from a non-GAAP financial measure and a GAAP financial measure would be substantially the same due to an immaterial difference between the two. In such a case, doubling the disclosures (by presenting both GAAP and non-GAAP) can lead to confusion and dilute key messages.

h) Language

The language used in the Proposed Instrument is difficult to read in places and may cause confusion. We recommend simplifying the wording and using plain English throughout the Proposed Instrument and the Companion Policy.

i) Interpretation guidance or webinar

Does the CSA intend to provide further interpretation guidance or a webinar on this Proposed Instrument? Given the confusion and clarifications surrounding some of the definitions and disclosure requirements, providing further interpretation guidance or a webinar could ensure that all issuers apply the requirements in the Proposed Instrument consistently.

Question 4

Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We note that as the Proposed Instrument is substantially in-line with the requirements of the SEC, the exemption is appropriate since SEC foreign issuers would already be presenting the required disclosures.

Question 5

Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

We agree with the exclusion of oral statements from the scope of the Proposed Instrument. However, we believe that it would be beneficial to include additional guidance with respect to the disclosures required when written transcripts of oral statements are provided by an issuer. Specifically, can the issuer refer to existing public documents such as MD&A that already contain the required disclosures rather than re-creating the disclosures specially for the transcript and if so, what is the required structure of the references to the existing disclosures?

Question 6

Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

We agree with the inclusion of all the documents outlined within the Proposed Instrument. However, we believe this could lead to significant duplication of information and risk of confusion if the same non-GAAP measure is presented in multiple disclosures. We recommend that the Proposed Instrument allow the issuer to cross-reference existing public documents, such as the MD&A, that already contains the required disclosure. For example, if the press release refers to highlights of the quarterly results including non-GAAP measures, the press release would then reference the non-GAAP measures section of the MD&A or the specific page within the MD&A where the information is presented instead of representing the same information in multiple places. We suggest that clarity be provided on what form this reference may take, i.e. is a note directing the reader to 'see the non-GAAP measures section of the MD&A' sufficient or must there be electronic links to the electronic version of the MD&A where an organization has the technical capability to provide that option. We caution that mandating duplication of information or the extensive linking of electronic documents could cause

substantial regulatory burden, especially for smaller filers that do not have the web-based capabilities of larger companies.

We noted that the Proposed Instrument provided limited guidance on social media formats such as Twitter, LinkedIn, etc. which many Companies are now using to communicate with the public. It is not clear as to how the criteria of this Proposed Instrument would be met in a limited character posting especially if the Company has limited web-based capabilities.

December 5, 2018

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
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Me Anne-Marie Beaudoin
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consultation-en-cours@lautorite.qc.ca

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

Dear Sir/Madam,

Freehold Royalties Ltd. (“Freehold”) is a dividend-paying corporation incorporated under the laws of the Province of Alberta and trades on the Toronto Stock Exchange under the symbol FRU. Freehold is directly and indirectly involved in the development and production of oil and natural gas, predominantly in western Canada. Our primary focus is acquiring and managing oil and natural gas royalties.

Our comments are regarding one component of the proposed instrument, that being disclosure that would be required in documents other than required filings.

Under the Application heading it states the following:

2.(2) *This Instrument applies to any non-GAAP financial measure, segment measure, capital management measure or supplementary financial measure that an issuer discloses in a document and that is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction, whether or not filed under securities legislation, unless the issuer discloses a specific financial measure in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada.*

It is our understanding that the definition of a document is extensive and it includes all information made available to the public including but not limited to Management's Discussion and Analysis (MD&A), press releases, the Annual Information Form, prospectuses, including other written communications in websites or social media.

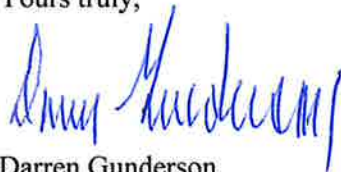
More specifically our concern surrounds the detailed disclosure requirements of clause 3(d) in all public documents:

- 3.(d) *the first time the non-GAAP financial measure appears in the document, the document*
- (i) subject to subsection 4(2), identifies the non-GAAP financial measure as such,*
 - (ii) states that the non-GAAP financial measure does not have a standardized meaning under the financial reporting framework used to prepare the financial statements and may not be comparable to similar financial measures presented by other issuers,*
 - (iii) explains how the non-GAAP financial measure provides useful information to a reasonable person and explains the additional purposes, if any, for which management uses the non-GAAP financial measure,*
 - (iv) subject to subsection 4(3) and section 5, provides a quantitative reconciliation, to the most directly comparable financial measure presented in the primary financial statements, which reconciliation*
 - (A) is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items,*
 - (B) does not describe a reconciling item as non-recurring, infrequent or unusual when a similar loss or gain is reasonably likely to occur within the next two years or has occurred during the prior two years, and*
 - (C) is explained in such a way that it provides a reasonable person an understanding of each reconciling item, and*
 - (v) explains the reason for a change, if any, in the label, composition or calculation of the non-GAAP financial measure.*

Freehold has no objections to the intent of the above disclosure requirements. However, meeting the requirements of clause 3(d) on all public documents will dramatically increase the size of documents, result in duplication of information and affect understandability. If the information required from clause 3(d) is already disclosed in the issuer's MD&A it is our preference that a simple reference to the Non-GAAP Financial Measures section of the MD&A would concisely handle the concerns that the proposed Instrument is attempting to address. A duplication of information could negatively affect the understanding of messaging provided in these other public documents, such as news releases and investor presentations, when the intended effect is to provide clear, concise and understandable information.

Thank you for your consideration of these concerns and to discuss further, please contact the undersigned.

Yours truly,



Darren Gunderson
Vice-President, Finance and Chief Financial Officer



Barristers & Solicitors

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December 4, 2018

VIA EMAIL

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- and -

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

Dear Sirs/Mesdames:

Re: Submission on Proposed non-GAAP Measure Rule

Set out below are our comments on proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the “**Proposed Rule**”). We would be happy to discuss with you further at your convenience.

1. Application.

We believe that the exemption from the application of the Proposed Rule set forth in s.2(1) of the Proposed Rule should be expanded to include all SEC Issuers (as defined in National Instrument 51-102 *Continuous Disclosure Obligations* (“**NI 51-102**”)). We believe that there is no policy rationale for differentiating between SEC foreign issuers and SEC Issuers – in both cases, the issuer would be subject to regulation under US securities laws.

We note that many Canadian issuers that qualify as SEC Issuers file their continuous disclosure documents, including annual and interim MD&As where non-GAAP measures are typically presented, on US forms prepared in compliance with US requirements. If the Proposed Rule applies to those issuers, in addition to complying with the US requirements for non-GAAP

measures, a separate Canadian review of the non-GAAP measures will be required to confirm compliance with the Canadian requirements. While the US requirements may be similar to the requirements of the Proposed Rule, the application of the Proposed Rule would impose an additional regulatory burden on these issuers which we submit should not be necessary if such issuers are already complying with applicable US requirements. It may be appropriate to qualify the exemption to only apply if the SEC Issuer is complying with all US requirements relating to the use and disclosure of non-GAAP financial measures.

We feel that this change would not materially diminish the regulatory benefits of the Proposed Rule and is a reasonable accommodation to reduce duplicative regulation.

2. Reconciliation of Financial Outlook

We believe that consideration should be given to exempting issuers from any requirement to reconcile or provide incremental disclosure where a non-GAAP financial outlook is disclosed but the most directly comparable GAAP measure is not presented for the same forward-looking period. In our view, under these circumstances, the regulatory objective sought by the inclusion of s.5(2)(c)(ii) of the Proposed Rule is adequately addressed by Parts 4A and 4B of NI 51-102, which require disclosure of the material factors or assumptions used to develop forward-looking information and contain specific requirements applicable to the disclosure of financial outlook

If the proposal described above is not acceptable, we recommend that the requirements set forth in s.5(2)(c)(ii) of the Proposed Rule, together with the corresponding provisions in the companion policy, be revised to provide issuers and their advisors with additional guidance about the applicable disclosure requirements.

We believe that most issuers will choose not to reconcile non-GAAP financial outlook to the most directly comparable financial outlook for which an equivalent historical financial measure is presented in the primary financial statements as permitted by s. 5(2)(c)(ii)(A). Instead, we expect most issuers to elect to provide the disclosure contemplated by s. 5(2)(c)(ii)(B), which requires disclosure of “each of the significant components of the financial outlook used in the calculation”. The companion policy goes on to provide guidance on this disclosure which, in our view, is unclear. For example, the reference in the companion policy to the description of “the process followed in preparation and reviewing the financial outlook”, should provide greater explanation and guidance about what disclosure the CSA expects regarding the process undertaken by the issuer in this regard.

3. Non-GAAP Measures that are Financial Outlooks

The requirement in subsection 3(b) to require that non-GAAP financial measures are presented with no more prominence in the document than the most directly comparable financial measure presented in the primary financial statements will not be applicable in the context of financial outlook which, by definition, is forward-looking and not captured in the presentation of historical

financial statements of an issuer and an issuer may not prepare forward-looking financial statements.

Accordingly, we believe that the lead-in to Section 3(b) should be revised to state “subject to subsection 4(1) and 5(3)...” and section 5 to be amended to include a new subsection 5(3) which would state: “Subparagraph 3(b) shall only apply to in respect of a non-GAAP financial measure that is a financial outlook to the extent the issuer prepares and discloses forward-looking financial statements.”

4. Other

We propose that the implementation of the Proposed Rule include a sufficient and appropriate transition period to afford issuers time to prepare disclosure that is compliant with the new requirements.

Yours truly,

Goodmans LLP

“William Gorman”
William Gorman
WRG/wes
6886477

“Brenda Gosselin”
Brenda Gosselin

“Brad Ross”
Brad Ross

VIA EMAIL:

comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

December 5, 2018

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
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Me Anne-Marie Beaudoin
 Corporate Secretary
 Autorité des marchés financiers
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 C.P. 246, tour de la Bourse
 Montréal QC H4Z 1G3

Re: Canadian Securities Administrators (the “CSA”) 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 and Related Proposed Consequential Amendments and Changes

Background on Lifeco

Great-West Lifeco Inc. (TSX: GWO) (“Lifeco”) is a leading international financial services holding company with interests in the investment management, life insurance, health insurance, retirement savings and reinsurance businesses. Lifeco operates primarily in Canada, the United States and Europe through its subsidiaries.

Objectives of the Proposed Instrument

Lifeco welcomes the efforts by the CSA to provide clear requirements surrounding the disclosure of non-GAAP and other financial measures. We believe that such efforts will be beneficial to investors and will significantly reduce variances in the disclosure practices surrounding non-GAAP measures. In addition, we have provided additional feedback within our general comments.

General Comments**Disclosures around externally imposed capital requirements should be excluded from the Proposed Instrument**

The Proposed Instrument applies to the disclosure of certain financial measures unless the issuer discloses a specific financial measure in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada. Lifeco supports revising the Proposed Instrument to provide that it also would not apply to specific financial measures disclosed in the notes to the financial statements around externally imposed capital requirements in Canada and foreign jurisdictions in which the issuer operates (in accordance with International Accounting Standard 1.135(a)(ii)). For example, the Office of the Superintendent of Financial Institutions (“OSFI”) requires life insurance companies and insurance holding companies to maintain a specific Life Insurance Capital Adequacy Test (“LICAT”) ratio. The LICAT ratio is not law but is the tool used by OSFI to ensure companies are complying with capital requirements that are law. Based on Annex C of the proposed companion policy, it appears that the ratio would meet the definition of a Capital Management Measure under Section 7. However, we believe that this LICAT and other required capital management ratios should be out of scope of the Proposed Instrument.

External regulators require these ratios to be publicly disclosed at least annually. Most public life insurance companies have chosen to include this type of ratio disclosure within their financial statements and/or Management Discussion and Analysis (“MD&A”). Including the ratios of Lifeco’s insurance subsidiaries in Lifeco’s public documents benefits Lifeco’s shareholders by providing a more complete picture of Lifeco’s financial performance. However, these metrics are complicated and cannot be succinctly explained or reconciled back to a GAAP measure. Accordingly, providing a quantitative reconciliation for metrics such as LICAT and Risk Based Capital, or describing how these metrics are calculated in a way that provides a reasonable person an understanding of the metrics, would not be practical or useful for the users of a life insurer’s financial reports.

Section 7 of the Proposed Instrument should exclude all segment measures that are presented or disclosed in the financial statements

We agree that the concept of segment measures introduced in the Proposed Instrument should only apply to segment measures that are not disclosed in the notes to the financial statements. Segment financial measures that are disclosed in the notes to the financial statements must follow the requirements under International Financial Reporting Standards (“IFRS”), which includes the reconciliation requirements under IFRS 8.28. Including these measures in the Proposed Instrument would increase reporting costs to issuers without adding significant benefits to investors.

To clarify the Proposed Instrument, we suggest a revision to exclude any segment measures disclosed in a publicly available document that are also disclosed in the financial statements. These measures are disclosed in the financial statements under a reporting framework that

contains requirements on how they are calculated and presented, which would satisfy the requirements under the Proposed Instrument.

Controls over non-GAAP financial information are necessary but should not be subject to external audit requirements

We agree with the absence of external audit requirements for the control framework issuers will have in place for the financial measures in scope of the Proposed Instrument. National Instrument 52-109 requirements in place provide for a solid control framework, imposing external audit requirements would result in additional costs to issuers without providing significant benefits to users of the information.

Distinction between “presented” and “disclosed” in the financial statements is unnecessary

The Proposed Instrument currently makes a distinction between financial measures that are “presented” and “disclosed” in the financial statements. We believe that this distinction is not necessary as both items are integral to the financial statements and subject to external audit. As such, we suggest revising the Proposed Instrument to remove this distinction.

Responses to Consultation Questions

Question 1

Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

We believe that financial measures that are required to be disclosed by a regulatory agency, either within Canada or a foreign jurisdiction in which issuers may operate, should not be included in the Proposed Instrument. These types of non-GAAP and other financial measures have guidelines as to how they are calculated and disclosed but are not always made pursuant to a specific law. Currently, these financial measures appear to meet the definition of either a non-GAAP financial measure or other financial measures in the Proposed Instrument. However, we believe they should be excluded.

One example of a financial measure required by a regulatory agency is the LICAT ratio. LICAT is a regulatory capital adequacy measurement for life insurance companies. LICAT was established by OSFI and is the tool used to assess if a company maintains adequate capital, as defined by law. LICAT is disclosed in the notes to the financial statements, along with other documents, and OSFI has provided public disclosure requirements. Based on Annex C of the proposed companion policy, LICAT would meet the definition of a Capital Management Measure under Section 7. However, we believe that the ratio should be out of scope of the Proposed instrument due to the following reasons:

- the disclosure of the ratio in the financial statements is required under OSFI guidelines
- the ratio is calculated and disclosed by all life insurance companies under OSFI guidelines, and
- the ratio disclosed in the financial statements is an audited financial measure

Question 2

Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

We do not believe there are any specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors.

Question 3

Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

Except for items noted elsewhere in our comment letter, we do not believe there is specific content in the Proposed Companion policy that is unclear or inconsistent with the Proposed Instrument.

Question 4

Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We have no comments on the proposed exemption for SEC foreign issuers.

Question 5

Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

Lifeco agrees that the exclusion of oral statements from the requirements contained in the Proposed Instrument is appropriate. Executive officers of an issuer should have the flexibility to discuss, openly and honestly, the performance of the issuer with investors in understandable and relatable terms. These discussions typically include impromptu comments which would make it difficult for an executive officer to provide the level of disclosure required by the Proposed Instrument. Including oral statements in the Proposed Instrument would, in our view, limit the flexibility and openness of such discussions to the detriment of investors and may discourage these types of discussions.

Question 6

Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

Lifeco believes that, to remain accessible to all investors, it is not appropriate to apply each of the disclosure requirements outlined in Part 2 of the Proposed Instrument to every document made available to the public. Lifeco suggests revisions to the Proposed Instrument that would allow for the requirements under section 3(d)(iii) and 3(d)(iv) of Part 2 to be incorporated by reference to other documents filed under an issuer's SEDAR profile. This would follow what is currently permitted under National Instrument 51-102 – *Continuous Disclosure Obligations*.

In such a scenario, an issuer's interim or annual MD&A could satisfy the disclosure requirements outlined in Part 2 of the Proposed Instrument while the issuer's news release that accompanies the release of results would incorporate such disclosure requirements by reference to the MD&A. This would allow news releases to remain concise, accessible and understandable to all investors while also providing investors with the ability to better analyze financial measures within an industry or among different industries.

Summary

Lifeco supports the efforts by the CSA to provide clear and formalized requirements regarding the disclosure of non-GAAP and other financial measures. However, the practical realities of communicating with investors should be considered when finalizing the Proposed Instrument. Lifeco believes that excluding oral statements from the disclosure requirements contained in the Proposed Instrument would provide executive officers of an Issuer with the flexibility to have open discussions with investors. To remain accessible to investors, Lifeco supports revising the Proposed Instrument to:

- (a) exclude specific capital management measures which are required by regulators to be calculated and disclosed publicly;
- (b) allow for the incorporation of the disclosure requirements by reference to other documents, such as an MD&A, in news releases;
- (c) segment measures disclosed or presented in the financial statements, along with other publicly available documents, should be excluded from the scope of the Proposed Instrument;
- (d) controls over financial measures in scope of the Proposed Instrument should not be subject to external audit requirements; and
- (e) the distinction between financial measures that are "presented" or "disclosed" should be removed from the Proposed Instrument.

We appreciate the opportunity to provide you with our comments on the Proposed Instrument and would be pleased to answer any questions that you may have about this submission. Please feel free to contact me if you wish to discuss this further or require additional information.

Yours very truly,

GREAT-WEST LIFECO INC.

Garry MacNicholas, Executive Vice-President and Chief Financial Officer



INPLAY OIL

INCLUDES COMMENT LETTERS

December 5, 2018

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 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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consultation-en-cours@lautorite.qc.ca

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: Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure and the related proposed Companion Policy, Consequential Amendments and Changes

InPlay Oil Corp. (“InPlay”, “we” or the “Company”) is pleased to provide its comments on the:

- Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure;
- Proposed Companion Policy 51-112 Non-GAAP and Other Financial Measures Disclosure; and
- Related proposed consequential amendments/changes,

collectively referred to as “Rule 52-112” or the “Proposed Materials” throughout this letter.

**Overall Comments**

The Company generally supports the Canadian Securities Administrators' ("CSA") efforts to better define and clarify the disclosure requirements surrounding non-GAAP financial measures and other financial measures, understanding as a principal component, however, that the CSA's mandate is not to in effect prohibit or otherwise limit a reporting issuer's ability to disclose non-GAAP financial measures as part of Rule 52-112.

By way of context, we are a junior public issuer involved in the oil and gas sector and rely heavily upon the support of both institutional and retail investors, along with market participants, many of which rely upon our provision of non-GAAP measures.

Within the *CSA Notice and Request for Comment* dated September 6, 2018 ("Request for Comment"), it is stated that "in some cases, non-GAAP and other financial measures are helpful to investors to assess an issuer's performance". We specifically want to emphasize the importance of non-GAAP and other financial measures to investors. Throughout the Company's regular and ongoing communications with current and potential investors, we continue to see various non-GAAP measures being requested from us and utilized extensively by such investors in their assessment of our Company and our results of operations. Current shareholders, existing and potential investors (both retail and institutional) and analysts utilize non-GAAP measures to assist in their evaluation of the Company's performance and in making their investment decisions. As such, we cannot over-emphasize the usefulness and relevance of such measures to both our and our peers' investment community. Moreover, we respectfully submit that it should not be necessary to satisfy any form of objective test as to whether the measure being used is "useful" or relevant as only the user can address that question. We submit that if the purpose of providing the measures stated, the reader can judge the usefulness.

The Company is also concerned about the possible inability to cross reference from one public document to required reconciliations and other detail disclosed in another public filing available on SEDAR. The Company is of the opinion cross referencing is an efficient and effective approach to avoid having significantly longer, duplicative and more costly and burdensome disclosure documents while still providing sufficient and compliant disclosure to investors by way of cross referencing. The added cost could be particularly significant to issuers of our size.

In summary the Company feels that any outright restriction on the disclosure of non-GAAP and other financial measures would negatively impact our ability to convey important financial and operational performance metrics that our shareholders and investment community demand, regularly relies upon and has become familiar with. We support the recommendation the CSA has proposed requiring additional reconciliations to GAAP measures and its efforts to clarify with greater detail the disclosure requirements accommodating all non-GAAP measures so long as non-GAAP measures can continue to be utilized and disclosed by issuers.

Yours very truly,

InPlay Oil Corp.

(signed) "Douglas J. Bartole" _____

Douglas J. Bartole
President and Chief Executive Officer

(signed) "Darren Dittmer" _____

Darren Dittmer
Chief Financial Officer



December 5, 2018

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
 Superintendent of Securities, Northwest Territories
 Superintendent of Securities, Yukon
 Superintendent of Securities, Nunavut

To the attention of:

The Secretary
 Ontario Securities Commission
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**CANADIAN SECURITIES ADMINISTRATORS NOTICE AND REQUEST FOR COMMENT –
 PROPOSED NATIONAL INSTRUMENT 52-112, NON-GAAP AND OTHER FINANCIAL MEASURES
 DISCLOSURE**

This letter is submitted on behalf of the Institute of Corporate Directors (“ICD”) in response to the invitation to comment on the CSA’s Proposed National Instrument 52-112, *Non-GAAP and other Financial Measures Disclosure*.

Overview

We thank the Canadian Securities Administrators for the opportunity to comment on this proposal.

The ICD is broadly supportive of the direction taken by the CSA. We note that many of our members already adhere to the guidance provided by CSA Staff Notice 52-306 (Revised) Non-GAAP Financial



Measures (SN 52-306). As such, we do not anticipate that the requirements in the Proposed National Instrument will significantly alter current practices or present undue burden.

Our comments below offer the perspective of directors, particularly audit committee members, charged with the oversight and disclosure of financial reporting. These are intended to be accretive to the Proposed National Instrument.

Bringing more clarity to Non-GAAP Reporting

The guidance provided in CSA Staff Notice 52-306, largely codified through this Proposed Instrument, provides issuers with a “road map” for disclosing their non-GAAP financial measures. Importantly, this proposal will also better align Canadian practices with those in the United States.

This, however, is not the only non-GAAP roadmap in Canada as there are other oversight bodies, including the Accounting Standards Board (AcSB), working to provide issuers and users more clarity around the correct use of these measures.

In most cases, issuers use non-GAAP measures to better explain their financial position. For their part, users turn to non-GAAP measures to better understand a company’s future prospects. While we do not advocate standardizing non-GAAP measures, we do believe the more our markets can achieve common understandings relative to what is disclosed, the fairer and more functional they will become.

While we understand that the Proposed National Instrument is intended only to regulate non-GAAP financial measures, we would encourage the CSA to work closely with other standards-setters and, potentially, industry associations, to continue bringing additional clarity to other non-GAAP measures in addition to non-GAAP financial measures.

Core documents vs. shorter documents

While we agree that non-GAAP measures should be clearly identified in core documents and should not be given more prominence than the most directly comparable IFRS measure, we would recommend that the CSA consider issuers’ obligations with respect to different types of documents.

Simply put, the type of document should matter – press releases, social media, IR materials and other shorter documents should not be considered equal to substantive filings such as the Annual Information Form (AIF), MD&A, financial statements and prospectuses.

If there is appropriate disclosure in core documents, then an issuer should be allowed to discuss non-GAAP measures in press releases, etc. without the full explanation as long as the core document is referenced in the document.

Further, it is unclear why cross-referencing would not be allowed in the National Instrument when the appropriate disclosure has already been made once in a core document.

Only a small number of skilled users will read and interpret non-GAAP financial measures and this audience will read them in the core documents. We believe, therefore, that it would be an unnecessary burden to require full disclosure by issuers in each subsequent document.



Institute of Corporate Directors
Institut des administrateurs de sociétés

In addition, audit committees may be better able to execute their key role if the definitions of non-GAAP measures are limited to the core documents. Audit committees may have difficulty maintaining effective oversight if the number of documents requiring disclosure and definition increases and/or are issued too frequently. In this regard, there is less chance for confusion if a commonly-agreed definition of a non-GAAP measure is set within a core document and is referred to in shorter documents.

Primary financial statements

We recommend that the regulators clarify the definition of “primary financial statements” as described in the proposal. Specifically, we recommend that it be made more clear that the notes to the financial statements, where segment information is usually contained, are included in this definition.

Related to this, we would ask the regulators to consider whether a quantitative reconciliation of all segment information to information provided in the notes may prove complicated and burdensome. Further, we would ask the regulators to consider whether disclosing all such information risks revealing competitive information.

Once again, we thank the CSA for the opportunity to provide our comments.

Yours Truly,

Rahul K. Bhardwaj, LL.B, ICD.D
President and CEO
Institute of Corporate Directors

About the ICD

The ICD is a not-for-profit, member based association with more than 13,500 members and eleven chapters across Canada. ICD members across all sectors of the economy oversee well in excess of \$1-trillion in market capitalization and institutions that impact the lives of virtually every Canadian. Our purpose is to improve trust and confidence in Canadian organizations by developing and activating directors.



VIA EMAIL

December 5, 2018

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

Attention:

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**Re: Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosures*
Proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosures***

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 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 \$15 billion. The quality of our financial disclosure is fundamental to us, as evidenced by the financial reporting awards we have recently received, including an honourable mention in Financial Reporting from CPA Canada (2016), as well as an award for Best Financial Reporting from IR Magazine (2018).

Our experience has shown that often times non-GAAP financial measures respond better to investor needs than GAAP financial measures do. We believe that non-GAAP financial measures represent an important aspect of analysts' valuations. We are concerned that the Proposed NI will result in unnecessarily heavy disclosure that will dilute key messages and potentially confuse investors. In addition, in our view some elements of the Proposed NI are in contradiction with 'disclosure effectiveness' principles, which have been supported and promoted in recent years by Canadian and U.S. standard setters.

We understand the importance of complete and transparent disclosures given the challenge of comparability from one company to the other. However, the Proposed NI could discourage the use of non-GAAP financial measures given the wide scope of application (all public documents) and the level of disclosure required, especially when it comes to first-time disclosure in each document.

Our letter includes specific comments, including examples and opportunities, which in our view will help improve the Proposed NI into a more principle-based framework and align it with disclosure effectiveness principles.

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. Rule-based instrument

Related extract from Proposed NI

- *This Instrument applies to any non-GAAP financial measure, segment measure, capital management measure or supplementary financial measure that an issuer discloses in a document and that is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction, whether or not filed under securities legislation, unless the issuer discloses a specific financial measure in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada.*

The Proposed NI is a rule-based instrument, very much aligned with the prescriptive SEC Regulation G. No concept of materiality has been applied.

Judgement is required when selecting, using and disclosing non-GAAP financial measures. As such, we believe that a principle-based instrument similar to the current Staff Notice 52-306 (Revised) - *Non-GAAP financial measures*, including best practices surrounding the selection, labelling, use and disclosure of non-GAAP financial measures and other performance measures, would be more appropriate in Canada.

2. Scope of the Proposed NI

Related extract from Proposed NI

- *This Instrument applies to any non-GAAP financial measure, segment measure, capital management measure or supplementary financial measure that an issuer discloses in a document and that is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction, whether or not filed under securities legislation, unless the issuer discloses a specific financial measure in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada.*

We believe that the scope of the Proposed NI is overly broad and that it should only apply to the company's documents filed on SEDAR and other documents available on its website.

| Subject | Questions/Clarifications |
|---------------------|--|
| <p>Scope</p> | <ul style="list-style-type: none"> • Should the Proposed NI apply to all public documents (including those that are not required filings) or only those filed on SEDAR? • What do we mean by “that is intended to be, or reasonably likely to be, made available to the public”? <ul style="list-style-type: none"> ▪ Documents available on a company website (including those filed on SEDAR) that include a non-GAAP financial measure? ▪ Which other documents should be covered by the Proposed NI? • Clarification required (example): <ul style="list-style-type: none"> ▪ CEO of a company gives a presentation or conference to businesspeople and presents slides (financial highlights), which include non-GAAP financial measures. The document is not distributed. What are the company’s obligations? Do they change if the document is distributed to the group but not posted on the company’s website? |

3. Equal or greater prominence of GAAP financial measures over Non-GAAP financial measures

Related extracts from Proposed NI

- *Non-GAAP financial measure is presented with no more prominence in the document than the most directly comparable financial measure presented in the primary financial statements*
 - *Determining whether a non-GAAP financial measure is presented with no more prominence is a matter of judgment, taking into account the overall disclosure and the facts and circumstances in which the disclosure is made.*
 - *We expect that presentation of a non-GAAP financial measure would not in any way confuse or obscure the presentation of financial measures presented in accordance with the financial reporting framework used in the preparation of the issuer's financial statements.*
 - ***The following are examples that we view as causing a non-GAAP financial measure to be more prominent than the most directly comparable measure presented or disclosed in the financial statements:***
 - *Omitting the most directly comparable measure from a press 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 or larger font) that emphasizes the non-GAAP financial measure over the most directly comparable measure*
 - *Describing a non-GAAP financial measure as, for example, "record performance" or "exceptional" without at least an equally prominent descriptive characterization of the most directly comparable measure;*
 - *Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most directly comparable measures or without including the most directly comparable measures in the same table or graph.*
 - *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 directly 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 directly comparable measure contemporaneously. For example, within the previous, same or next page of the document*
- **We agree that the use of non-GAAP financial measures should not mislead the reader.**
 - **We also agree that determining whether a non-GAAP financial measure is presented with no more prominence is a matter of judgement.**
 - Investors often seek to understand the company **through the eyes of management**, which in many cases is by using non-GAAP financial measures. As such, discouraging the use of non-GAAP financial measures entirely should not be the objective of the Proposed NI. The regulation, in its proposed form, may create this unwanted result.
 - In most 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 noted that the equal or greater prominence principle is **very much aligned with the highly prescriptive SEC Regulation G**. We believe that equal or greater prominence criteria should take into account materiality. 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 criteria would unnecessarily burden disclosure.

- We have looked at the disclosure of a number of relevant U.S. peers applying the principle of equal or greater prominence as prescribed by SEC Regulation G in their MD&A and earnings press release. We found their disclosure to be very heavy and the key messages unclear given the duplication of information in the headlines, tables and graphs.

The investment community's perspective – a key consideration:

Analysts are looking for management's insights into a company's core performance, in terms of quality of earnings and performance over time. This is the **purpose of the MD&A**. The equal or greater prominence principle, as proposed and outlined (examples above) defeats that purpose.

When looking at **selected analyst reports following the earnings release of U.S. peers** (which are presumably in compliance with SEC Regulation G), we noted that non-GAAP financial measures represented an important aspect of their valuation and investment thesis - buy, hold or sell the stock.

In fact, of the sample selected, which included 7 analyst reports from 5 different investment firms, **all analysts used the non-GAAP financial measures as a critical aspect of their report:**

- Of the 7 reports selected, **all 7 analysts used non-GAAP financial measures** as the basis for their key messages, valuation and estimates.
- **Six of the seven reports** had operating/core EPS as the **very first** measure mentioned.
- Of the different financial measures mentioned in the key highlights of these reports (approximately 25 different measures), **more than 70% of them were non-GAAP financial measures.**
- Some of the analysts reported their **own measures**, based on the company's reports. Discouraging non-GAAP financial measures entirely could further encourage the use of tailored measures, which could amplify comparability and consistency issues.

In our case, the introduction of non-GAAP financial measures is often in response to a need from the investment community and is with the intent to harmonize the measures used in analysts' reports. In other words, we create these measures to respond to a need that is often not met by solely using GAAP measures, rather than to change the public's perception of our results.

If the investment community rely mainly on non-GAAP financial measures and focus less on GAAP financial measures, **why should GAAP financial measures have equal or greater prominence in documents which aim to serve the needs of these key stakeholders** (amongst others)? Our concern is that this could lead to confusion and dilution of key messages, as stated above.

Note that we do agree that **equal or greater prominence should be given to GAAP financial measures when it would be misleading not to do so**, as detailed on the next page.

A more principle-based standard, similar to the format of the current Staff Notice 52-306 (Revised) - Non-GAAP financial measures, would be more appropriate in allowing the MD&A to achieve its purpose. We strongly believe that this regulation in its proposed form is not viable and that it defeats the purpose of investor focus and disclosure effectiveness. Please see below for specific comments.

| Subject | Questions/Clarifications |
|---------------------------|--|
| No more prominence | <ul style="list-style-type: none"> • Is equal or greater prominence really intended for all instances where we present a non-GAAP financial measure? We use many Non-GAAP financial measures that are well-defined and reconciled. Applying this principle (in all its forms) would essentially mean doubling our level of disclosure whenever a non-GAAP financial measure appears. GAAP financial measures are readily available should the user wish to consult them. • The proposed requirements would unnecessarily burden disclosure, especially in situations where the conclusions drawn from a non-GAAP financial measure and a GAAP financial measure would be substantially the same due to an immaterial difference between the two. • Proposed NI is very prescriptive, which is at odds with disclosure effectiveness trends and Canada’s history of principle-based accounting standards. • Based on the above, we believe that the GAAP financial measure should have equal or greater prominence when it would be misleading not to do so. |
| Qualification | <ul style="list-style-type: none"> • It is unclear whether this statement is intended only for exceptional characterizations, or for all descriptive characterizations. <ul style="list-style-type: none"> ▪ E.g.: strong core EPS of \$1.50 and solid EPS of \$1.35....Is this the desired outcome of the Proposed NI? ▪ If the latter applies (all descriptive characterizations), we believe that the outcome would be to dilute key messages and would also defeat the purpose of the MD&A (investor focus). |

4. First-time disclosure requirement, not in line with disclosure effectiveness principles

Related extracts from Proposed NI

- *The first time the non-GAAP financial measure appears in the document, the document*
 - *subject to subsection 4(2), identifies the non-GAAP financial measure as such,*
 - *states that the non-GAAP financial measure does not have a standardized meaning under the financial reporting framework used to prepare the financial statements and may not be comparable to similar financial measures presented by other issuers,*
 - *explains how the non-GAAP financial measure provides useful information to a reasonable person and explains the additional purposes, if any, for which management uses the non-GAAP financial measure,*
 - *subject to subsection 4(3) and section 5, provides a quantitative reconciliation, to the most directly comparable financial measure presented in the primary financial statements, which reconciliation*
 - *is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items,*
 - *does not describe a reconciling item as non-recurring, infrequent or unusual when a similar loss or gain is reasonably likely to occur within the next two years or has occurred during the prior two years, and*
 - *is explained in such a way that it provides a reasonable person an understanding of each reconciling item.*

- *The information required by paragraph 3(d) 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 occurs in the document using a footnote that refers to a separate section **within the same document**. The requirements in subparagraphs 3(d)(ii), (iii), (iv) and (v) of the Instrument may then be presented in the separate section the footnote referred to.*
 - *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, we consider that issuers meet the “first time” objective by, for example, clearly identifying the measure as being a non-GAAP financial measure and providing a link to the other required disclosure.*
 - *To prevent duplicate disclosure, an issuer may provide all the required disclosures for all non-GAAP financial measures in one section of the document, and cross-reference to that section each time a non-GAAP financial measure is presented in that same document.*
- We agree that a comprehensive non-GAAP financial measures section is important for users given that these measures do not have any standardized meaning prescribed by GAAP and are unlikely to be comparable to similar measures presented by other companies.
 - However, the Proposed NI **insists** on providing the first-time disclosure requirements (which are already burdensome in and of themselves) **in the same document** which we consider to be **excessive** and will result in unnecessary duplication of information.

We feel that the Proposed NI is inconsistent with disclosure effectiveness principles. We believe that cross-references to the MD&A (or any other document filed on SEDAR that contains the first-time disclosure requirement) should be permitted and encouraged. Please refer to the table below for specific comments.

| Subject | Questions/Clarifications |
|--|--|
| <p>First-time disclosure requirement (identification)</p> | <ul style="list-style-type: none"> • The comments below refer to the first-time disclosure requirement (identification of a non-GAAP financial measure). • In theory, we agree that the first time a non-GAAP financial measure is used it should explicitly be identified as such. • Practical issue: <ul style="list-style-type: none"> ▪ It is reasonable to assume that the average reader skips to selected sections and does not read the document in a sequential order, and as such could miss the first-time disclosure requirement. ▪ As a result, we believe that the strict application of the first-time disclosure requirement may not result in the intended application to caution the reader that this is a non-GAAP financial measure. ▪ In our opinion, the most efficient way to achieve this objective would be to list all non-GAAP financial measures at the beginning of the document (Section: Non-GAAP financial measures where we caution the reader) and refer to the detailed section containing definitions, usefulness and reconciliations for more information. • Practical issue: <ul style="list-style-type: none"> ▪ The strict application of the first-time disclosure requirement will result in multiple footnotes throughout the document. |

| | |
|---|---|
| | <ul style="list-style-type: none"> ▪ We believe that the company should use its judgement in applying the first-time disclosure requirement (identification) – in places of prominence (ex: table of financial highlights), regardless of the page number on which the non-GAAP financial measure first appears (ex: highlight bullets). |
| <p>First-time disclosure requirement (definitions, usefulness and reconciliations)</p> | <ul style="list-style-type: none"> • The comments below refer to the first-time disclosure requirement, including definitions, usefulness and reconciliations of non-GAAP financial measures to the corresponding GAAP financial measures (referred to as Appendix). • Is this requirement intended for all financial reports issued publicly that contain non-GAAP financial measures? Applying this principle would mean adding an Appendix (5-6 pages) to each document that contains a non-GAAP measure, which is inconsistent with disclosure effectiveness principles. <ul style="list-style-type: none"> ▪ Based on our understanding, a company’s one-page Quick facts tear sheet containing at least one non-GAAP financial measure would need to be accompanied by the Appendix on non-GAAP financial measures. Currently, our Quick facts refer to the MD&A for definitions and reconciliations of non-GAAP financial measures. We believe that a cross reference is adequate, and we do not understand why the first-time disclosure requirement (Appendix) must appear in each document. • As a result, we believe the following to be an acceptable alternative that is in line with disclosure effectiveness principles. <ul style="list-style-type: none"> ▪ Appendix included in one document filed on SEDAR (ideally the MD&A, which complements the financial statements and already includes the non-GAAP financial measures information) or in a separate document (Appendix: Non-GAAP financial measures) filed on SEDAR. Any document under the scope of the Proposed NI that contains non-GAAP financial measures would include a cross-reference to the SEDAR document that contains the required disclosure to avoid repetition and duplication. • Ideally, this Appendix should also be made available on the company website for easy access. |

5. Overall clarity of the Proposed NI

We find that the Proposed NI could use more ‘plain language’. The current structure (sentences and cross-references) can make the instrument difficult to read and unclear in certain areas. *Refer to Question 3 for more details.*

Specific comments to improve overall clarity

- **Simplify the wording** and use plain English:
 - Short and affirmative sentences are easier to understand.
 - Examples of recommended/ prohibited disclosures.
 - Summary of requirements presented in tabular format (Annex C is a good example).
- **Reduce the number of cross-references** where possible.
- **Webinars and interpretation guidance** should be considered.

RESPONSE TO SPECIFIC QUESTIONS

1. Question: Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should (or should not) be captured?

We **do not believe** that the proposed disclosure should apply to:

- a disaggregation of a non-GAAP financial measure, which currently seems to fall under the scope of this Proposed NI (*refer to Response 3a hereafter*); and
- capital measures presented in the notes to the financial statements, or in accordance with the specifications of another regulator (*refer to Response 3d hereafter*).

2. Question: Are there any specific disclosures not considered in the proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors?

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. **Disclosure effectiveness principles** should also guide how to best disclose the information.

Please also refer to the Section Overall comments.

3. Question: Is specific content in the Proposed Companion policy unclear or inconsistent with the Proposed Instrument?

Yes; please refer to our comments hereafter.

a. Disaggregation of a non-GAAP financial measure

Related extracts from Proposed NI

“non-GAAP financial measure” means

- *(a) a financial measure of financial performance, financial position or cash flow that is not disclosed or presented in the financial statements and that is not a disaggregation, calculated in accordance with the accounting policies used to prepare the financial statements, of a line item presented in the primary financial statements, or*
- *(b) a financial outlook for which no equivalent financial measure is presented in the primary financial statements.*

Specific comments

- Based on the definition of non-GAAP financial measure contained in the Proposed NI it is unclear if a disaggregation of a non-GAAP financial measure also meets the definition of a non-GAAP financial measure and thus must comply with all the requirements.
- It is our opinion that a disaggregation of a non-GAAP financial measure should not be subject to the disclosure requirements included in the Proposed NI as it would be unnecessarily burdensome and, in many cases, very difficult to achieve as an issuer may not present the equivalent disaggregated GAAP financial measure in the financial statements.
- We believe that the Proposed NI should permit reconciliation of a non-GAAP financial measure to an item in the financial statements as a whole (including the notes to the financial statements), as the financial statements are prepared in accordance with applicable accounting principles.
- We believe that the financial statements as a whole (including the notes to the financial statements) should qualify as a GAAP source, as the notes are prepared in accordance with applicable accounting principles, and are within the scope of the annual audit.

In our opinion, disclosure requirements should only apply to the highest aggregation of a non-GAAP financial measure (see example below).

Underwriting income (core) as presented in a company’s MD&A (both on a consolidated level and by line of business) is a non-GAAP measure, as it excludes certain elements which are not representative of the company’s core performance. The underwriting income (core) at the consolidated level is reconciled with the financial statements, in compliance with the requirements. However, the company may not present underwriting income by line of business in the financial statements, rendering it difficult to provide reconciliations to the Financial Statements for each line of business.

Proposed example for reconciliation of a disaggregated item:

| Core underwriting income | 201X |
|--|-------------|
| <i>Line of business A</i> | 10 |
| <i>Line of business B</i> | 20 |
| <i>Line of business C</i> | 30 |
| Consolidated core underwriting income (Non-GAAP) | 60 |
| <i>Reconciling item 1</i> | (10) |
| <i>Reconciling item 2</i> | 15 |
| Underwriting income (as per financial statements) | 65 |

b. Full statement of profit or loss of non-GAAP financial measures

Related extract from Proposed NI

- *Presenting a full statement of profit or loss and other comprehensive income of non-GAAP financial measures without presenting it in the form of a reconciliation of each non-GAAP financial measure to the most directly comparable measure, sometimes referred to as a single column approach;*

Specific comments

- If a table of consolidated highlights contains several non-GAAP financial measures, **which ultimately reconcile to a GAAP financial measure** without presenting it in the form of a reconciliation of each non-GAAP financial measure, would this be permissible?
- See below for an example.

In our opinion, the following disclosure of profit and loss should be permissible under the Proposed NI (see example below).

| Consolidated results | 201X |
|---|-------------|
| <i>Core pre-tax income component A</i> | 10 |
| <i>Core pre-tax income component B</i> | 20 |
| <i>Core pre-tax income component C</i> | 30 |
| Core pre-tax income (Non-GAAP) | 60 |
| Non-core pre-tax income (see details in Table X) | (10) |
| Pre-tax income (GAAP) | 50 |
| Income tax expense | (5) |
| Net income (GAAP) | 45 |

c. Non-GAAP financial measures that are ratios

Related extract from Proposed NI

- Paragraph 3(b) (non-GAAP financial measure is presented with no more prominence in the document than the most directly comparable financial measure presented in the primary financial statements) does not apply if:
 - (a) the non-GAAP financial measure is a ratio, and
 - (b) the ratio is presented with no more prominence in the document than similar financial measures presented in the primary financial statements.

Specific comments

- Based on the above extract, it is unclear as to whether a non-GAAP financial ratio, e.g. Core EPS, can be presented in the MD&A without presenting the GAAP financial measure (EPS) in the MD&A, if the GAAP financial measure (EPS) is presented with similar prominence in the primary financial statements.

We seek clarification on this item, as we interpret it to mean that if Core EPS is presented with no more prominence in the MD&A than EPS is presented in the financial statements, then the prominence requirements do not apply.

d. Definition of a capital management measure

Related extract from Proposed NI

- “Capital management measure” means a financial measure that is disclosed in the notes to the financial statements to enable users of financial statements to evaluate the issuer’s objectives, policies and processes for managing capital;
- This section applies to a capital management measure that
 - a) is disclosed in a document other than the financial statements, and
 - b) is not
 - (i) a total, subtotal or line item presented in the **primary** financial statements, or
 - (ii) a disaggregation, calculated in accordance with the accounting policies used to prepare the financial statements, of a line item presented in the primary financial statements.

Specific comments

- Requirements in Section 7 (capital management measures) apply to a capital management measure that ‘is not a total, subtotal or line item presented in the primary financial statements’.
- This would imply that all capital management measures are subject to the disclosure requirements, since, by definition, capital management measures are not presented in the primary financial statements, but rather in the notes to the financial statements.
- The requirements in Section 7 seem excessive given that all disclosure requirements proposed are already included in the notes to the financial statements, thereby creating duplicate disclosure.

We believe that if a capital management measure is presented within the financial statements (including the notes to the financial statements), and that measure is calculated in accordance with applicable accounting policies or within the specifications of another regulator, it should not qualify as a non-GAAP financial measure.

e. **Primary financial statements and notes to the financial statements**

Related extract from Proposed NI

- *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.*
- *subject to subsection 4(3) and section 5, provides a quantitative reconciliation, to the most directly comparable financial measure presented in the primary financial statements, which reconciliation...*

Specific comments

- Throughout the Proposed NI, the distinction is made between primary financial statements and notes to the financial statements, for instance by **only allowing reconciliations to the most directly comparable financial measure presented in the primary financial statements.**

In our opinion, the financial statements as a whole should be considered as a reliable source of GAAP financial measures, as they are prepared in accordance with applicable accounting principles.

4. Is the proposed exemption for SEC foreign issuers appropriate?

Yes, as they currently comply with SEC Regulation G which is extensive in scope.

5. Question: Is the proposed exclusion of oral statements to the application appropriate?

Yes. It would be very difficult, indeed nearly impossible, to apply these requirements to oral statements made by management.

6. Question: Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available?

As mentioned in the General Comments Section, we believe that the scope of the Proposed NI is overly broad and that it should only apply to the company's documents filed on SEDAR and other documents available on its website.

OTHER COMMENTS

1. Labelling

Related extract from Proposed NI

- 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.
- *The following are a few examples which we consider would not be in compliance with the labelling requirement in paragraph 3(a) of the Instrument:*
 - *Labels that cause confusion with amounts prepared in accordance with the financial reporting framework used in the preparation of the issuer's financial statements. Using terms or labels which are the same as, or confusingly similar to, those normally used under the financial reporting framework is misleading. 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.*

We agree that proper labelling of non-GAAP financial measures is important to avoid potential confusion with similar measures presented in the financial statements.

Specific comments

- We believe that **adding "core" or "adjusted" in front of each non-GAAP financial measure that is entity-specific** is a very effective way to signal to readers that the measure is an **adjustment** to a GAAP financial measure and that it may not be comparable across entities.
- This labeling also makes it **easy for the users to understand what the most comparable GAAP financial measure is**. Example: Core EPS (non-GAAP financial measure) vs EPS (GAAP financial measure).
- It could also be useful to lay out the **best practices for nomenclature of terms**. Many companies use the same terms (adjusted, core, operating, etc.) to mean different things and a general set of 'best practices' could prove useful, especially to smaller organizations. For instance:
 - Guidelines could lay out that 'adjusted' should be for one-off items, or that 'core/operating' could be for revenue streams that the organization considers as key.
 - Return on Equity (ROE) should be labelled as such only if calculated based on the last twelve months (to remove quarterly seasonality); otherwise, it should be labelled as Annualized ROE.
 - Consider setting an official reference guide of **preferred definitions** for commonly used measures such as ROE, book value per share, dividend yield, dividend payout ratio, debt-to-total capital, etc.

2. Reconciliation of a non-GAAP financial measures

Related extract from Proposed NI

- *Where a reconciling item is **not extracted directly from the issuer's primary financial statements**, but is a component of a line item in the issuer's primary financial statements or originates from outside the primary financial statements, the reconciliation should:*
 - *explain how the figure is calculated;*
 - *include a description of the line item of the primary financial statements where the reconciling item originates, if any; and*
 - *discuss significant judgments and estimates, if any, that management has made in developing the reconciling items used in the reconciliation.*

We find the above disclosure excessive. We believe that no additional disclosure should be required for a reconciling item that is disclosed in the financial statements (including the notes to the financial statements) and thus calculated according to applicable accounting principles.

Related extract from Proposed NI

An issuer should disclose any income tax effects of its non-GAAP financial measure depending on the nature of that measure. However, adjustments to arrive at the non-GAAP financial measure should not be presented "net of tax" but should be shown as a separate adjustment and clearly explained.

We believe that it should be permissible to present reconciling items net of taxes, where both the GAAP and non-GAAP financial measures are presented net of tax (e.g.: reconciling items between Adjusted EPS and EPS should be presented net of tax, as both these items are net of tax).



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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Corporate Secretary
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consultation-en-cours@lautorite.qc.ca

Re: Inter Pipeline Ltd. – Canadian Securities Administrators ("CSA") Notice and Request for Comment (the "CSA Notice and Request for Comment") on Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* and Proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (together, "Proposed NI 52-112")

We are a major petroleum transportation, natural gas liquids processing, and bulk liquid storage business based in Calgary, Alberta, Canada and own and operate energy infrastructure assets in western Canada and Europe. We are a member of the S&P/TSX 60 Index and our common shares trade on the Toronto Stock Exchange under the symbol IPL.

This letter contains our responses to the specific questions outlined in the CSA Notice and Request for Comment, as well as our general comments on Proposed NI 52-112.

Overall we are supportive of new CSA initiatives aimed at improving the comparability of issuer disclosure while understanding that there will always be inherent and necessary differences among issuers and their disclosure practices. That said, we do believe that new initiatives, such as Proposed NI 52-112, should strike the appropriate balance between being useful while at the same time not unduly increasing the regulatory burden for issuers. We are not entirely convinced that the current draft of Proposed NI 52-112 strikes this necessary balance.

For the reasons more specifically described below, it is our view that Proposed NI 52-112 as presently drafted would not only increase the time and cost for issuers to prepare disclosure documents, but it may also have the unintended consequences of potentially confusing or misleading investors due to the sheer size and complexity of the required disclosures and reconciliations contained therein.

By way of analogy at a high level, in our view, one of the primary reasons that financial statements and the notes thereto are difficult for the vast majority of users to navigate and understand is simply a result of the volume and complexity of the required disclosures under IFRS. Proposed NI 52-112 will be no different than IFRS in this respect by adding to this ever growing volume and complexity of disclosure. To state more plainly, we believe that the current draft of Proposed NI 52-112 will be of limited benefit to users and may not achieve the CSA's recently published objectives of reducing the regulatory burden for issuers, eliminating duplication of disclosure and enhancing the comparability of issuer disclosure in the marketplace.

In order to limit the volume and complexity of disclosure in a number of disclosure documents (i.e. press releases, investor presentations, website materials, social media or other investor relations type disclosure materials) and to lessen the regulatory burden for issuers, we would recommend that issuers be permitted to simply make a cross referencing statement in such documents to a continuous disclosure document containing the required non-GAAP disclosure and reconciliations (i.e. an MD&A or financial statements) which has been previously filed by the issuer on SEDAR.

1. Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

As a general comment, having multiple subsets of "financial measures" imbedded within the definition of "non-GAAP financial measures" with separate definitions and their own disclosure requirements (i.e. "financial outlook", "capital management measure", "segment measure" and "supplemental financial measure") is cumbersome and awkward at best. We are of the view that a more simplified and concise approach to defining this term should be used. For instance, a "non-GAAP financial measure" could be defined in such a manner that is clear that it is simply a measure that solely relates to financial performance (as opposed to any kind of operational performance) which is not recognized under GAAP.

As an example, the definition of "segment measure" is too broadly defined in our view and not tied to the definition of a business segment in the financial statements under IFRS, which could create confusion.

Also by expanding non-GAAP measures to include those measures included in the notes to financial statements but not in the "primary financial statements" is unduly burdensome. The

notes to the financial statements are also in accordance with IFRS and are audited annually, so amounts disclosed in the notes should be reliable to utilize in other materials without additional reconciliations and disclosure.

2. Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

There are none in our view.

3. Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

We find the Proposed Companion Policy adds specifics on the Proposed Instrument which clarify what is included or not included in its application, and the expected disclosures. This additional detail is useful and will reduce confusion and inconsistency in the application of the Proposed Instrument. However, again, we feel that these requirements should only apply to those documents filed under Canadian securities laws, as the new disclosure detailed in the Proposed Companion Policy would sizeably increase the investor relations and other marketing materials, to a point where they would be difficult to navigate for the vast majority of users.

We would also suggest that it be made more clear in the Proposed Companion Policy that requirement for any reconciliation should not apply to financial metrics included in contracts such as credit facilities or similar agreements even if they are disclosed in disclosure documents on the basis that these are contractual obligations and not disclosed by an issuer for the purposes of highlighting financial results or performance.

4. Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

No, we believe that an exemption for SEC foreign issuers is not appropriate, as it could reduce comparability between peers, if certain companies are SEC foreign issuers while others are not and is arguably inconsistent with the overall purpose and intent of Proposed NI 52-112.

5. Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

Yes, we agree that it is appropriate to exclude oral statements from the application of Proposed NI 52-112. However, we do not believe that a disclosure statement should be provided by management if a written transcript is provided by the issuer. Any oral references to non-GAAP measures should be qualified by a written statement referencing such non-GAAP measures contained and reconciled in the most recently filed MD&A or financial statements.

6. Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.



We feel that the application to all documents is not appropriate. In particular, and as stated above, the application should not apply to investor relations materials otherwise they will become far too lengthy with the inclusion of the proposed new disclosures, and users of these materials will find it very difficult to find the pertinent information they require for their own purposes. We would suggest that the application be limited only to "continuous disclosure documents" required to be filed on SEDAR and that in all other cases a simple cross reference to these documents would suffice in other documents. Put another way, at the very least, if all documents were to be included in the application, cross-referencing between documents would be highly recommended to avoid repeating the same disclosure in numerous documents.

Yours truly,

INTER PIPELINE LTD.

A handwritten signature in blue ink, appearing to read "Anita Dusevic Oliva".

Anita Dusevic Oliva
Vice President, Legal

INVESTOR ADVISORY PANEL

November 20, 2018

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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consultation-en-cours@lautorite.qc.ca

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

The Investor Advisory Panel (IAP) welcomes this opportunity to provide the Canadian Securities Administrators (CSA) with our response to *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 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 Commission's policy and rule making initiatives.

The CSA currently provides guidance regarding the disclosure of non-GAAP financial measures in CSA Staff Notice 52-306 (SN 52-306). Introduced almost 15 years ago, SN 52-306 was intended to help ensure that non-GAAP financial measures disclosure did not mislead investors. While SN 52-306 has been updated several times since, issues relating to the consistency and comparability of non-GAAP financial measures in corporate disclosure materials have persisted.

The Proposed Rule represents a renewed effort by the CSA to promote more transparent and informative corporate disclosure. We support the Proposed Rule and its heightened focus on current disclosure practices surrounding non-GAAP financial measures.

We also note approvingly that the Proposed Rule, if adopted, will establish prescribed, mandatory disclosure requirements consistent with the regulatory expectations articulated in SN 52-306 but with the cogency necessary to ensure those expectations will be met.

It goes without saying that success of this initiative will depend on continued allocation of sufficient resources at the compliance review and enforcement levels. We commend the CSA for its commitment to the initiative, and we look forward to seeing that commitment translate into better outcomes for investors.

We thank you for this opportunity to comment on the Proposed Rule. Please feel free to contact us if you require any elaboration or follow-up on the contents of this letter.

Yours truly,



Neil Gross, Chair
Investor Advisory Panel



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December 4, 2018

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Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
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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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Montréal, QC H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.gc.ca

Dear Sirs/Mesdames:

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

On behalf of Keyera Corp. (“Keyera”), we appreciate the opportunity to offer our comments in response to the Notice and Request for Comment published by the Canadian Securities Administrators (“CSA”) on September 6, 2018 with respect to the following documents:

- 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”); and
- Related proposed consequential amendments or changes to other Instruments and Policies

(collectively, the “Proposed Materials”).

Keyera understands that two of the main outcomes that the CSA hopes to achieve in proposing to adopt the Proposed Materials are:

1. improvements in the quality of non-GAAP disclosure and other financial measures to support investor understanding; and
2. strengthened enforcement capabilities in the event that non-GAAP disclosure or other financial measures are determined to be misleading.

Having reviewed the Proposed Materials, we are pleased to offer the following general comments organized around these two intended outcomes.

General Comments Regarding the Quality of Non-GAAP Disclosure

Keyera shares the desire for quality disclosure, including disclosure of non-GAAP and other financial measures. We believe it is in the interests of all stakeholders in the capital markets, including issuers and investors, to ensure that financial disclosure assists readers in understanding the actual performance of the issuer and is not misleading. For the reasons discussed below, we also believe that non-GAAP and other financial measures are often an important aspect of financial disclosure in that they allow issuers to provide meaningful explanations of their financial performance in light of the nature of their business. We believe this kind of disclosure, completed in a manner consistent with the existing CSA Staff Notice 52-306 (Revised), *Non-GAAP Financial Measures* (“SN 52-306”), helps to enhance investors’ understanding of an issuer’s financial performance.

Context

Over the years, International Financial Reporting Standards (“IFRS”) have introduced increasingly complex concepts into financial statements. Contributing to this complexity is the fact that IFRS is principles-based, which creates greater opportunity for interpretation and therefore inconsistency between issuers in financial disclosure. An example of the complexity that IFRS has introduced is the inclusion of an increased number of unrealized gains and losses and other items which do not impact cash. Given the complexities of the accounting treatment of these items, it is difficult for an average reader of financial disclosure to (a) understand how these items are accounted for and (b) how these items may or may not affect the actual performance of the issuer. As a result, non-GAAP and other financial measures are important tools in assisting investors with assessing an issuer’s performance.

The current direction contained in SN 52-306 provides a straightforward framework and set of expectations. If followed by issuers, we believe SN 52-306 provides a reasonable approach to non-GAAP financial disclosure. By providing non-GAAP information in addition to the requirements of IFRS, and by reconciling these key non-GAAP measures to the most directly comparable financial measure provided in the primary financial statements, investors are provided with additional information about an entity’s performance that they may otherwise not have access to or would have to try and estimate on their own.

Concerns with the Proposed Materials

We appreciate the concerns identified by the CSA with respect to the quality of certain non-GAAP disclosures and other financial measures by some issuers. However, we believe that the approach taken in the Proposed Materials will result in further increased complexity in financial disclosure, less clarity and more confusion for investors and other readers of the disclosure. The extent of the changes from the existing SN 52-306 have a number of potential unintended consequences and are unlikely to deliver the intended outcomes. In particular:

1. The creation of various new categories of covered disclosure, each with different disclosure requirements, creates an unnecessarily high level of complexity and fails to deliver value to the reader.
2. If every measure defined as a segment measure, capital management measure, or supplementary financial measure requires additional disclosure considerations (whether complex or not), this will add unnecessary length to the disclosures, possibly making them more difficult for a reader to navigate.
 - Providing detailed and specific disclosure requirements for each type of measure becomes overly confusing, resulting in a situation where the disadvantages of the complicated information outweighs any benefit of providing such additional disclosures.
 - The Proposed Materials could also result in instances where a common measure meets the definition of a non-GAAP measure for certain entities but does not for other entities.

3. Given the increased complexity contained in the Proposed Materials, issuers may be discouraged from disclosing non-GAAP and other financial measures in fear of not properly applying the overly complex disclosure regime that is being proposed. The absence of this information would be detrimental to investors because they would not get the benefit of measures that provide meaningful information on the performance of the issuer.
4. Contrary to the assumption included in the Proposed Materials, the complexity necessitated by the proposed disclosure requirements will result in ongoing increased costs for issuers to comply should they choose to disclose non-GAAP or other financial measures.
5. We accept that an issuer should be consistent in how it defines and calculates its non-GAAP and other financial measures in its various public disclosures; however, the proposed scope of application to all written disclosure is impractical and overbroad.
 - Including extensive detail and reconciliations in materials such as investor presentations, on websites or transcribed documents is simply not feasible. Furthermore, these non-core documents are meant to provide timely communication to investors on specific information, and are extracted and summarized from an issuer's core documents.
 - At a minimum, if any broader scope of application of the disclosure requirements, such as those contained in the Proposed Materials is to be pursued, it needs to be clear that incorporation by reference or referring readers to where they can find the necessary disclosures would be an accepted practice.
6. The disclosure requirements in the Proposed Materials will not result in greater comparability of non-GAAP measures between issuers or industries.
 - With IFRS being a principles-based set of accounting standards, it is not uncommon for there to be inconsistent, albeit correct, conclusions among issuers or between industries. Since non-GAAP financial measures must be reconciled to the most directly comparable measure under the issuer's GAAP, there will inherently be inconsistencies in the non-GAAP measures between issuers based on the issuer-specific inputs in the reconciling items.

General Comments on the Enforceability of Non-GAAP Measure Disclosure

Keyera understands the concerns that have been raised with respect to the inappropriate use of non-GAAP measures that does not follow the guidance in SN 52-306 and also understands the frustration that the CSA has expressed with respect to some issuers who fail to follow SN 52-306. Conceptually, given the importance and prevalence of non-GAAP measures, we can see the merit in having requirements similar to those in SN 52-306 incorporated into a National Instrument rather than a Staff Notice. Such an approach would allow securities regulators to hold those issuers who fail to comply with the requirements accountable, which we believe is more likely to achieve the intended outcomes.

However, we do not believe the Proposed Materials, as currently drafted, are an appropriate replacement for SN 52-306.

Concluding Remarks

Keyera agrees that non-GAAP measures and other financial information provided to investors should assist the reader in understanding the issuer's financial performance and should not be misleading. We believe that the disclosure likely to result from the application of the Proposed Materials would result in: overly complex disclosures that detract from a reader's ability to understand an issuer's financial performance rather than improve it; the need for overly complex analysis and associated costs by issuers in order to try to comply with the disclosure requirements; and a potential reduction in the disclosure of meaningful non-GAAP and other financial measures that are meaningful and useful for investors. Finally, while there may be merit in having the expectations articulated in SN 52-306 further formalized into a National Instrument in order to provide securities regulators with the ability to take appropriate regulatory action with respect to issuers who fail to meet the requirements, the approach in the Proposed Materials is overbroad, impractical and will not serve the interests of issuers or investors. We therefore urge the CSA to revisit the approach contained in the Proposed Materials.

Keyera appreciates the opportunity to submit our comments to the CSA for consideration and looks forward to continued collaboration among the CSA, issuers, investors and other stakeholders in identifying a suitable approach to achieving the desired outcomes.

Sincerely,



Steven Kroeker
Senior Vice President, Chief Financial Officer
Keyera Corp.

About Keyera

Keyera (TSX: KEY) operates an integrated Canadian-based midstream business with extensive interconnected assets and depth of expertise in delivering midstream energy solutions. Keyera strives to provide high quality, value-added services to its customers across North America and is committed to conducting its business ethically, safely and in an environmentally and financially responsible manner. For more information about Keyera please visit www.keyera.com.



Private and Confidential

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

Via e-mail

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December 4, 2018

Dear Sirs/Mesdames:

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

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

We strongly support the CSA's objective to reduce the uncertainty regarding an issuer's disclosure obligations and improve transparency and consistency among issuers regarding disclosure of non-GAAP financial measures. We believe that formalized disclosure requirements are fundamental in providing quality financial information allowing investors to better analyze financial performance of issuers against others within or across industries.

While we support the objective of the Proposed Instrument, we are concerned that, because of the complexity of the changes and expanded scope of the Proposed Instrument, it will prove difficult to implement in a timely manner. We understand the primary reason for this project is to codify the existing CSA Staff Notice 52-306 into a rule to allow for better enforcement. We recommend this be undertaken as step one in a project.

As a further step, consideration should be given to what other changes are warranted and how other GAAP financial measures should be addressed (e.g. Segment Measures and Capital Management Measures). This would allow the CSA time to consider how their proposals interact with other initiatives, such as the Accounting Standards Board's "Draft Framework for



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

December 4, 2018

Reporting Performance Measures” and the IASB’s various projects under its headline theme “Better Communication in Financial Reporting.”¹

If the CSA nevertheless decides to continue with its comprehensive updated Proposed Instrument now, we have several significant concerns and suggestions for CSA Staff to consider in finalizing the Proposed Instrument. Our primary concern is that the structure of the Proposed Instrument is overly complicated and naming conventions are not intuitive. We believe the Proposed Instrument could be improved by:

- Using the label non-GAAP financial measures (NGFMs) only for those financial measures that include non-GAAP amounts. All GAAP based financial measures, except Segment Measures and Capital Management Measures if deemed appropriate to retain, could have a more appropriate label such as Supplementary Financial Measures or Alternative Performance Measures.
- Reducing the categories of measures from four to three or possibly two. We question whether this Proposed Instrument needs to address Segment Measures as these are already governed by IFRS 8 Operating Segments. We further question whether Capital Management Measures need to be addressed or at least whether certain disclosures with respect to Capital Management Measures already made to comply with IAS 1 Presentation of Financial Statements are required if they are already provided in the financial statements. We believe users are already suffering disclosure overload and repeating disclosures already made in the financial statements is not valuable. Further, the burden to issuers of repeating disclosures found in the financial statements should be considered. See further discussion in the Appendix – Other Matters.
- Excluding the topic of forecasts from this Proposed Instrument and addressing it in NI 51-102 where other guidance on forward looking information resides.
- For clarity and ease of use for preparers, drafting the requirements for NGFMs that are amounts and NGFMs that are ratios separately rather than on an exception basis for ratios.

We have also included in the Appendix – Other Matters our observations on certain other matters where comment was not specifically requested.

We believe that NGFMs are an increasingly important topic and the Proposed Instrument will bring us closer to their consistent use and disclosure. Therefore it is important that the principles outlined in the Proposed Instrument be clear and unambiguous. We fear that the complex verbosity and content structure as a whole may result in unintentional inappropriate application of the well-meaning guidelines. We believe that without appropriate lead time for investor education there will be challenges in the appropriate implementation of the Proposed Instrument and request that this be considered in selecting the effective date.

¹ In its *Primary Financial Statements* project, the IASB is developing targeted improvements to the structure and content of the primary financial statements, with a focus on the statement(s) of financial performance. A due process document is expected in the second half of 2019.



Comment Letter on Proposed National Instrument 52-112 Non GAAP and Other Financial Measures Disclosure
December 4, 2018

Please contact Laura Moschitto (416 777 8068) if you wish to discuss any of the issues raised in this letter.

Yours sincerely,

A handwritten signature in black ink that reads "KPMG LLP" with a horizontal line underneath.

Brad Owen
Partner

Laura Moschitto
Partner

Appendix – Responses to questions posed in the Proposed National Instrument 52-112

Q1: Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

The term non-GAAP financial measures is applied too broadly

- ***It should not be applied to combinations of line items in the primary financial statements***
- ***It should not be applied to amounts comprised of GAAP amounts as this creates user confusion and may be contributing to issuers re-arranging or adding line items in their financial statement presentation***

We support the CSA's objective to develop an enforcement tool to regulate the use of non-GAAP financial measures (NGFMs). We believe that guidance in this area is useful given the prevalence of NGFMs used by issuers. However, we are concerned that the proposed definition of a NGFM is too broad, thereby capturing certain financial measures that we believe should not be captured.

Section 1, definition of a non-GAAP financial measure, of the Proposed Companion Policy states:

Disaggregation of subtotals and totals presented in the primary financial statements are captured by the definition of non-GAAP financial measures. For example, if EBITDA is not presented in the primary financial statements, it would be inappropriate to conclude that it is not a non-GAAP financial measure on the basis that it is a disaggregation of profit as presented in the statement of profit or loss. Likewise, a measure calculated by combining numbers disaggregated from different line items would also meet the definition of a non-GAAP financial measure, unless that measure is separately disclosed in the notes to the financial statements, for example, when expenses in the statement of profit and loss are presented by function and then also presented by nature in the notes to the financial statements.

We disagree with the proposal that financial measures that represent disaggregation of subtotals or totals in the primary financial statements or that are combinations of line items in the primary financial statements should be labelled as a NGFM as the basis of these amounts **is** GAAP. We believe for a financial measure to be labelled a NGFM it must contain an amount or measure not calculated in accordance with the accounting policies used to prepare the financial statements (e.g. adjustments to report on a cash basis or eliminate the effects of currency movements, ratios using non-financial measures such as revenue per user or revenue per square foot).

Users are confused to see an amount such as Working Capital or EBITDA labelled as NGFMs when comprised entirely of GAAP numbers. Confusion also results because issuer A may elect to present their GAAP financial statements in a way to allow the presentation of the line caption "EBITDA", while issuer B does not, and as a result a measure of the same amounts, comprising entirely of GAAP measures, is required to be labelled a NGFM by issuer B and not by issuer A. This distinction, we suggest, has in the past and may continue to encourage issuers to include unnecessary measures on the primary financial statements to avoid the labelling of them as a NGFM.

The level of aggregation, or disaggregation, in an issuer's financial statements is a matter of materiality specific to the issuer based on its facts and circumstances. Disaggregation may occur on the primary financial statements, or in the notes thereto, or not at all, depending on the specific issuer's judgment as to whether this information is material. If issuer C decides to disaggregate a GAAP line item on the primary financial statements or in the notes (because it is judged to be material information), but issuer D does not (because it is judged to obscure other material information), this should not force issuer D to label such information as NGFMs if both issuers provide the disaggregated information in their respective MD&A, for example, because it is expected by investors/analysts.

Label all measures comprised entirely of GAAP amounts in the primary financial statements, not separately disclosed in the notes thereto, as Supplementary Financial Measures or a similar name and consider appropriate disclosures

We believe that measures comprised entirely of GAAP amounts in the primary financial statements, not separately disclosed in the notes thereto, represent Supplementary Financial Measures. We note that the European Securities and Markets Authority (ESMA) refers to similar measures as Alternative Performance Measures² and we believe such a term or Supplementary Financial Measures is a more representative term of these financial measures. We would recommend that for financial measures that fall under Part 2, Item 8(a)(i) be amended to indicate that the first time the Supplementary Financial Measure appears in the document that the issuer should: a) if a disaggregation, describe how the Supplementary Financial measure is calculated and b) if a combination, provide a quantitative calculation of how the Supplementary Financial Measure was calculated and explain the purpose of the financial measure (e.g. Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) and working capital). The CSA should consider requiring issuers who have similar financial measures as sub-totals or totals beyond the minimum required under IFRS to explain, consistent with Part 2, Item 3(d)(iii), how the additional sub-totals or totals provide useful information to a reasonable person and the additional purposes, if any, for which management uses these additional sub-totals or totals as this is not presently a requirement under paragraphs 55A or 85A of IAS 1, *Presentation of Financial Statements*. In this way, issuers who provide additional combinations of line totals in the primary financial statements and those that provide the same disclosure in other documents will both be required to explain the relevance of the measures presented. If the issuer cannot explain the relevance, but has inserted additional line totals then the CSA could challenge the issuer's application of IAS 1.

Future outlooks

- **Should not be labelled a NGFM if forecasting GAAP information**
- **Should not be in the scope of this Proposed Instrument**
- **If future outlooks are to remain in the Proposed Instrument there should be consistency in categorization of historical NGFM and future-oriented NGFM for disaggregations**

We are also concerned about how the definition of NGFMs applies to financial outlooks. As proposed, a NGFM means a financial outlook for which no equivalent financial measure is presented in the primary financial statements. By way of example: if issuer A presents gross margin percentage in their primary financial statements, it follows that any discussion of future gross margins outside the financial statements is not a NGFM; but if issuer B does not present such information on the face of their financial statements it is a NGFM. As discussed above, we disagree with the requirement to label a historical financial measure or future outlook comprised of GAAP amounts a NGFM for issuer B.

We believe the requirement in Part 2, Item 5(2)(c) of the Proposed Instrument to either describe (a) the material differences between the outlook and the historical measure or (b) each of the components in the outlook would be equally relevant information to users of issuer A's or issuer B's documents. However, issuer A would provide nothing and issuer B would provide disclosures. These matters may be better addressed outside of this Proposed Instrument by including additional guidance in NI 51-102 with respect to forward looking information, and we recommend removing from the Proposed Instrument all guidance related to future outlooks.

In practice, some issuers present future outlooks on amounts that are disaggregations of line captions or amounts disclosed elsewhere in the financial statements (e.g. forecasts of segment revenue, forecasts of mortgage growth in a particular line of business where the historical measures are Supplementary Financial Measures). In these cases, the historic measure is not a NGFM, but the future measure is a

² See <https://www.esma.europa.eu/sites/default/files/library/2015/10/2015-esma-1415en.pdf>

NGFM, which makes it impossible to disclose the “equivalent historical NGFM” as required by Part 2, Item 5(2)(c). Further, it does not seem logical to turn a measure into a NGFM simply because it is forward looking when it was not a NGFM as an historic measure. For this reason, we believe financial outlooks should also scope out disaggregations similar to the historic measures from the definition of NGFMs. If this is not done, there is a risk that issuers will clutter the primary financial statements with additional line item captions to avoid the NGFM requirements related to outlooks.

Inconsistent labelling between NGFMs that are amounts versus ratios will create confusion

We believe it is inconsistent that ratios calculated using line items obtained directly from the primary financial statements are not required to be labeled as NGFMs when the financial measure is required to be labelled a NGFM. For example, if an issuer discussed the amount of working capital this would be a NGFM; however, if the same issuer discussed the working capital ratio it would not be a NGFM. We believe this will be confusing to the users of the financial statements. In each case, we believe that these represent Supplementary Financial Measures.

Current NGFM definition may inadvertently scope-out matters it intends to capture

Though the definition of a NGFM captures items we believe should not be considered a NGFM, the definition may equally fail to capture specific measures. The inclusion of “*calculated in accordance with the accounting policies used to prepare the financial statements*” within the definition of a NGFM is confusing and appears that it is a criterion of a NGFM. If read as a criterion of both NGFM and Supplementary Financial Measures, it would unduly result in the failure to capture measures within either of these definitions. For example, in accordance with GAAP an issuer accounts for an investment in an entity using the equity method. The issuer also presents an additional measure, which is calculated as the issuer’s revenue plus the issuer’s proportionate share of its investee’s revenue, in its MD&A on a periodic basis. This additional measure is not calculated in accordance with the accounting policies used to prepare the financial statements. Therefore, this does not meet the definition of a NGFM. Likewise, this does not meet the definition of a Supplementary Financial Measure as it fails to be a disaggregation of a line item presented in the primary financial statements and is not calculated in accordance with GAAP. In such instances, how should this measure be treated?

Based on our comments above, we recommend that paragraph (a) in the definition of NGFM, under section 1, be changed to the following:

- (a) *a financial measure of financial performance, financial position or cash flow that is not disclosed or presented in the financial statements and that is (i) not a disaggregation of a line item presented in the primary financial statements (ii) not a combination of line items presented in the primary financial statements, or ...”*

Disaggregation should then be separately defined under Section 1, *Definitions*, as:

disclosure in the financial statements of more granular information regarding a specific line item in the primary financial statements and calculated in accordance with the accounting policies used to prepare the financial statements

Clarity required regarding whether certain financial measures are NGFMs

We are concerned that without additional guidance in Section 1 of the Proposed Companion Policy that certain financial measures may inadvertently be captured as NGFMs. For example, certain entities use financial metrics to give a picture of transaction volume (e.g. assets under management, total financings in dollars). We recommend providing such examples in Section 1 and indicating a financial measure of financial performance is meant to capture amounts typically captured in the primary financial statements.

Q2: Are there any specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

We believe that the Proposed Instrument includes a comprehensive list of required disclosures and therefore have no additional recommendations on specific additional disclosures not already considered in the Proposed Instrument.

Q3: Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?

The Proposed Companion Policy is beneficial as it provides examples of various types of non-GAAP measures and practical guidelines. Our concerns regarding the guidance in Section 1 were discussed in our answer to Question 1.

Ratios

- **Guidance related to prominence should not apply when directly comparable measures do not exist**
- **Guidance is not sufficiently clear with respect to quantitative reconciliations**

We are concerned about some of the guidance in *Section 4 - Disclosure of non-GAAP financial measures that are ratios*. The Proposed Instrument requires that the ratio be presented with no more prominence than similar financial measures presented in the primary financial statements. However, in many cases there are no ratios presented in the primary financial statements. We believe the Proposed Instrument should be altered to state requirements for ratios presented in the primary financial statements from those not presented in the primary financial statements, as clearly any discussion of an item not presented in the primary financial statements will be done with more prominence. We believe the guidance should state that when there is no comparable ratio in the financial statement that the requirements related to prominence do not apply. If retained, we did not find the guidance that addresses this matter helpful. In particular, it states:

Many ratios do not have a directly comparable financial measure. As such, issuers should consider the disclosure of the ratio in relation to the overall disclosure of similar performance measures that have been presented in the primary financial statements. For example an issuer may calculate a debt to equity ratio (where the debt component is the total liabilities line item as presented in the statement of financial position and the equity component is the total equity line item as presented in the statement of financial position) and use this in its discussion of liquidity, however this discussion should form part of an overall discussion that should include relevant measures from the issuers primary financial statements.

In this example, both debt and equity are indicated to be the amounts presented in the primary financial statements. The issuer is advised to consider the disclosure of the ratio in relation to the overall disclosure of similar performance measures in the primary financial statements. However, given the ratio came directly from the primary financial statements we fail to see an issue with respect to prominence.

We also note for NGFMs that are ratios, the requirement to provide a quantitative reconciliation does not apply if the first time the ratio appears it (i) identifies each NGFM used to calculate the ratio and comply with section 3 for each NGFM or (ii) provides a quantitative reconciliation to the ratio as calculated using the most directly comparable financial measure presented in the primary financial statements. It would then follow that, if the ratio is gross margin calculated using sales and cost of goods sold from the primary financial statements, option (i) would not apply as there are no NGFMs used in the ratio and option (ii) would not apply as there are no comparable ratios presented in the primary financial statements. Thus, an issuer would not meet the conditions of the exemption and would be forced to apply Part 1, Item 3(d)(iv) which requires a quantitative reconciliation to the most directly comparable financial measures in the primary financial statements which is impossible to perform as previously discussed as the ratio is not

presented. We believe the Proposed Instrument needs to address situations when all the components of a ratio are from the primary financial statements. In such cases, we believe it is sufficient to simply explain how the ratio was calculated and explain how the ratio provides useful information to a reasonable person and the additional purposes, if any, for which uses the ratio, without providing a numeric reconciliation.

Future Outlooks

- **Recommend additional option for future outlooks be included in Proposed Instrument process to prepare the outlook should be either included or excluded regardless of approach to describe reconciliation**
- **Additional examples required for clarity regarding expectations**

The Proposed Instrument and Proposed Companion Policy appear inconsistent in *Subsection 5(2) – Disclosure of non-GAAP financial measures that is a financial outlook for which FOFI has not been disclosed with the financial outlook* with respect to the requirements in Part 1, Item 5(2)(c). The Proposed Companion Policy expands option Part 1, Item 5(2)(c)(ii)(B) from describe “each of the significant components of the financial outlook used in its calculation” to describe “(a) each of the significant components of the financial outlook used in its calculation or (b) a description of what was used in the calculation of the financial outlook.” We do not believe it is appropriate to provide a third option in the Companion Policy. We believe this option should be presented in the Proposed Instrument itself as it is a unique option. We are not clear why the “process followed in preparing and reviewing the financial outlook” is only relevant to option (b). We believe it either should be included for both options or excluded entirely. Finally, we believe examples of disclosure are required to add clarity to what is expected and how the disclosures would differ following these various methods.

Q4: Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We agree with the proposed exemption for SEC foreign issuers related to all documents.

However, we are concerned that the Proposed Instrument does not provide the same exemption for Canadian SEC issuers. We note that NI 51-102 does allow the filing of certain US forms in place of Canadian forms by defining certain documents broadly:

- “AIF” means a completed Form 51-102F2 *Annual Information Form* or, in the case of an SEC issuer, a completed Form 51-102F2 or an annual report or transition report under the 1934 Act on Form 10-K or Form 20-F
- “MD&A” means a completed Form 51-102F1 *Management’s Discussion & Analysis* or, in the case of an SEC issuer, a completed Form 51-102F1 or management’s discussion and analysis prepared in accordance with Item 303 of Regulation S-K under the 1934 Act.

To file those forms, Canadian SEC issuers will need to meet US securities requirements which does not align with the proposed Canadian requirements. We believe such issuers should be allowed to follow US securities requirements related to Non-GAAP measures for *all* documents. We believe it will be onerous for Canadian SEC issuers to have to comply with both sets of regulations.

Q5: Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

We agree with the proposed exclusion of oral statements to the application of the guidelines, given that it would be difficult, and at times impracticable, to satisfy the guidelines in verbal communications. The inclusion of public transcripts is appropriate and we find the Proposed Companion Policy useful as it provides operational guidelines for issuers in this respect.

Q6: Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

We agree with the proposed inclusions as it relates to documents.

Appendix – Other Matters**Segment Measures**

We believe the CSA should reconsider if any specific disclosures are required for Segment Measures that are disclosed in the notes to the financial statements. Specific considerations follow.

Eliminate reconciliation requirement or allow reference to financial statement note

Per the Proposed Instrument, if an issuer discloses in a document other than the financial statements a total of Segment Measures that is not a total, subtotal or line item presented in the primary financial statements, the document should include a quantitative reconciliation of the total Segment Measures to the most directly comparable measure presented in the primary financial statements. Since IFRS 8 *Operating Segments* paragraph 21 (c) already requires that an entity disclose the reconciliation of the total of segment revenues, assets and liabilities and other material segment items to the entity's corresponding entity amounts, we do not believe that such disclosure is necessary (i.e. it is duplication). If the CSA believes this information is important, we believe issuers should be allowed to cross reference back to the financial statements to avoid duplication.

Eliminate prominence requirement as Segment Measures are GAAP measures or allow reference to financial statement note

The Proposed Instrument requires that the measure be presented with no more prominence than the directly comparable financial measure. We believe that as these measures **are** GAAP measures, issuers should be allowed to present them without dealing with prominence concerns. However, if the CSA believes this information is important, we believe issuers should be allowed to cross reference back to the financial statements to avoid duplication.

Eliminate requirement for comparative information as this is a GAAP requirement

The Proposed Instrument requires presentation of the segment measure for the comparative period. The financial statements would already have provided such information so we believe this requirement is not necessary. Further, even without a stated requirement today, our observation is that comparable information is generally provided in the accompanying documents.

Capital Management Measures

We believe the CSA should reconsider if any specific disclosures are required for Capital Management Measures that are disclosed in the notes to the financial statements. Specific considerations follow.

Eliminate requirements that are found in GAAP or allow cross-referencing to financial statements to eliminate duplication and issuer burden

The Proposed Instrument requires that issuers explain how the Capital Management Measure provides useful information to a reasonable person and explains the additional purposes, if any, for which management uses the capital management measure. We believe the requirements in IAS 1 paragraph 135 are sufficient for users to understand the uses of the measures and ratios and do not require repeating. Further, we question whether it is necessary to explain *how* the Capital Management Measure provides useful information for instances where it is required by regulation. We believe in such situations that simply stating it is required by a regulator should suffice.

For those Capital Management Measures that appear in the document, the Proposed Instrument requires that the issuer describe how the Capital Management Measure is calculated. We support this requirement if the disclosure is not already provided in the financial statements. If the financial statements provide such disclosures we believe the issuer should be allowed to refer the reader to the financial statements to ease the burden on preparers and to eliminate redundant disclosures.

We believe the Proposed Companion Policy should provide more guidance as to the level of detail expected. For example, how much information is expected to be required in detailing debt agreements that have defined terms? What is appropriate when the Capital Management Measure is in compliance with a regulatory requirement? Certain financial institutions disclose in their financial statements capital per GAAP and then in one line take “regulatory deductions” to arrive at regulatory capital without explaining how regulatory deductions are determined. Are detailed explanations expected? Could a link to the regulatory requirements suffice?

Eliminate requirement for quantitative reconciliation

The Proposed Instrument requires that issuers provide, except where the Capital Management Measure is a ratio, a quantitative reconciliation of the measure to the most directly comparable financial measure presented in the primary financial statements. We do not believe that there is a need for a quantitative reconciliation to be provided to a measure in the financial statements. If a user understands how the calculation was determined that should be sufficient. We also observe that the vast majority of Capital Management Measures are in fact ratios and as such that this requirement would not apply to most measures being reported in practice. Further, we don’t believe reconciliation to the financial statements is useful as that is not how the measures are intended to be used.

Eliminate required statement regarding accounting policies.

The Proposed Instrument requires that issuers “state that the accounting policies used to prepare the financial statements do not specify how the Capital Management Measure is calculated.” We believe this fact is understood as there is no accounting policy in the financial statements and the requirement could be eliminated.

Eliminate requirement for comparative Capital Management Measure or allow cross reference to financial statements to avoid duplication

The Proposed Instrument requires disclosure of a comparative Capital Management Measure. We do not believe this is necessary as the comparative measures already required by GAAP is material. If the requirement is retained, we recommend allowing a cross reference to the financial statements.

Clarify how to comply with prominence requirements

The Proposed Instrument requires for Capital Management Measures that they be presented with no more prominence than the most directly comparable measure/ratio presented in the primary financial statements. However, such measures are rarely, if ever, presented on the primary financial statements as note disclosure is typical. We believe it will be rare for an issuer to be able to comply with the requirement in Part 2, Item 7(2)(a) of the Proposed Instrument as a result. For example, financial institutions have many capital measures that must be maintained; however, there are no such ratios presented in the primary financial statements and it would therefore be impossible to meet the requirement that the ratio be presented with no more prominence than the most directly comparable financial measure or similar financial measure presented in the primary financial statements.

Clarify what ‘appears in the document’ means

The Proposed Instrument requires certain disclosures when the measure ‘appears in the document’. Many entities have financial measures and ratios that are required to be maintained by a regulator (e.g. OSFI) or lenders and discuss these measures and ratios in MD&A. If an entity does not provide an actual measure, but simply lists the measures that must be complied with, it is unclear if the requirements in the Proposed Instrument apply. For example, an issuer may indicate that they must maintain working capital in excess of \$500,000 and a working capital ratio in excess of 4:1 and that they have met those requirements without actually discussing the amount of their working capital or disclosing their working

capital ratio. We believe the Proposed Companion Policy should address what is required in this situation otherwise there will be diversity in practice.

Supplementary Financial Information

For the reasons discussed under question 1, we believe the definition of Supplementary Financial Measure should be broadened to capture combinations of line captions in the primary financial statements. We recommend redefining it as follows:

Supplementary Financial Measure means a financial measure that is not disclosed or presented in the financial statements and that

- (a) Is a combination of line captions in the primary financial statements or is a disaggregation, calculated in accordance with the accounting policies used to prepare the financial statements, of a line item presented in the primary financial statements, and*
- (b) Is, or is intended to be, disclosed on a periodic basis to present an aspect of financial performance, financial position or cash flow.*

Application

Part 1, Item 2 Application states that the “first time” concept is intended to be applied to each discrete document that relates to a specific period or date. We believe this will result in unnecessary duplication. We believe issuers should be allowed to cross reference to an earlier document, in the public domain, that provided the appropriate disclosures

December 5, 2018

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

By email: comment@osc.gov.on.ca

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

Dear Secretary,

I appreciate the opportunity to provide my comments on the Proposed Draft Instrument on Non-GAAP and Other Financial Measures disclosure. My comments are as follows:

General Comments:

The Committee's proposal to clarify the criteria defining non-GAAP and other financial measures will greatly assist users and preparers in effectively deploying this interpretation in the preparation of primary financial statements and other documents. Additionally, other documents discussing current or future operations presented in the public domain would be read with a greater awareness of the distinction between information in accordance with the accounting standard framework and information not defined by it.

Specific Comments:

Question 1

Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

Response 1) The definition for non-GAAP financial measure provided in the Proposed Instrument outlines a metric as one that has not been disclosed or presented in the financial statements and that is not a disaggregation calculated in accordance with the accounting policies used to prepare financial statements or line items within primary financial statements. The Proposed Instrument notes that Section 2.3(d) (ii) requires disclosure that a non-GAAP measure does not have a standardized meaning under the financial reporting framework.

The Committee may consider requiring an expressly stated disclosure that:

- a) the non-GAAP measure discussed is not defined;
- b) is not a disclosure requirement; and

c) is outside the framework of accounting standards applied and with which the primary financial statements were prepared.

This disclosure would be followed by Section 2.3(d) (iii) stating how this information is useful, and by Section 2.3(d) (iv) providing the quantitative reconciliations as noted in the Proposed Instrument.

The Proposed Instrument states in Section 2.3 (b) that the non-GAAP financial measure should be presented with no more prominence in the document than the most directly comparable financial measure presented in the primary financial statements. While this requirement ensures that greater attention is not afforded to a non-GAAP financial measure, it has the unintended consequence of melding in seamlessly, such non-standardized metrics, with other GAAP related disclosures giving it the same level of approval or accreditation. Therefore, the Committee should consider including at each instance of a non-GAAP measure an express statement of disclaimer that the non-GAAP measure is outside the scope of the accounting standard framework and accordingly may not be comparable to other metrics bearing similar descriptions.

Question 2

Are there any specific additional disclosures not considered in the Proposed instrument that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.

Response 2) See Response 1 above.

Question 3

Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed instrument?

Response 3) The content included in the Proposed Companion Policy is consistent with the Proposed Instrument.

Question 4

Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

Response 4) The Draft Proposal does not reference the Policy Instrument for Disclosure and Other Exemptions relating to Foreign Issuers. The distinguishing factors in the accounting practices of certain foreign issuers and foreign legislative requirements would render certain accounting references inconsistent in comparison to domestic accounting practices. Accordingly, in the case of SEC foreign issuers, where primary financial statements and other documents require other financial measure disclosures, the definition of a non-GAAP financial measure may be ambiguous. However, the Committee should consider including in the Proposed Instrument a reference to NI 71-102 *Continuous*

Disclosure and Other Exemptions Relating to Foreign Issuers to support the basis of exemption for this subset of market participants.

Question 5

Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

Response 5) In determining if the Proposed Instrument should apply to oral statements, it is important to understand the intention of the speaker and its market impact on the entity's share price or the valuations of other exchange-traded instruments. Oral statements made at an earnings conference call must include finance terms that are in accordance with the accounting standard framework applied. There are some instances where non-GAAP metrics are included in earnings calls to describe improvements or accomplishments in business operations. This may underscore the notion that technology and financial milestones achieved are not adequately represented to stakeholders through the exacting application of the accounting standard framework. However, it is important to distinguish between GAAP recognized information and non-GAAP information. This can be accomplished by requiring transcripts of such oral statements to meet the requirements of the Proposed Instrument.

Question 6

Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

Response 6) Agree with the application of the Proposed Instrument to all documents. As noted in the Discussion Paper where a legislative requirement mandates the definition of a specific financial measure, any reference to non-GAAP financial measures should corroborate mandated disclosures for greater transparency in financial reporting.

If you have any questions please do not hesitate to contact me by email at lynnessadiaz@gmail.com.

Yours sincerely,

Lynessa Dias, CPA, CGA, CFA, FRM, CAIA

James D. Gallagher

Executive Vice President and General Counsel

December 5, 2018

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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Me Anne-Marie Beaudoin
Corporate Secretary
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Montréal QC H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames,

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

Manulife Financial Corporation (“Manulife”) is pleased to have the opportunity to submit comments to the Canadian Securities Administrators (CSA) on Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* and the accompanying Proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* published on September 6, 2018 (together, the “Proposed Materials”).

INCLUDES
COMMENTS
LETTERS

Manulife is a large international financial services group with principal operations in Canada, Asia and the United States. Our insurance and global wealth and asset management businesses operate in highly regulated industries and we prepare financial information under multiple accounting basis.

Manulife's common shares are listed on four stock exchanges located in Toronto, New York, Hong Kong and the Philippines. We serve a diverse international investor and analyst community. This community helps shape our corporate disclosures by telling us what type of information they would like to see and what metrics are useful for their purposes. We use a number of measures in our disclosure materials to help investors better understand and assess our business operations and financial results, including non-GAAP financial measures, supplemental information and non-financial measures. These measures support our objective to provide clear and concise disclosure that is meaningful to investors.

We are committed to the overall goal of improving the quality of information provided to investors. In the Proposed Materials, the CSA has adopted an approach of proposing comprehensive disclosure requirements rather than specific limitations or industry-specific requirements. While we are generally supportive of this approach, the Proposed Materials appear to have been drafted to address specific disclosure concerns that may not have broad application to most or all issuers. The broad application of such comprehensive requirements may have unintended and/or adverse consequences when applied by particular issuers or in particular industries.

Comments

1. Specific Financial Measure

The Proposed Instrument does not apply to a "specific financial measure" that an issuer discloses "*in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada.*"

However, there are number of financial measures that an insurance company may disclose that are calculated in accordance with regulatory guidelines, systems and frameworks of Canada and other jurisdictions, or in compliance with industry best practices.

For example, insurance companies are required to maintain adequate capital under the local capital regime and statutory accounting basis. Manulife is required to maintain adequate levels of capital calculated in accordance with the Office of the Superintendent of Financial Institutions' (OSFI) guideline for the Life Insurance Capital Adequacy Test (LICAT). Manulife discloses its LICAT ratio (and components of the LICAT ratio such as capital) in press releases, investor presentations and Management's Discussion and Analysis (MD&A) and other documents. Starting in 2019, Manulife and other life insurance companies will be subject to OSFI's LICAT Public Disclosure Requirements Guideline. We also prepare a Source of Earnings identifying the primary sources of gains or losses in each reporting period following OSFI's regulatory guidelines and in accordance with educational notes published by the Canadian Institute of Actuaries. There are a number of measures, including embedded value and new business value that are widely used and have accepted meaning in the life insurance industry. Typically, such financial measures do not have a directly comparable IFRS measure.

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We believe these financial measures, which provide greater transparency into the Company's results of operations, should be excluded from the scope of the Proposed Instrument as they conform to regulatory guidelines and industry disclosure practice.

2. Cross-referencing

The Proposed Companion Policy requires an issuer to present non-GAAP requirements in a separate section within the same document. We believe it is common practice to cross-reference the detailed non-GAAP financial measures disclosure in one document, MD&A, for example. Cross-referencing is efficient and avoids repetitive and cumbersome additional disclosures in a document, such as an investor slide presentation, when the required information can be readily accessed in the MD&A, either online or in print. A further comment is to allow cross-referencing in written transcripts to the extent the recorded oral statements do not otherwise point listeners to where they can find this disclosure.

3. Transition Period

The insurance industry is facing significant changes to the way financial results are reported with the coming implementation of IFRS 17. In May 2017, the International Accounting Standards Board issued IFRS 17, the new Insurance Contracts standard. The standard is an extremely complex set of accounting principles that are expected to materially impact the recognition and measurement of policyholder liabilities and profits for insurance companies. IFRS 17 will impact all facets of an insurer's operations and will require significant investments in financial systems and processes. The substantive nature of the changes that will arise from IFRS 17 increases the importance of avoiding drastic changes to our non-GAAP disclosures prior to implementation of IFRS 17. It would be unduly burdensome for insurance companies to have to modify their disclosure to comply with a new rule on non-GAAP measures when following implementation of IFRS 17 they would likely have to change their non-GAAP disclosure all over again. This could result in inconsistent and confusing financial disclosures that would not be helpful to investors.

Given the anticipated difficulties this will cause insurance companies and insurance holding companies, we would propose that they be given additional time to comply with the new rule. We respectfully request that insurance companies and insurance holding companies be given a two-year transition period post IFRS 17 to comply with the new rule.

* * * *

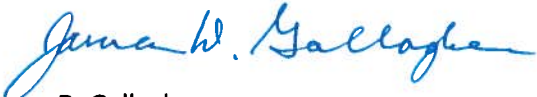
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If you have any questions or comments, please do not hesitate to contact the undersigned. We would be happy to meet with you to discuss any questions.

Sincerely,



James D. Gallagher
General Counsel

INCLUDES COMMENT LETTERS

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December 4, 2018

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
 Superintendent of Securities, Northwest Territories
 Superintendent of Securities, Yukon
 Superintendent of Securities, Nunavut

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To the attention of:

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 Toronto, Ontario M5H 3S8
 Fax: 416-593-2318
 Email: comments@osc.gov.on.ca

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Comments on CSA Draft Regulation 52-112 respecting Non-GAAP and Other Financial Measures Disclosure and concordant regulations

Introduction

This letter is submitted in response to the CSA Notice of Consultation (the **Notice of Consultation**) regarding Draft Regulation 52-112 respecting Non-GAAP and Other Financial Measures Disclosure (the **Draft Regulation**), the companion Draft Policy Statement (the **Draft Policy Statement**) and concordant regulations (collectively, the **Proposed Regime**) issued by the Canadian Securities Administrators (the **CSA**) on September 6, 2018. It reflects the views of a working group consisting of issuers having a combined market capitalization of more than CAD \$200 billion (the **Working Group** or **we**). Members of the Working Group welcome the CSA's initiative to clarify disclosure obligations and increase transparency in our capital markets and appreciate the decision of the CSA not to limit the issuers' ability to disclose different types of non-GAAP financial measures or other financial measures. The members nonetheless believe the CSA's Draft Regulation introduces some highly complex and impractical disclosure requirements that should be re-evaluated. We provide below our general comments and responses to the questions asked by the CSA in the Notice of Consultation. We thank you for

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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.

General comments

The Working Group believes that proper rules surrounding disclosure of non-GAAP and other financial measures can enhance their usefulness to investors' decision-making, provided that such rules are clear and not cumbersome and do not result in cluttering disclosure with overwhelming regulatory statements and mandatory explanations.

After studying the Draft Regulation and Draft Policy Statement, we are of the view that the Proposed Regime is overly complicated and confusing for both investors and issuers and may have a chilling effect on disclosure of information to investors.

In particular, in addition to the elements outlined in our responses to the CSA's questions below, we would like to emphasize the following observations:

1 *Complex Categories and Subdivisions of Disclosure Requirements Are Confusing*

In addition to non-GAAP financial measures, the Proposed Regime would introduce three new categories of financial measures, each being subject to a specific mix of disclosure requirements. Moreover, under the Proposed Regime, the definition of non-GAAP financial measures would also encompass ratios and financial outlooks, each, again, attracting a slightly modified set of disclosure requirements. The subdivision and multiple combined disclosure obligations are complex and confusing and issuers may respond by limiting the financial information provided to investors so as to avoid the danger of non-compliance. Issuers will also most likely interpret differently certain of the requirements set out in the Proposed Regime, potentially resulting in the selection of different categories for similar measures. Issuers should be provided with a "roadmap" to better understand how to categorize the financial measures they use and what disclosures are required. The differences between various types of disclosure should be clarified. Furthermore, the rationale behind the introduction of four categories and two subdivisions should be better explained by the CSA.

The CSA should focus on facilitating useful and readable disclosure and avoiding complex and confusing rules that lead to overdisclosure and to the adoption of overly detailed "boilerplate" disclosure by issuers intending to mitigate the risk of non-compliance. CSA requirements regarding the disclosure of non-GAAP financial measures and other financial measures must allow issuers to apply their own judgment to determine the level of disclosure that is appropriate to their specific business and financial conditions within the context of their industry and peers.

2 *Application to "Issuers"*

We note that the Draft Regulation applies to "issuers" rather than to "reporting issuers", which considerably increases the scope of application of the Proposed Regime, consequently also covering "non-reporting issuers".

Under Canadian securities laws,¹ a "reporting issuer" is an issuer that, among other things, has filed a prospectus and received a receipt therefor or has securities that have been listed for trading on a stock exchange recognized by Canadian securities commissions. The definition of "issuer" under Canadian securities laws is significantly broader, usually referring simply to a person or company who has outstanding, issues or proposes to issue, a security.

It is our view that the reference to "issuers" makes the scope of the Proposed Regime unduly broad and should be restricted to "reporting issuers". Contrary to "non-reporting issuers", encompassed within the term "issuer" and including for example private issuers, private corporations, non-distributing corporations or non-offering corporations, "reporting issuers" are generally subject to the continuous disclosure reporting requirements under

¹ See for instance *Securities Act* (Ontario), RSO 1990, c S.5, s. 1(1).

applicable securities laws in Canada. Accordingly, it is unclear why new disclosure-related requirements, as created by the Proposed Regime, should apply to issuers who are not otherwise subject to obligations of continuous disclosure.² While we are aware that the CSA Staff Notice 52-306 (Revised) (the **Staff Notice**) also referred to “an issuer that discloses non-GAAP financial measures” [our emphasis], we note that the Staff Notice only sets out guidelines while the Proposed Regime has force of law. As such, its scope should not be overly broad.

3 **Reasonable Person Standard**

The Draft Regulation also newly applies a “reasonable person” standard with respect to the usefulness requirement under subsection 3(d)(iii) and the quantitative reconciliation requirement under subsection 3(d)(iv). This is in contrast with the reference to “investors” in the Staff Notice, which referred to investors rather than a reasonable person. We are of the view that the new “reasonable person” standard is inappropriate for governing the level of disclosure with respect to financial information. It is our view that the CSA should either clearly indicate how this standard will affect its expectations with respect to the issuers’ compliance with their obligations, or revert to referring to investors.

4 **Transition Period**

The Working Group is of the opinion that, should the Proposed Regime enter into force, issuers should be given sufficient time to fully implement the new set of disclosure rules. As such, applying the Proposed Regime to 2018 annual documents would be too early. In addition, the Proposed Regime should not start applying mid-year. Issuers should be permitted to complete their reporting year in accordance with the disclosure requirements provided in the Staff Notice rather than the Proposed Regime in order to ensure consistent and comparable reporting over periods.

5 **Harmonization with Other Initiatives**

The CSA mentioned in its Notice of Consultation that certain accounting standard boards, such as the International Accounting Standard Board, are currently examining the structure and content of financial statements. The Working Group is of the view that the requirements of the Proposed Regime should be harmonized with these important initiatives prior to its entry into force in order to avoid further confusion and the necessity for multiple overarching reviews of the issuers’ financial information disclosure process.

Questions

1 Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.

(a) Ratios

We understand that the Draft Regulation and the non-GAAP financial measure disclosure requirements set out therein now expressly apply to ratios, which were not specifically covered by the requirements of the Staff Notice. As per section 4 of the Draft Regulation and the discussion concerning section 4 set out in the Draft Policy Statement, ratios are included within the scope of the non-GAAP financial measure disclosure obligations, including where all components of such ratios are (a) disclosed or presented in the financial statements; or (b) disaggregations of line items presented in the primary financial statements, calculated in accordance with the accounting policies used to prepare the financial statements.

Hence, ratios composed solely of GAAP components (the **all-GAAP ratios**) are included within the purview of the Draft Regulation and would be, with a few exceptions provided in section 4, subject to the non-GAAP financial measure disclosure requirements provided under section 3.

² Non-reporting issuers are not required to file continuous disclosure documents pursuant to National Instrument 51-102 — *Continuous Disclosure Obligations* or National Instrument 81-106 — *Investment Fund Continuous Disclosure*.

In addition, the discussion relating to section 4 set out in the Draft Policy Statement suggests that a ratio calculated using non-financial information may also be within the purview of the Draft Regulation.

The Working Group is of the view that subjecting the all-GAAP ratios to the special disclosure requirements set out under the Draft Regulation is unnecessary because, as a financial measure composed exclusively of GAAP financial measures (or other measures disclosed or presented in the financial statements or of disaggregations calculated in accordance with the accounting policies used to prepare the financial statements), the all-GAAP ratios should not meet the definition of “non-GAAP financial measures” per se, and the policy reasons behind the special disclosure are much less compelling. Similarly, the Working Group is of the view that ratios composed exclusively of non-financial measures, or a combination of GAAP financial measures and non-financial measures, should not meet the definition of “non-GAAP financial measures” per se, and be excluded from the special disclosure requirements set out under the Draft Regulation.

By comparison, under Regulation S-K³ of the Securities and Exchange Commission of the United States (the **SEC**), item 10(e)(4)(ii)(A) and (B), non-GAAP financial measures exclude ratios or statistical measures calculated using exclusively one or both of (A) financial measures calculated in accordance with GAAP; and (B) operating measures or other measures that are not non-GAAP financial measures. Harmonization with the SEC’s requirements would be advisable in respect of such matters.

Finally, we note that the discussion relating to section 4 set out in the Draft Policy Statement indicates that “[f]or clarity, ratios include those measures expressed as percentages.” Given that, technically, this would cover all decrease or growth percentages used to describe year-over-year or quarter-over-quarter variations in results, the CSA should clarify what was intended to be captured.

(b) Financial outlooks

The Draft Regulation applies to financial outlooks, which are newly expressly captured under the definition of “non-GAAP financial measures” even if such financial outlooks are not presented in the form of FOFI, as defined under the Draft Regulation and Regulation 51-102. Such financial outlooks can be disclosed in a document without the quantitative reconciliation required under subparagraph 3(d)(iv), provided that a specific description requirement is complied with.⁴ The description requirement is in addition to the other disclosure obligations set out in section 3 of the Draft Regulation, except for the obligation to provide quantitative reconciliation. We note, however, that in its discussion of subsection 5(2) of the Draft Regulation, the Draft Policy Statement refers to the description requirements set out in sections 5(2)(c)(ii)(A) and (B) as “reconciliation requirements”. Accordingly, the statement in subsection 5(2) of the Draft Regulation to the effect that subparagraph 3(d)(iv) (i.e., the reconciliation requirement) does not apply is somewhat confusing and could be misleading.

Under the Proposed Regime, to satisfy the description requirement, the issuer must disclose, along with the financial outlook, the equivalent historical non-GAAP financial measure, and describe either (A) each of the material differences between the financial outlook and the most directly comparable financial outlook for which an equivalent historical financial measure is presented in the primary financial statements; or (B) each of the significant components of the financial outlook used in its calculation ((A) and (B) being collectively referred to as the **Description Requirement**).

The Draft Policy Statement emphasizes that the equivalent historical non-GAAP financial measure is subject to the disclosure requirements in section 3 of the Draft Regulation, including the quantitative reconciliation requirement in subparagraph 3(d)(iv). While not being emphasized in the Draft Policy Statement, such requirements also include the comparative period disclosure requirement in subparagraph 3(c) of the Draft Regulation (and corresponding quantitative reconciliation requirement). In addition, with respect to the “description of” the material differences under subsection (A) above, the Draft Policy Statement specifies that the reconciliation should, to the extent possible, be quantitative. Furthermore, the disclosure should, as per the Draft

³ Title 17, Chapter II, Part 229—Standard Instructions for Filing Forms under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975.

⁴ S. 5(2)(c) of the Draft Regulation.

Policy Statement, include the significant judgments and estimates that management has made in developing the reconciling items. The alternative (B) prong of the Description Requirement requires in turn a description of “each of the significant components of the financial outlook used in its calculation”, while the Draft Policy Statement adds that the description should also disclose the material factors or assumptions relevant to the financial outlook.

The Working Group considers that the disclosure requirements attaching to financial outlooks, and more particularly the Description Requirement, are overly demanding. The Description Requirement is problematic because it would require providing guidance on each discrete component of the financial outlook. We believe that such additional disclosure would not be helpful to the investment community (assuming that this is the CSA’s intended meaning of the term “reasonable person”) as it would in many cases require issuers to provide a much wider range of guidance for the equivalent GAAP measure. For example, if issuers were, in the case where they provide guidance for an adjusted earnings measure, required to provide guidance for net earnings (i.e., the equivalent GAAP measure of an adjusted earnings measure), we believe that issuers would have to provide a much wider range of guidance for net earnings in order to protect themselves against the volatility of items that are out of management’s control such as, without limitation, share price movements and interest rates. Such wider range of guidance concerning equivalent GAAP measures could be so broad as to become meaningless for investors. Moreover, the requirement to disclose significant judgments and estimates that management made in developing the reconciling items may clutter the disclosure.

The Working Group suggests (i) removing the Description Requirement and only require instead that the corresponding non-GAAP historical financial measure be presented with a historical reconciliation to the most directly comparable GAAP financial measure, but without being required to present the same non-GAAP financial measure (and corresponding quantitative reconciliation) for the comparative period; or (ii) clarifying that the Description Requirement applies only to the extent the components are available without unreasonable efforts. With respect to the second alternative, we note that the SEC’s requirements under Item 10(e)(1)(i)(B) of Regulation S-K are analogous, containing an “unreasonable efforts” exception to the quantitative reconciliation requirement with respect to a forward-looking non-GAAP measure.

The Working Group is of the view that overly complicated disclosure requirements will either lead to uncertainty and confusion due to lengthy cluttered disclosure, or have a chilling effect on disclosure of additional information to investors, thus causing reduced disclosure since issuers may opt for ceasing to use certain useful non-GAAP measures to avoid complex disclosure adaptation. This will ultimately lead to less useful information being provided to investors.

2 *Are there any specific additional disclosures not considered in the Draft Regulation that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.*

The Working Group does not believe that additional disclosures are required. As indicated above, it is our view that disclosure requirements that are too complex do not benefit investors.

3 *Is specific content in the Draft Policy Statement unclear or inconsistent with the Draft Regulation?*

(a) Application

We note a discrepancy between subsection 2(2) of the Draft Regulation and the discussion relating to Section 2 set out in the Draft Policy Statement in defining the documents to which the Draft Regulation applies. While pursuant to subsection 2(2) of the Draft Regulation all documents that are intended to or likely to be made public, whether or not filed under the securities laws,⁵ would be covered under the Proposed Regime, the Draft Policy Statement indicates that in the case of documents that are not filed, they would only be captured if their content

⁵ More specifically, the section refers to a document that “is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction, whether or not filed under securities legislation, unless the issuer discloses a specific financial measure in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada”.

could “reasonably be expected to affect the market price or value of a security of the issuer.” [Our emphasis] To ensure that the concrete legal obligations of issuers are clearly stated and the scope clearly defined, we are of the view that this limitation should be included in the text of the final version of the Draft Regulation itself and not only in the Draft Policy Statement.

We also noted that although subsection 2(2) of the Draft Regulation refers to the filing of documents “under securities legislation”, the Draft Policy Statement refers to the filing of documents with securities regulatory authorities as well as with a government or a government agency under applicable securities or corporate law or an exchange or quotation and trade reporting system under its by-laws, rules or regulations.

In addition, there seems to be some confusion regarding the definitions of certain measures as being disclosed or presented in the notes to the financial statements and the disclosure requirements in sections 6 and 7 of the Draft Regulation, which apply to such measures if they are disclosed in a document other than the financial statements. The intended application could be clarified, for instance in the following instances:

- “capital management measure” means a financial measure that is disclosed in the notes to the financial statements [...]
- “segment measure” means a financial measure of segment profit or loss, revenue, expenses, assets, or liabilities that is disclosed in the notes to the financial statements;
- Segment measures: s. 6. If an issuer discloses in a document other than the financial statements a total of segment measures that is not a total, subtotal or line item presented in the primary financial statements, [...]
- Capital management measures: s. 7. (1) This section applies to a capital management measure that (a) is disclosed in a document other than the financial statements, and [...]

Also, in section 3(v) of the Draft Regulation, in the requirement to explain the reason for a change, if any, in the label, composition or calculation of the non-GAAP financial measure, the prior period of disclosure relative to which “a change, if any” must be appreciated should be specified. While the Draft Policy Statement states that the change must be “from what has been disclosed previously”, this remains unclear and should be clarified in the Draft Regulation.

(b) Additional Definitions

We note that the term “disaggregation” is used frequently in the Draft Regulation and Draft Policy Statement without being defined or explained. The Staff Notice does not refer to disaggregations and accordingly, this term is rather new in the context of non-GAAP financial measures disclosure. This term is not defined either under International Financial Reporting Standards (IFRS). It would therefore be beneficial to clarify the meaning of this term in a separate definition.

Furthermore, the definition of “capital management measure” should be expanded and clarified; for example, it is not clear whether measures like “free cash flows” would be captured by such definition, or whether they are instead intended to be non-GAAP financial measures. Examples of measures that constitute capital management measures should be provided as well.

Also, in sections 4(1)(b) and 7(2)(a)(ii) of the Draft Regulation, the term “similar financial measures” should be defined.

(c) Financial Outlooks

Should the CSA decide to maintain the Description Requirement related to the disclosure of Financial Outlooks for which FOFI has not been disclosed, we are of the view that further clarifications and explanations (including actual examples) are required in order to better enable issuers to understand the new obligations incumbent on

them as per the Description Requirement. For instance, illustrative examples should be provided as to what the CSA considers to be appropriate disclosure in respect of (i) material differences between the financial outlook and the most directly comparable financial outlook for which an equivalent historical financial measure is presented in the primary financial statements, and of significant judgments and estimates that management has made in developing the reconciling items, for purposes of section 5(2)(C)(ii)(A); (ii) the process followed in preparing and reviewing the financial outlook, including the material factors or assumptions relevant to the financial outlook, for purposes of section 5(2)(C)(ii)(B); and (iii) the explanations specific to the non-GAAP financial measure used, to an issuer, to the nature of the business and the industry, and to the way the non-GAAP financial measure is assessed and applied to decisions made by management, for purposes of the requirement of subparagraph 3(d)(iii) of the Draft Regulation.

Should the CSA decide to maintain the Description Requirement related to the disclosure of financial outlooks for which FOFI has not been disclosed, we are of the view that a review of the Draft Policy Statement and Draft Regulation should be made to ensure no additional requirements are contained in the Draft Policy Statement. The inclusion in the Draft Policy Statement of additional requirements to the already complex Proposed Regime creates increased complexity and potential for additional confusion for issuers. Examples of additional requirements found in the Draft Policy Statement include:

- in respect of subsection 5(2) of the Draft Regulation, to include the significant judgments and estimates that management has made in developing the reconciling items and to disclose the material factors or assumptions relevant to the financial outlook;
- in respect of subparagraph 3(d)(iv) of the Draft Regulation, to discuss significant judgments and estimates that management has made in developing reconciling items;
- in respect of the requirement of subparagraph 3(d)(iii) of the Draft Regulation, the requirement that the explanation should be specific to the way the non-GAAP financial measure is assessed and applied to decisions made by management; and
- in respect of subparagraph 3(d)(iv) of the Draft Regulation, the requirement that explanations of reconciling items cover the circumstances that give rise to the particular adjustments.

(d) Footnoting and Cross-Referencing

The Draft Policy Statement should clarify that a disclosure-related footnote is not required each time a non-GAAP financial measure is used in a document. Furthermore, the Draft Regulation should expressly permit to comply with the Proposed Regime by cross-referencing to documents filed with a securities regulatory authority that contain the disclosures required under the Proposed Regime, when applicable.

(e) Quantitative Reconciliation

(i) Overlapping Requirements

The Working Group is of the opinion that there may be an overlap in the list of manners in which quantitative reconciliation is to be made under section 3(d)(iv)(A) and (C). Subparagraph 3(d)(iv) reads as follows:

(iv) subject to subsection 4(3) and section 5, provides a quantitative reconciliation, to the most directly comparable financial measure presented in the primary financial statements, which reconciliation

(A) is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items,

(B) does not describe a reconciling item as non-recurring, infrequent or unusual when a similar loss or gain is reasonably likely to occur within the next two years or has occurred during the prior two years;

(C) is explained in such a way that it provides a reasonable person an understanding of each reconciling item.

More particularly, subsection (A) appears to merely constitute a specific way to comply with subsection (C). A disaggregation would likely be accompanied with a statement explaining the disaggregation so as to clarify the use of reconciling items. It is unclear whether a disaggregation so explained would be considered as meeting both the obligations provided under subsection (A) and (C) or whether a separate explanation, distinct from the disaggregation, would be required. As such, given the principles of legal interpretation, we are of the view that subsection (A) is unnecessary and should be reformulated to be included under subsection (C).

(f) Exemptions under financial reporting framework

The Working Group is of the view that it would not be appropriate for the Draft Regulation to require an issuer to provide information on a financial measure for the comparative period where a new accounting standard for the financial reporting framework used in the preparation of the issuer's financial statements does not require full retrospective application (e.g., IFRS 16 – Leases, in effect for annual periods beginning on or after January 1, 2019). Therefore, the Draft Regulation should provide for an exemption from the comparative disclosure requirement in such circumstances.

4 *Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.*

The Working Group considers the exemption appropriate and also necessary in order to maintain the corresponding exemption for Canadian issuers under the Multijurisdictional Disclosure System and under the SEC's equivalent rules.

5 *Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.*

Excluding oral statements from the purview of the Draft Regulation is appropriate and necessary given that providing the required disclosures in public speeches would be considerably impractical.

Transcripts of oral statements should similarly be excluded from the purview of the Draft Regulation. Should the CSA require that the required disclosure be added to transcripts made available following oral statements, this would deter issuers from making those transcripts public, to the detriment of investors.

6 *Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.*

As mentioned in our answer to question 5, the Working Group is of the view that transcribed oral statements should be exempted from the application of the Draft Regulation. The disclosure requirements set out in the Draft Regulation are complex and demanding and we believe that many issuers who have been publishing written transcripts of relevant conferences, speeches and analyst calls on their websites will respond by refraining from doing so. The impact would then mostly be felt by less sophisticated investors who are unable to obtain transcripts of oral statements by other means. It is therefore our view that transcribed statements should be exempted from the application of the Draft Regulation, provided that they indicate in a clear and conspicuous way that they are transcripts of oral statements.

Moreover, as indicated under question 3, the Draft Regulation should expressly specify that the documents that are not filed with a securities regulatory authority are within the purview of the Draft Regulation only if their content can reasonably be expected to affect the market price or value of a security of the issuer.

In addition, offering memorandums whose form is not prescribed by regulation should be excluded from the documents to which the Draft Regulation applies. Such offering memorandums are prepared on a voluntary

basis. The prospectus exemptions upon which issuers rely are not based on the information the investors received, but on the investors' sophistication. Issuers are already careful to ensure that offering memorandums do not contain a misrepresentation. The disclosure requirements set out in the Draft Regulation would create an unnecessary burden for issuers who choose to provide information to investors. Voluntary offering memorandums are not documents that are intended to or likely to be made public, and as such should not be covered under the Proposed Regime. Even in those jurisdictions where such voluntary offering memorandums must be filed pursuant to applicable securities laws of such jurisdictions, these documents are not made publicly available for viewing on SEDAR, and remain private.

Conclusion

As explained above, the view of the Working Group is that the Proposed Regime is overly complex and should be re-evaluated. The Working Group is concerned that many of the new requirements will result in disclosure which will not benefit the investing community and may deter issuers from disclosing information which may be helpful for investors. We trust that the CSA will consider our above comments and amend the Proposed Regime. We thank you for allowing us to comment on this important matter.

Yours very truly,

(signed) Norton Rose Fulbright Canada LLP

ONTARIO POWER GENERATION

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VIA EMAIL: comment@osc.gov.on.ca

December 5, 2018

*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*

(together, the CSA)

c/o The Secretary, Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Attention: Alex Fisher, Senior Accountant, Ontario Securities Commission

Dear Sirs / Mesdames:

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

Ontario Power Generation, Inc. (OPG or the company) appreciates this opportunity to comment on the Proposed National Instrument 52-112 (the Proposed Instrument).

About Ontario Power Generation

OPG is an Ontario-based electricity generation company whose principal business is the generation and sale of electricity in Ontario. With a total in-service generating capacity of 16,218 MW as of September 30, 2018, the company owns and operates two nuclear generating stations, one thermal generating station, 66 hydroelectric generating stations, one wind power turbine and co-owns two nuclear stations and two gas-fired combined cycle generating stations in Ontario. Subsequent to September 30, 2018, the company acquired Eagle Creek Renewable Energy, LLC (Eagle Creek), an owner and operator of small hydroelectric facilities throughout the United States. The company is wholly-owned by the Province of Ontario. As a reporting issuer in all of the provinces of Canada, OPG is subject to the requirements of the *Securities Act (Ontario)* and the securities legislation of the other provinces.

We have reviewed the Proposed Instrument and provide the following comments.

- As a rate regulated entity, OPG is subject to the provisions of the *Ontario Energy Board Act, 1998* and *Ontario Regulation 53/05*, and receives regulated prices for certain generation facilities as determined by the Ontario Energy Board (OEB). OPG is currently the only electricity generator in Ontario that has its prices set through a public hearing process by the

OEB. Such oral public hearing processes and other applications submitted by the company to the OEB are memorialized through publicly-available transcripts as linked to on OPG's website. The availability of transcripts of such oral statements and applications made by OPG to the OEB may therefore be captured within the scope of the Proposed Instrument, which would require a significant amount of compliance effort to ensure any non-GAAP, capital management, segment or supplementary financial measures are appropriately captured resulting from OEB hearings. We believe that the intent of the Proposed Instrument is to focus on decision-making for investors rather than a broader group of stakeholders, and therefore recommend that the requirements for appropriate recognition and disclosure of non-GAAP measures within transcribed oral statements and applications made in connection with rate setting and other regulatory activities be explicitly restricted to financial documents intended to provide information to investors, rather than those documents that primarily service other stakeholders.

- We consider the inclusion of definitions of non-GAAP financial measures and reconciliations to equivalent GAAP measures within each individual document filed with the CSA to create voluminous disclosure that would be duplicated across several public documents that are filed concurrently with applicable securities commissions. Where non-GAAP financial and other measures are published in such individual documents, we suggest that permitting a direct reference to a single source, such as the MD&A or a separate non-GAAP definition and reconciliation filing, would provide more concise and streamlined information to investors whilst meeting the spirit of the Proposed Instrument.
- We find the application to 'all documents' within Section 2(2) of the Proposed Instrument to be broad. As our disclosures are intended to meet regulatory requirements and also for the benefit of investor decision-making and stakeholder confidence, many online publications and communications on company websites that are typically prepared for a purpose outside of the investor realm would potentially fall under this broad definition. Accordingly, we suggest that the Proposed Instrument may benefit from additional clarification that such publications for which the primary audience is not investors, such as sustainability reports, environmental reports, corporate newsletters and communications on company websites not considered to be aimed at an investor audience, are outside the scope of the Proposed Instrument.
- As a supporter of the recommendations outlined by the Financial Stability Board's Task Force for Climate-related Financial Disclosures (TCFD), on the assumption that the CSA's Climate Change-related Disclosure Project as outlined in CSA Staff Notice 51-354 aligns to similar principles, we are interested to see how the requirements of section 5 of the Proposed Instrument as they relate to Future Oriented Financial Information (FOFI) align with such proposed disclosures as recommended by the TCFD, which are currently in early stages across applicable reporting issuers.

We thank you for the opportunity to provide our comments. Please contact me if you wish to discuss these comments.

Yours truly,

ONTARIO POWER GENERATION

John Mauti
Vice President, Chief Controller and Accounting Officer



December 5, 2018

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
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin Corporate Secretary Autorité des marchés financiers consultation-encours@lautorite.qc.ca

Re: 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 the opportunity to comment on proposed National Instrument 52-112 and its Companion Policy and related Consequential Amendments. We believe additional guidance for issuers will contribute to meaningful disclosure of non-GAAP information and therefore we support the CSA’s rule making initiative in this area.

We have responded to your detailed questions in the Appendix to this letter, but we also have some general observations that we wish to share.

We believe that non-GAAP and other financial measures are most useful when used to explain changes between financial periods of a GAAP performance measure rather than as a standalone metric or as a substitute for GAAP information. For example, a non-GAAP measure may be useful as part of an explanation of why GAAP income has increased or decreased during a period.

IFRS and US GAAP already provide some latitude for disclosing performance through the eyes of the Chief Operating Decision Maker within segmented information.

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T: +1 416 863 1133, F: +1 416 365 8215, www.pwc.com/ca

PwC refers to PricewaterhouseCoopers LLP, an Ontario limited liability partnership



This disclosure should be based on the metrics management of an issuer uses to evaluate segment performance even if the policies applied in evaluating segment performance differ from GAAP. We encourage issuers to continue to assess whether their segment measures reflect the key performance measures used by management and to provide reconciliations within the segmented reporting note to the primary financial statements.

We also believe investors value consistency in non-GAAP information disclosed amongst issuers. While we agree with the CSA proposals that do not mandate consistency amongst issuers in the disclosure of non-GAAP information, we encourage industry accounting groups to continue to discuss non-GAAP measures, provide thought leadership, and to survey whether there is consistency between reporting of such measures within a particular industry or identify where there is divergence.

In addition to the authoritative rules, we also believe it will be important and helpful for the CSA members to publicly report overall findings on compliance with the final national instrument and provide early warning of concerns it identifies through issue oriented reviews and examples of best practice.

We believe that in establishing the effective date for these proposals, the CSA should provide sufficient time for issuers to fully consider and implement the proposals. Because this proposal is so pervasive, it is difficult to identify all unintended consequences that might arise. Therefore, it would also be helpful for the CSA to field test these proposals.

Should you have any questions regarding our response please contact Michael Walke (416) 815 5011 or Scott Bandura (403) 509 6659.

Yours truly,

PricewaterhouseCoopers LLP
Chartered Professional Accountants



Appendix - Responses to Specific Questions

1. *Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.*
 - Mutual fund managers 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. 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.
 - The proposed instrument includes new disclosure requirements where segment measures are disclosed outside of the financial statements including a reconciliation requirement to the most comparable measure presented in the primary financial statements. We have several concerns with these proposals:
 - IFRS 8.28 already requires a reconciliation of total segment revenues, income, assets and liabilities and every other material item of information disclosed to the corresponding amount for the entity. Accordingly, we do not believe it is necessary to duplicate such reconciliations in other continuous disclosure documents. It may be appropriate however to identify which note in the financial statements such information appears, the first time in a document such information is disclosed.
 - The proposals refer to “total of segment measures”, but this term is not defined. We presume that this is meant to be the total of an individual segment measure rather than the total of all segments. Issuers often discuss the results of individual segments in the context of explaining the overall performance for a reporting period and may not discuss the total of all segment measures. We believe it would be helpful to have a clear definition of what constitutes a “total of segment measures”.
 - We note that IFRS 8 requires that the reconciliation be performed between the aggregate of the segmented measures and the primary financial statements. For example, if an entity has three segments: A, B, and C then IFRS 8 would require the summation of the profit measure of all three segments to be reconciled to net income before taxes appearing in the primary financial statements. It is unclear whether the proposed instrument requires individual reconciliations for individual segment totals if they appear separately in the document (e.g. that the individual profit measure for segment A be reconciled to net income before taxes). We believe individual reconciliations of such figures will be voluminous and will not be useful for a reader. For example, to reconcile segment A’s measure of profit to total net income for the entity it will be necessary to include the aggregate results of segment B+C as a reconciling item.



- We believe the proposed instrument should clarify that disclosure of non-GAAP and other financial measures are within the scope of disclosure controls and procedures (“DC&P”) discussed in NI 52-109. The definition of DC&P in NI 52-109 indicates that DC&P relates to information “required to be disclosed by securities legislation”. The proposed national instrument requires disclosure should certain measures be presented outside of the financial statements, but if the underlying non-GAAP measures are provided voluntarily, it may not be clear that NI 52-109 applies to the voluntarily disclosed measure. Therefore we believe that you should clarify whether issuers should establish and maintain DC&P regarding the final version of 52-112 and also clarify that issuers should identify and report material weaknesses in internal controls over DC&P.
 - IFRS 3.B64(q) requires that certain pro-forma information be presented in the notes to the financial statements for business combinations. Furthermore, NI 51-102 requires issuers to present pro-forma information regarding certain significant acquisitions. “Pro forma earnings” is identified in the proposals as a common term used to identify a non-GAAP financial measure, but it is unclear whether the proposed instrument is meant to capture all pro-forma information including where such information is required to be presented in the notes to financial statements or is required and has been disclosed in other documents in accordance with NI 51-102.
2. *Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.*
- The proposed national instrument discusses changes in a non-GAAP financial measure, but notes that disclosing a particular non-GAAP measure does not generate a requirement to continue disclosing non-GAAP measures in future periods. We believe where a non-GAAP measure is no longer reported, the issuer should disclose its rationale for ceasing to report the non-GAAP measure.
 - Where an entity chooses to cease presenting a non-GAAP measure or changes the method of calculating a non-GAAP measure, we believe (where practicable) the issuer should also be required to disclose the measure on the previously calculated basis for at least 12 months from the date it decides to either change or to cease reporting a non-GAAP measure. This disclosure would allow users to understand what the results would have been under the old methodology and to better understand why the basis of reporting a non-GAAP measure has changed. Where it is not practicable to report this information (e.g. if information technology systems have changed such that certain amounts are no longer captured) we believe the reasons for the impracticality of making this disclosure should be provided.
 - For financial outlooks we believe that sometimes it may be more useful for an issuer to explain the outlook by presenting a reconciliation or bridge analysis to the most recent historical GAAP or non-GAAP information. We believe that there should be flexibility for an issuer to choose this presentation, if the issuer believes it will be more understandable.



- For example, if in August 2018 the entity is forecasting Adjusted EBITDA for the 3 month period ended June 30, 2019 we believe it might be appropriate to present a reconciliation or bridge analysis to either the equivalent historical period (the three months ended June 30, 2018) or to the most recent comparable period (the three months ended March 30, 2019) whichever is better representative of the starting point for their forecast used by management. For example:

| | |
|---|-------|
| Adjusted EBITDA for quarter ended June 30, 2018 | \$100 |
|---|-------|

Material Assumptions:

| | |
|-------------------------|------|
| Increase in sales price | \$10 |
|-------------------------|------|

| | |
|--------------------------|-----|
| Increase in sales volume | \$4 |
|--------------------------|-----|

| | |
|------------------------------------|-------|
| Increase in cost of sales (volume) | (\$8) |
|------------------------------------|-------|

| | |
|--|-----|
| Decrease in cost of sales (input cost) | \$3 |
|--|-----|

| | |
|--|-------|
| Forecasted adjusted EBITDA for quarter ended June 30, 2019 | \$109 |
|--|-------|

The rationale for each of the significant adjustments would also be provided.

3. *Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?*

- Earnings coverage ratios prescribed by 41-101F1 are identified in the proposed companion policy as “specific financial measures” that are not subject to the proposed instrument. It is noted that the list of “specific financial measures” is not exhaustive. However, we believe the list in the companion policy should be expanded to provide other very common measures (e.g. in a prospectus “use of proceeds”, “pro forma capitalization” etc.) as this will avoid confusion over which common measures are within or out of the scope of the standard.
- It would be helpful to more clearly explain the scope of the exemption for SEC Foreign Issuers giving specific examples of categories of SEC filers and whether they would need to comply (e.g. explaining that issuers reporting annual results using SEC form 40-F are subject to the guidance in the proposed national instrument).

4. *Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.*

- As defined SEC Foreign Issuers would not include certain Canadian issuers filing on US domestic forms (or issuers that are SEC registrants outside of the Multi-Jurisdictional Disclosure System) and subject to the US Securities and Exchange Commission’s (“SEC”) guidance on non-GAAP measures. We believe it would be appropriate to exclude a larger class of entities as long as they are required to comply with the SEC’s published guidance on non-GAAP measures (e.g. issuers filing on domestic SEC forms or on form 20-F). This avoids potential conflicts between the proposed national instrument that might arise now or in the future (i.e. where the SEC guidance requires certain disclosure that the proposed national instrument prohibits or vice versa). Furthermore, we believe that the SEC guidance on non-GAAP measures is robust and that providing this exemption would not be prejudicial to the public interest.

December 4, 2018

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

c/o

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Corporate Secretary
Autorité des marchés financiers
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RE: **CSA Notice and Request for Comment – Proposed National Instrument 52-112, Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes ("CSA Notice and Request for Comment")**

Ladies and Gentlemen:

We appreciate the opportunity to comment on the proposed National Instrument 52-112 – *Non-GAAP and Other Financial Measures Disclosure* (the "**Proposed Instrument**") and the proposed Companion Policy 52-112 – *Non-GAAP and Other Financial Measures Disclosure* (the "**Proposed Companion Policy**"). Our comments appear directly underneath the applicable questions reproduced from the request for comments section in the CSA Notice and Request for Comment.

In order to ensure that additional disclosures and reconciliations are a net benefit to the readers, it is our view that the definitions need to be limited, and at the same time, sufficient credit be given to measures disclosed in the primary financial statements and notes. As the legislation reads, there is a risk that issuers will resort to limiting disclosure now available to readers versus complying with the extensive disclosure and reconciliations. This unintended consequence may be at the detriment to the readers.

1. *Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.*

In our view, the definition of a non-GAAP financial measure in the Proposed Instrument should be amended to read as follows:

- a. A financial measure of financial performance, financial position or cash flow that is not:
 - a. disclosed or presented in the financial statements; or
 - b. a disaggregation of a line item, subtotal or total presented in the primary financial statements; or
 - c. disclosed or presented in the financial statement notes that reconcile to a line item, subtotal or total on the financial statements (“Reconciled Note”) and that is not a disaggregation of a Reconciled Note, subtotal or total.

The reference to being in accordance with the accounting policies used to prepare the financial statements should be removed because in our opinion it is redundant, provided the financial statements are prepared in accordance with the standards and this is well understood by all readers of the financial statements.

Subtotals and totals incorporated as per IAS 1.85 are comprised of line items made up of items recognized and measured in accordance with IFRS and are labelled in a clear and understandable manner, therefore can be understood by the reader and relied upon without additional reconciliation and disclosure.

Excluding financial measures and disaggregations of financial performance, financial position or cash flow disclosed in the financial statement notes would focus the readers’ attention on the financial statements and notes. In turn, this would ensure that issuers are focusing their efforts on improving those disclosures, limiting additional distracting disclosure and reconciliations which could overwhelm readers.

With the proposed legislation, issuers wishing to incorporate a common performance measure such as “EBITDA” would be forced to amend the face of their statement of earnings, and possibly required to change their statement layout (from functional to nature) to incorporate the additional subtotal. These changes may have other unintended negative reporting consequences. Based on our proposal, issuers instead could incorporate EBITDA within the segment disaggregation of the operating segment note. Readers would be given the information that they want and the operating segment disclosure in the financial statement notes would provide a clear and understandable reconciliation for the reader.

In our view, financial outlooks should not be included in the definition of a non-GAAP financial measure. Requiring issuers to disclose and reconcile individual line items used in the calculation of the Financial Outlook is problematic as investors may place undue reliance on such individual line item projections which should, in our view, only be placed on the aggregate. Firstly, certain individual components of the reconciliation, such as realized and unrealized foreign currency gains and losses on derivatives marked to market, may be impractical to quantify. Secondly, disclosing individual line items projections could disclose indications as to an issuer’s future plans before the issuer has a disclosure obligation in respect of a course of action. For example, if extra interest expense is disclosed in the projection for an individual line item, investors could assume that a debt offering is imminent and impact the cost of those funds in the capital markets, creating a true cost to the issuer of such disclosure. Furthermore, inference of a debt offering may be made when it is only one of several options available to the issuer and no firm decision has been made to proceed. Such result is

extremely problematic because certain investors could use inferences from such disclosure to predict certain business decisions that may or may not be true. In our view, providing investors with a historical reconciliation of the non-GAAP financial measure is sufficient as investors have detailed information with respect to the calculation and methodology used for such Financial Outlook.

We also propose that specific financial measures that are required to be calculated in accordance with the prescribed requirements under applicable laws of a jurisdiction in which the issuer operates, in addition to the securities law and laws of Canada, be excluded from the definition of non-GAAP measures.

2. *Are there any specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.*

No, there are no specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors. In our view, the current regime in CSA Staff Notice 52-306 (Revised) – *Non-GAAP Financial Measures* is more than adequate to provide quality disclosure to investors.

3. *Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?*

The Proposed Companion Policy should provide a clearer explanation of which specific financial measures are not subject to the Proposed Instrument. For example, if an issuer files a regulatory filing such as an earnings coverage ratio, FERC form, NEB form or other similar disclosures, we suggest these should be exempt from the proposed instrument.

4. *Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.*

No comment. This question is not applicable to us.

5. *Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.*

Yes, the proposed exclusion of oral statements to the application is appropriate.

6. *Is the proposed inclusion of all documents to the application appropriate? If not for which documents should an exclusion be made available? Please explain.*

In our view, investors rely on Core Documents, as defined as those documents required by Canadian securities laws, for a comprehensive explanation and disclosure of financial metrics and measures used by an issuer to evaluate performance. Conversely, non-core documents, such as investor presentations, corporate sustainability reports and news releases, are intended to provide summarized and streamlined information on a more accessible basis to the general investing public, extracted largely from Core Documents, of an issuer's financial performance.

At minimum, if all documents that are intended to be, or reasonably likely to be, made available to the public in the local jurisdiction are subject to the Proposed Instrument, issuers should be permitted to cross-reference the applicable non-GAAP financial measure disclosure contained in the issuer's Core Documents. Requiring issuers to include the comprehensive disclosure prescribed by the Proposed Instrument in each public document will vitiate the fundamental purpose of the non-core document, being to provide investors with summarized and streamlined, easy to understand information, void of burdensome language. In many cases, the inclusion of the proposed disclosure will make non-core documents unwieldy, depriving investors of valuable information. Further, as the financial measures

disclosed in an issuer's non-core documents are calculated using identical methodology to that described in a Core Document, investors should be not burdened with having identical disclosure in such streamlined documents. Requiring issuers to adhere to the Proposed Instrument in non-core documents would diminish, rather than enhance, the value of the disclosure to investors.

7. *Other comments, if any.*

Disclosure for other financial measures including Segment Measures, Capital Management Measures and Supplementary Financial Measures should be limited to those measures which are not:

- a. on the face of the primary financial statements; or
- b. disclosed in the notes to the financial statements.

In general, we would also like to refer to CSA Staff Notice 51-353 – *Update on CSA Consultations Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*, which sets out a number of upcoming CSA policy products intended to reduce the regulatory burden associated with capital raising in public markets (i.e., prospectus-related requirements) and the ongoing costs (i.e., continuous disclosure requirements) applicable to non-investment fund reporting issuers. One of the six new policy projects announced by the CSA is reducing or streamlining certain continuous disclosure requirements while enhancing its usefulness and understandability for investors. In our view, for the reasons outlined above, the Proposed Instrument does not accomplish either of the aforementioned stated goals and would, in fact, increase the burden on reporting issuers in Canada with little or no benefit to the current regime.

Pembina Pipeline Corporation

By: **Scott Burrows**
 Title: Senior Vice President & CFO

Date: 12/4/18

Pembina Pipeline Corporation

By: **Cameron Goldade**
 Title: Vice President, Capital Markets

Date: 12/4/18

Pembina Pipeline Corporation

By: **Tracy Hecker**
 Title: Vice President & Controller

Date: DEC 4, 2018

Québec Bourse Inc.
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December 4, 2018

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
Financial and Consumer Services Commission, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Anne-Marie Beaudoin
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Autorité des marchés financiers
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Fax: 514 864-6381
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The Secretary
Commission des valeurs mobilières de l'Ontario
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Toronto (Ontario) M5H 3S8
Télécopieur : 416 593-2318
comment@osc.gov.on.ca

Re: CSA consultation – Draft Regulation 52-112 respecting Non-GAAP and Other Financial Measures Disclosure and Draft Policy Statement 52-112

Dear Sirs/Mesdames:

Québec Bourse would like to thank the Canadian Securities Administrators (the "CSA") for allowing interested parties to comment the Draft Regulation 52-112 respecting Non-GAAP and Other Financial Measures Disclosure and the related draft Policy Statement.

Québec Bourse is the association that brings together Québec's public companies and the stakeholders that make up the public market ecosystem. Québec Bourse currently has 93 members. Listed companies' members of Québec Bourse are of various sizes and from all industries. Listed companies' members of Québec Bourse have an aggregate market capitalization of more than \$40 billion. Québec Bourse is particularly well placed to convey the views of listed companies and its other members.

First, it is essential to emphasize the importance of reducing the regulatory burden in order to ensure that the stock market remains competitive and relevant. We believe that the primary purpose of replacing SN 52-306 with Draft Regulation 52-112 should be to simplify compliance for issuers rather than to provide CSA staff with a more efficient enforcement tool. Furthermore, reading the questions in the consultation document, we noticed that most of them appear to be intended for investors rather than issuers.

We recognize that investors should be provided with reliable and quality financial information. We believe that non-GAAP financial measures must be analyzed taking into account all disclosure obligations and all GAAP financial information, and therefore made available to all investors (on SEDAR and issuers' websites). It should also be acknowledged that when management uses non-GAAP financial measures, it does so out of a strong desire to provide investors with financial information that provides a better appreciation of the issuers' financial performance. Some components of the International Financial Reporting Standards (such as fair market value of assets and accounting for leases) create major accounting fluctuations (from one period to the other) that do not optimally serve investors' information needs.

With respect to regulatory requirements for non-GAAP financial measures, we agree that issuers who use non-GAAP financial measures should be required to describe and explain the measures used.

We understand that Draft Regulation 52-112 does not apply to oral statements. In our view, it should also not apply to press releases and corporate presentations in cases where the non-GAAP financial measures are already reconciled in the issuer's financial documents (such as management's discussion and analysis) that are available on SEDAR. It may suffice to mention in the press release or presentation that the document contains non-GAAP financial information and readers should refer to the financial documents on SEDAR.

We also wonder whether it is necessary to require a non-GAAP financial measure to be equally prominent to the most directly comparable financial measure presented in the primary financial statements. The reconciliation is what matters. Reliance on a footnote could achieve the regulatory objective without overloading the press release or corporate presentation.

We understand that issuers in industries such as real estate, bolstered by the work of their industry organization, use non-GAAP financial measures and find themselves having to use a number of reconciliation techniques, resulting in information overload and the potential for confusion. We believe the CSA should work with such industry organizations to come to a consensus and identify the reconciliation factors that are most meaningful to investors.

Thank you in advance for your consideration.

Sincerely,



Louis Doyle
Executive Director
Québec Bourse Inc



SEVEN GENERATIONS
ENERGY

December 5, 2018

VIA EMAIL AND COURIER

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
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Anne-Marie Beaudoin
 Corporate Secretary
 Autorité des marchés financiers
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 C.P. 246, tour de la Bourse
 Montréal QC H4Z 1G3
 Fax: 514-864-6381
 consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

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

The Canadian Securities Administrators recently published 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**”) for comment. We appreciate the opportunity to provide feedback regarding the Proposed Instrument and Proposed Companion Policy.

We are generally supportive of the Proposed Instrument and Proposed Companion Policy, but have concerns with articles 3(b) and 7(2)(a) of the Proposed Instrument and the related provisions in the Proposed Companion Policy that require issuers to disclose financial measures presented in the primary financial statements (the “IFRS Measures”) with equal or greater prominence relative to comparable non-GAAP financial measures and capital management measures as described under the Proposed Instrument (the “Non-IFRS Measures”).

Based upon discussions with directors, officers, shareholders, institutional investors and securities analysts, it is clear to us that standard financial measures presented in the primary financial statements are not the primary measures being utilized by capital market participants to evaluate our business and assess our competitive position relative to our peers.

In the oil and natural gas industry, Non-IFRS Measures are important metrics that market participants use to assess financial and operational performance. In many cases, the Non-IFRS Measures are considered to be more useful and meaningful than related IFRS Measures. For example, cash provided by operating activities is largely ignored by the readers of our continuous disclosure documents. When assessing cash flow from operations, market participants are less concerned about the timing of accounts receivable collections or accounts payable fluctuations, and are far more interested in understanding the link between operating netbacks and cash flow.

We are generally supportive of the provisions of the Proposed Instrument and Proposed Companion Policy and think the following requirements are constructive:

- The requirement to label Non-IFRS Measures and distinguish nomenclature to avoid confusion between Non-IFRS Measures and comparable IFRS Measures;
- The requirement to caution readers that Non-IFRS Measures do not have any standardized meaning;
- The requirement to explain the rationale for changes to labels and the composition and calculation of Non-IFRS Measures;
- The restriction on Non-IFRS Measures to characterize adjusting items as 'non-recurring' or 'infrequent' when similar adjustments are reasonably likely to occur again;
- The requirement to provide reconciliations of Non-IFRS Measures to the most directly comparable IFRS Measures;
- The requirement to explain how Non-IFRS Measures provide useful information to a reasonable person and to explain the additional purposes, if any, for which management uses the non-IFRS financial measures; and
- The requirement to describe how capital management measures are calculated and to state that the accounting policies do not specify how the measure is calculated.

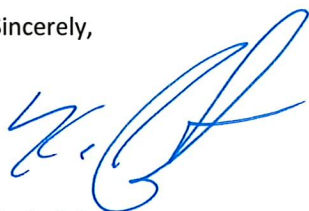
In our view, the above requirements provide sufficient transparency to ensure that market participants will not be misled by Non-IFRS Measures without the additional requirement that IFRS Measures be conveyed with equal or greater prominence. We think the prominence requirements lead to repetitive, more voluminous, lower quality disclosure, without any incremental benefits to market participants.

Our disclosure documents are reviewed by a broad range of individuals, with various levels of understanding of finance and accounting. IFRS Measures can often be as equally challenging to interpret as Non-IFRS Measures, especially for individuals who are less familiar with finance and accounting. Non-IFRS Measures may be easier to understand for those who are unfamiliar with complex accounting requirements but want to understand the profitability of a company without including, for example, the impact of unrealized corporate hedging gains or losses. We do not believe that equal prominence of IFRS and Non-IFRS Measures provides more meaningful information for users in many contexts.

Article 1.5 of the Companion Policy to National Instrument 51-102 requires the use of plain language. In our view, reporting comparable IFRS and Non-IFRS Measures in external disclosures with equal prominence results in confusion and repetitive disclosures. The MD&A must be written "through the eyes of Management" and to "discuss material information that may not be fully reflected in the financial statements" (NI 51-102F1 PART 1). If Management believes that Non-IFRS Measures should be given more emphasis over IFRS Measures, they should have the opportunity to present the information in such a manner so long as such disclosures are clear and transparent and are not misleading. A similar approach should be taken with respect to news releases, investor presentations and other disclosures where Non-IFRS Measures are discussed.

For the reasons discussed above, we believe the requirements set forth in Article articles 3(b) and 7(2)(a) of the the Proposed Instrument and the related provisions in the Proposed Instrument and Proposed Companion Policy should be removed.

Sincerely,



Kevin Johnston
Vice President, Accounting & Controller
Seven Generations Energy Ltd.

Stikeman Elliott

DELIVERED BY ELECTRONIC MAIL

December 5, 2018

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
Superintendent of Securities, Nunavut

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Me Anne-Marie Beaudoin
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Autorité des marchés financiers
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Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

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

A. INTRODUCTION

We submit the following comments in response to the Notice and Request for Comment (the “**Notice**”) published by the Canadian Securities Administrators (the “**CSA**”) on September 6, 2018 with respect to Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (“**Proposed NI 52-112**”) and Proposed Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (“**Proposed 52-112CP**”). Collectively, Proposed NI 52-112 and Proposed 52-112CP are referred to as the “**Proposed Amendments**”.

Thank you for the opportunity to comment on the Proposed Amendments. This letter represents the general comments of certain individual members of our Securities practice group (and not those of the firm generally or any client of the firm) and are 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.

We have organized our comments below with reference to general comments on the Proposed Amendments and then to certain specific questions posed in the Notice. Our specific comments on aspects of the Proposed Amendments are included in this latter section. All references to parts and sections are to the relevant parts or sections of the applicable Proposed Amendments.

B. General Comments

While we understand the CSA's desire to attempt to harmonize disclosure of non-GAAP measures to the extent practicable, we believe that the Proposed Amendments are over-reaching in that they apply to all issuers and are not limited in application to "reporting issuers". First, we believe that such a broad application would be very difficult to enforce given that disclosure by non-reporting issuers is not generally subject to submission or review by securities regulators. We also believe that such a proposal to broadly regulate disclosure by non-reporting issuers is counter to a number of the CSA's recent initiatives to ease restrictions in the exempt market, including recent amendments to National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"), which ease reporting requirements in respect of exempt distributions, particularly with respect to foreign issuers undertaking exempt distributions to institutional investors and other non-reporting issuers undertaking exempt distributions to institutional investors in Canada as part of a broader offering outside of Canada. In our view, such an expansive scope will have a restrictive effect on the exempt market with respect to the content of offering memoranda. As the content of offering memoranda is not currently regulated (save for certain mandatory requirements such as statutory rights of actions and similar requirements and outside of the exempt distributions made in reliance upon the offering memorandum exemption in section 2.9 of NI 45-106), we urge the CSA to undertake a careful review of the impact such proposal may have and whether there is any further regulatory concern with respect to the exempt market.

C. Notice Questions

- 3) *Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?*

We believe that there are certain aspects of the Proposed Amendments that are unclear and have noted those as follows:

Definitions – Section 1

- We believe the definition of "capital management measure" is confusing as the definition requires that the measure be "disclosed in the notes to the financial statements," whereas section 7.1 of the Proposed Amendments only applies to a "capital management measure" that is disclosed in a document "other than the financial statements." We believe section 7.1 of the Proposed Amendments should be revised to provide that the section applies to a "capital management measure" as defined, to the extent it is used in a document other than the notes to the financial statements.
- We believe that subparagraph (b) of the definition of "non-GAAP financial measure" is overly restrictive in referring to "primary financial statements" in that there may be circumstances where a measure is not disclosed in the "primary financial statements", but in the financial statements.

Section 2

- We believe that the standard introduced in Section 2(2) regarding disclosure that is "...intended to be, or reasonably likely to be, made available to the public" is a vague and imprecise standard. We believe that there are similar concepts under applicable securities

laws to refer to publicly available documents and that for consistency and ease of application such existing concepts should be used.

Section 3

- We suggest that section 3(d) be amended to refer to “the first time the non-GAAP financial measure appears in the body of the document” to clarify that the requirement does not apply to primary or secondary headlines or titles.
- We suggest that paragraph 3(d) of Proposed 52-112CP be amended to explicitly state that cross-referencing to previously filed documents that comply with the Proposed Amendments would be permitted in order to satisfy the requirements of the Proposed Amendments.
- We suggest that section 3(d)(v) be amended to clarify that this requirement applies the first time there is a change in the label, composition or calculation etc., from the label, composition or calculation of the same measure disclosed in respect of a comparative period to ensure this is not an open-ended and ongoing obligation.

4) *Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.*

We respectfully submit that it is not clear why the proposed exemption is only available to “SEC foreign issuers” and has not been extended to “designated foreign issuers” as defined in National Instrument 72-102 *Continuous Disclosure and other Exemptions Relating to Foreign Issuers* (“**NI 71-102**”). Furthermore, we believe that the express exemption should also be extended to “SEC issuers” as defined in National Instrument 51-102 *Continuous Disclosure* (“**NI 51-102**”).

Under the framework of NI 71-102, SEC foreign issuers and designated foreign issuers are largely exempt from most disclosure and related requirements under Canadian securities laws on the basis of compliance with the local requirements of the designated foreign jurisdictions. As such, we do not believe that such issuers should be subject to a specific and very technical set of requirements with respect to non-GAAP measures, when the vast majority of their disclosure is exempt from specific form and timing requirements under applicable Canadian securities laws. For example, a designated foreign issuer that is not required to comply with Canadian disclosure requirements relating to management discussion and analysis, should not have its locally compliant financial disclosure subject to one set of technical Canadian requirements. To the extent that the CSA are proposing to exempt SEC foreign issuers only on the basis that such issuers would be subject to similar requirements (under United States federal securities laws), then we believe that “SEC issuers” under NI 51-102 should also be similarly exempt as per exemptions currently available to such issuers under NI 51-102. We also note that “SEC foreign issuers” may not be subject to disclosure requirements under United States federal securities laws to the extent they are “foreign private issuers” for the purposes of such laws. In this respect we note that section 1.4 of the Companion Policy to NI 71-102 also acknowledged this fact, that compliance with a specific aspect of United States federal securities laws includes reliance upon an available exemption from such requirements. As such, we further question whether the exclusion of “SEC foreign issuers” only is appropriate.

* * * * *

Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions in this regard.

Yours truly,

Ramandeep Grewal
 Jeff Hershenfield
 Jonah Mann
 Billy Rosemberg



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December 5, 2018

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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 Email: comments@osc.gov.on.ca

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 Fax: 514-864-6381
 E-mail: consultation-en-cours@lautorite.qc.ca

**Re: CSA 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 Sirs/Mesdames:

Suncor Energy Inc. (Suncor, we or the company) appreciates the opportunity to provide comments on the recently proposed National Instrument 52-112 – *Non-GAAP and Other Financial Measures Disclosure* (NI 52-112 or the proposed instrument) as well as the associated proposed companion policy (the Companion Policy).

Suncor is an integrated energy company headquartered in Calgary, Alberta, Canada. We are strategically focused on developing one of the world's largest petroleum resource basins – Canada's Athabasca oil



sands. In addition, we explore for, acquire, develop, produce and market crude oil and natural gas in Canada and internationally; we transport and refine crude oil, and we market petroleum and petrochemical products primarily in Canada. We also conduct energy trading activities focused principally on the marketing and trading of crude oil, natural gas, power and byproducts. We also operate a renewable energy business as part of our overall portfolio of assets.

We recognize the importance of clear guidelines around the use of non-GAAP financial measures and are largely supportive of the principles-based guidance found in Staff Notice 52-306 – *Non-GAAP Financial Measures* (SN 52-306), which is currently in effect. SN 52-306 provides clear guidance on how an issuer may appropriately disclose non-GAAP financial measures and we question the need for an instrument that makes certain requirements less clear while also providing very prescriptive guidance that will be difficult for issuers across multiple industries to apply effectively and consistently. We view non-GAAP measures as a useful and effective way to demonstrate a company's financial and operating performance by adjusting for items management believes are less important or significant to investors when evaluating the company's performance over a given period. It also allows a company to more clearly disclose the operating results within the context of the specific industry it operates in, as long as the integrity of the IFRS reporting framework is maintained through adequate disclosure and reconciliation.

Our comments below identify areas in NI 52-112 and the Companion Policy that Suncor believes require further clarification or that we believe are too prescriptive to be applied effectively across multiple industries of varying global investment reach and, where applicable, we suggest an alternative approach. There are several proposed requirements in NI 52-112 that we feel will ultimately result in less useful financial information and we believe will increase the regulatory burden on issuers without a corresponding benefit to users of the information. In that regard, we believe that the identified items would benefit from further review and consideration by the Canadian Securities Administrators (CSA).

Comments

- **Companion Policy: Paragraph 3(b) – Prominence of a non-GAAP financial measure**

Describing a non-GAAP financial measure as, for example, “record performance” or “exceptional” without at least an equally prominent descriptive characterization of the most directly comparable measure.

For various reasons, there will be times when a non-GAAP financial measure and the most directly comparable GAAP measure are not both records or have not achieved the same level of performance in a given period. Moreover, referencing multiple records for comparable non-GAAP and GAAP measures would be unnecessarily repetitive and may not be the most effective way to describe the GAAP performance measure.

It is our opinion that references to multiple records or a detailed summary as to why the most comparable GAAP measure is or is not a record would not add value to the user of the information and would make disclosures unnecessarily repetitive, confusing for readers and, at the same time, more burdensome for preparers.

Where the non-GAAP financial measure is clearly identified as such, a quantitative reconciliation is provided or incorporated by reference, and the most directly comparable figure presented in the issuer's financial statements is presented along with the non-GAAP measure with equal or greater prominence, we believe readers will be provided with sufficient information to understand the non-GAAP financial measure. We believe this type of disclosure will provide investors with more

useful information than mandating that multiple, sometimes competing, discussions be provided. This requirement to present descriptive characterization with equal prominence could have the effect of issuers disclosing less operational detail/context to limit the need and potential risk associated with additional and cumbersome disclosures required to attain an equally prominent characterization.

Proposed alternative – The prominence requirement should be principles based, much like IFRS, and afford management of the issuer a certain level of judgement. An alternative to a specific requirement that descriptions be equally prominent is to have figures be equally prominent while having issuers provide sufficient correlation to the comparable GAAP measure to make the reader aware of the relationship. To limit confusion, issuers should be permitted to focus descriptive discussions on the measure that best reflects how the business is managed. If: (1) a non-GAAP financial measure is reconciled in a meaningful way; and (2) the differences between that measure and the most directly comparable GAAP measure presented in the issuer’s financial statements are sufficiently explained both qualitatively and quantitatively, then there should be no need to repeat certain descriptions or to counter existing ones.

- **Companion Policy: Paragraph 3(b) – Prominence of a non-GAAP financial measure**

Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most directly comparable measures or without including the most directly comparable measures in the same table or graph.

Similar to the comments above, in our view, requiring issuers to present dual graphs/charts to represent comparable non-GAAP and GAAP financial measures is unnecessarily repetitive and would simply duplicate items already found in a reconciliation to a graph/chart. In some cases, this would render a chart ineffective or confusing.

If the equal prominence principles are adhered to appropriately the first time a non-GAAP financial measure is disclosed in a document and applied consistently, then repeating the GAAP measure in graphical form would not add additional value to users of the information.

Proposed alternative – Rather than require that all non-GAAP tabular or graphical disclosures also include the GAAP measure, the GAAP measure should only be required if its absence renders the non-GAAP chart/graph confusing or misleading. If a clear, sequenced presentation and reconciliation of the non-GAAP financial measure to the most directly comparable measure presented in the issuer’s financial statements is supplemented by a graphic that displays only the non-GAAP measure, then the issuer has clearly communicated the correlation between the two and should not be expected to further complicate the tabular or graphical representation.

- **NI 52-112: Paragraph 3(c) – Comparative information**

3. An issuer must not disclose a non-GAAP financial measure in a document unless all of the following apply:

- (c) *the document presents the same non-GAAP financial measure for the comparative period;*

We agree with this requirement in the case of interim and annual management's discussion and analysis (MD&A), which require a comparison of the company's financial condition and financial performance in the current period to that in the comparative period. However, extending this requirement to other supplemental documents, such as investor presentations, which are intended to provide a user-friendly summary and supplementary information to investors, may cause documents to be unnecessarily lengthy and overly complex for users.

Information about the comparative period may not be relevant or applicable to the information being disclosed in these other 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 the non-GAAP financial measure for the comparative period may lead to arbitrary inclusions of comparative figures, which could cause the documents in which they are found to be unnecessarily complex and cumbersome for users, without providing additional useful information.

Proposed alternative – Outside of the MD&A, we believe that issuers should be given the flexibility to determine when to include the comparative figures. This would be if the absence of such information would render the non-GAAP measure misleading or if they feel it would be valuable and relevant to the discussion. In addition, preparers should be permitted to cross reference such information contained in other disclosure documents.

- **Companion Policy: Paragraph 3(d) – First time disclosure requirements**

The information required by paragraph 3(d) of the Instrument should be presented in the same document as the non-GAAP financial measure..... To prevent duplicate disclosure, an issuer may provide all the required disclosures for all non-GAAP financial measures in one section of the document, and cross-reference to that section each time a non-GAAP financial measure is presented in that same document.

Paragraph 3(d) of the proposed instrument would require that issuers include the information required by subparagraphs 3(d)(ii) to (v) in each document where a non-GAAP financial measure appears, even if that information has already been included in a publicly available document released at the same time or during a prior period. Requiring issuers to re-state the quantitative reconciliations and other information already disclosed and easily accessible to users in other documents would be unduly burdensome and could cause certain documents, such as investor presentations and news releases, to become unnecessarily complex and difficult for users to navigate. There is little, if any, benefit that will be gained by users from excessive repetition of reconciliations and other information.

Similarly, issuers will often disclose supplemental financial information, including non-GAAP financial measures, for several prior quarters and years, to provide useful, longer-term

comparative information for the benefit of investors. Typically, non-GAAP financial measures for a prior quarter or year will have been reconciled to the most directly comparable financial measures presented in the issuer's primary financial statements in the MD&A for that prior quarter or year. Requiring issuers to re-state quantitative reconciliations disclosed in prior MD&As in subsequent documents rather than permitting issuers to incorporate those reconciliations into future documents by reference will cause documents to become unnecessarily lengthy and difficult for users to navigate. It would also add unnecessary cost and burden for issuers. It is our view that the addition of several reconciliations from multiple prior periods will only further complicate the supplemental financial information and will be of little value to the end user.

Proposed Alternative – The proposed instrument recognizes the benefit of cross-referencing to a section of the document to avoid duplicating disclosures and even the proposed instrument itself makes references to other instruments/documents. We feel that issuers should similarly be permitted to satisfy the requirements of subparagraphs 3(d)(ii) to (v) of NI 52-112 by cross-referencing to another publicly available document containing such information. As long as the issuer clearly identifies the document containing the information required by subparagraphs 3(d)(ii) to (v) and incorporates the required information from that document by reference, the requirement in paragraph 3(d) should be considered to be met.

- **Companion Policy: Subparagraph 3(d)(iv) – Reconciliation of a non-GAAP financial measure**

An issuer should disclose any income tax effects of its non-GAAP financial measure depending on the nature of that measure. However, adjustments to arrive at the non-GAAP financial measure should not be presented “net of tax” but should be shown as a separate adjustment and clearly explained.

If the two measures being reconciled are on a pre-tax basis, then we see no issue with this application guidance. However, if the non-GAAP and GAAP figures being reconciled are both presented net of tax, we question the value in reintroducing the tax impact when reconciling after-tax figures. If the reconciliation is done in accordance with the guidance already presented in subparagraph 3(d)(iv), then sufficient information should be available to allow the user to understand the reconciliation. In addition, significant tax matters should already be disclosed as part of the company's results.

Furthermore, when attempting to achieve the requirements of the proposed instrument, it is our belief that a table which presents a discrete tax impact for each adjusting item would not create succinct or useful disclosure and could be confusing and does not add additional value to the information being presented. Alternatively, to present a more concise reconciliation, the sum of the total tax impact of the adjusting items could be presented within one tax impact line, but this would not drive enhanced disclosure and would not be as effective as disclosing each adjusting item on an after-tax basis.

Proposed alternative – The instrument should allow for reconciling items to be presented on the same basis as the non-GAAP and comparable GAAP measure being reconciled. If reconciling pre-tax figures, reconciling items should be presented on a pre-tax basis. If reconciling after-tax figures, then the reconciling items should be presented on an after-tax basis.

Thank you for this opportunity to provide comments on the proposed NI 52-112 and Companion Policy. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Sincerely,

SUNCOR ENERGY INC.

Angela Butler, Vice President and Controller

cc. Alister Cowan, Executive Vice President and Chief Financial Officer
Jacquie Moore, Vice President Legal Affairs, Corporate
Shawn Poirier, Director Legal Affairs, Corporate

December 5, 2018

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 of 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 Notice and Request for Comment – Proposed National Instrument 52-112 (“NI 52-112”), Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes (the “Proposed Amendments”)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to provide comments on the Proposed Amendments and respond to the questions posed in the Request for Comment.

¹ The CAC represents more than 15,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² 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 154,000 CFA charterholders worldwide in 165+ countries and regions. CFA Institute has eight offices worldwide and there are 151 local member societies. For more information, visit www.cfainstitute.org or follow us on Twitter at @CFAInstitute and on Facebook.com/CFA Institute.

We are supportive of the proposed NI 52-112 and the related consequential amendments and changes aiming to strengthen the disclosure requirements surrounding the use of capital management measures, segment measures and supplementary financial measures, or what others have collectively referred to simply as alternative performance measures or APMs. The proposal creates a set of enforceable standards that will further meaningful disclosures to investors without unduly limiting the ability of an issuer to tell their own story using what it deems to be the appropriate financial measure.

APMs are derived from adjusted GAAP and typically their calculation is highly subjective and not subject to assurance. APMs are a way for companies to report earnings based on whatever logic management finds suitable and the discrepancies between GAAP and non-GAAP earnings can be enormous.³ The reliance on these measures, however, has been progressively increasing among the global investor community. A recent global survey conducted by CFA Institute found that 63% of CFA charterholders thought that APMs should be subject to some regulation.⁴ In fact, the survey revealed the diversity and sophistication of investors' motives for using APMs. Independent, sell side research recently noted that 80% of companies in the S&P TSX60 Index used a non-GAAP measure of net income to adjust and increase the GAAP measure of net income in their securities filings.⁵

The CAC believes the use of APMs is generally reflective of investors' demand for such measures. As CFA Institute research identified, APMs are useful for investors for a variety of reasons, including as a valuation input and as an indicator of earnings quality. Equity investors typically want to translate book values and income statement items into a recurring stream of cash flow or free cash flow ("FCF") as cash flow arguably better reflects the true economic prospects of a business. Additionally, segment measures help investors understand the key valuation drivers for a given business unit (e.g. EV/EBITDA or Price/FCF multiples). APM measures are also used by investors to perform a trend analysis and to adjust for non-recurring items on the income statement (e.g. adjusted earnings per share for non-recurring items). Supplementary financial measures expand upon the information presented in the GAAP financial statements and help investors understand the operating performance of the given business (e.g., growth in same store sales). When compared with the GAAP financial statements, APMs offer a company more flexibility to measure financial performance than GAAP.

According to the Canadian Accounting Standards Board ("AcSB") the primary characteristics of high-quality performance measures are relevance and faithful depiction. Consistency, comparability, verifiability, timeliness and understandability are all

³ <https://www.cfainstitute.org/en/advocacy/issues/non-gaap-reporting>

⁴ CFA Institute, "Alternative Performance Measures –The Latest on Investor Use and Desire for Standardization," *CFA Institute Member Survey Report* (2018), online: <https://www.cfainstitute.org/en/research/survey-reports/alternative-performance-measures>

⁵ Georgopoulos, Taso and Scilipoti, Anthony, "Accounting Alert –Performance Measurement: The Rise of Non-GAAP Metrics," *Veritas Investment Research* (September 8, 2016), online: <https://maximizer.veritascorp.com/virdocs/Accounting-Alert-The-Rise-of-Non-GAAP-Metrics-Veritas-September-8-2016.pdf>

secondary characteristics of high-quality performance measures.⁶ Taken together, these characteristics or principles can help judge the usefulness of a financial measure. From an investor's perspective, a useful measure should either confirm the past value of an entity or help predict the future value of an entity (i.e., the measure should assist in either value realization and/or value creation). The CAC believes that most APMs are useful measures, but they may lack many of the secondary characteristics of a high-quality performance measure such as consistency, comparability and verifiability. The proposed rule will help address such deficiencies by requiring APMs to be more clearly identified, labeled, and reconciled back to GAAP measure along with an explanation for the change in all documents filed with securities regulators.

The CAC agrees with the principles created by the AcSB, and we would encourage the CSA, investors and other standard-setters to collaborate and harmonize any future principles, guidelines or standards that may be applied to the use of or calculation of APMs. Canadian companies compete in and raise capital in a global market and Canada's regulations should therefore position our issuers to succeed on the global stage. A harmonization of standards across Canada and with international standards is ideal.

Investors may benefit from a more transparent, consistent and comparable reporting regime, that includes industry specific APM disclosures. However, we caution regulators not to be overly prescriptive in their approach. Any financial measure that is flexible is also inherently subjective and may be difficult to standardize. Thus, when designing a framework surrounding the use and calculation of APMs, a principles-based approach such as required disclosures and reconciliations may be preferred over a more prescriptive rules-based approach, particularly as it pertains to the calculation of APMs. Any future refinement, beyond what is currently proposed in NI 52-112 should aim to balance investors demand for high-quality disclosures without inhibiting an issuer's ability to communicate the financial condition and prospects of their business or the ability to communicate industry specific measures.

A "comply or explain" regulatory model may help provide investors with the right amount of information without requiring excessive disclosures from issuers. Such a model would require an issuer to report according to a set of enforceable standards or principles, but is also flexible enough to allow an issuer to deviate from such standards when an appropriate explanation is provided. The CAC believes it is possible to reduce the absolute quantity of disclosures while still enhancing the quality of disclosures and promoting investor protection. Requiring excessive disclosure risks overwhelming investors with unnecessary information or worse. In fact, excessive disclosure relating to APMs measures may actually dis-incentivize issuers from communicating fully with their investors and place less emphasis on written materials that are broadly available to investors.

Generally, the CAC suggests that regulators should further embrace the use of data and technology to enhance the utility of disclosures (e.g., investigate further using XBRL

⁶ Linda Mezon, "Canadian Accounting Standards Board – Draft Framework for Reporting Performance Measures" (presentation delivered at the Alternative Performance Measures Working Group, 20 November 2018).

and other similar technologies). We believe that all documents filed with a securities regulator should include detailed reconciliations of any alternative performance measures back to the most representative line item reported under GAAP; however, when APMs measures are utilized in other written documents (e.g. investor presentations), a reference back to the securities filings ought to be sufficient disclosure.

Finally, it is our understanding that many of the requirements in the proposal that requires issuers to identify, label and reconcile APMs are already status quo and were originally established in Staff Notice 52-306. Formalizing the existing Staff Notice into a National Instrument should not be overly burdensome to Canadian issuers. Such formalization of the notice into a rule will also provide regulators with additional enforcement tools if they observe instances of non-compliance. We believe this is a positive step and a useful tool for regulators to possess.

We wish to respond to the specific questions posed as follows.

Responses to Questions listed in the Notice and Request for Comment

1. *Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.*

No.

2. *Are there any specific additional disclosures not considered in the Proposed Instrument that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.*

No.

3. *Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?*

No.

4. *Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.*

Yes.

5. *Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.*

Yes, but care should be taken not to dis-incentivize the use of written disclosures in favour of oral disclosure. Written communications are typically more broadly distributed and accessible to investors than oral disclosures (e.g. quarterly financial

statements and press releases are typically more accessible than corporate access meetings and conference calls).

6. *Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.*

All documents should not have the same standards apply. For presentation materials where the APMs measure was previously defined, it is sufficient to reference back to the most recent financial statements and reconciliations on file with the securities regulator. For quarterly or annual financial results press releases where full financial statements are posted online concurrently with the press release, a footnoted reference back to the financial statements ought to be sufficient disclosure.

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.

This letter is signed jointly by:

“The Canadian Advocacy Council for Canadian CFA Institute Societies”

“Sue Lemon, CFA”

Chief Executive Officer, CFA Society Toronto

“David Smith, CFA”

Chair, CFA Societies Canada



THE INVESTMENT
FUNDS INSTITUTE
OF CANADA

L'INSTITUT DES FONDS
D'INVESTISSEMENT
DU CANADA

December 10, 2018

Delivered by Email comment@osc.gov.on.ca; 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
 Autorite des marches 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

Attention:

The Secretary
 Ontario Securities Commission
 20 Queen Street West
 19th Floor, Box 55
 Toronto ON M5H 3S8

Me Anne-Marie Beaudoin
 Corporate Secretary
 Autorite des marches financiers
 800, rue du Square-Victoria, 22e etage
 C.P. 236, tour de la Bourse
 Montreal QC H4Z 1G3

Dear Sirs and Mesdames :

RE: 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 and Changes

The Investment Funds Institute of Canada (IFIC) appreciates the opportunity to comment on 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 and Changes (collectively, the Proposed Instrument). IFIC supports the Canadian Securities Administrators' (the CSA) goal of providing investors with quality information.

IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. The investment funds industry has a long-standing history of supporting measures to enhance investor protection and increase transparency in the adviser-client relationship while continuing to preserve investor choice. We continue to support these initiatives.

The Secretary
Me Anne-Marie Beaudoin
Re: 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 and Changes
December 5, 2018

Overview

IFIC seeks clarity on the application of the Proposed Instrument to the specific disclosure requirements for investment funds included in National Instrument 81-106 Investment Fund Continuous Disclosure (NI 81-106). IFIC concerns relate primarily to:

1. Specific calculations/requirements prescribed by NI 81-106, and
2. Non-specific calculations/requirements prescribed by NI 81-106.

Specific Calculations/Requirements

NI 81-106 explicitly prescribes the calculation for items like Management Expense Ratio (MER), MER before waivers or absorptions, Pricing NAV, Trading Expense Ratio, and Portfolio Turnover Rate, which are required to be included in the Management Report of Fund Performance (MRFP). While we acknowledge the exclusion of “specific financial measures” in the Proposed Instrument, there could be some ambiguity as to the application of the proposed amendments to all required disclosures in the MRFP, and other documents.

IFIC believes there is a risk in interpretation of which items will fall within the scope of the Proposed Instrument versus those that are excluded by virtue of the ‘specific financial measures’ exclusion in paragraph 2(2), and is therefore seeking explicit clarity from the CSA. Absent clarity, there is a risk that certain disclosures become less comparable between individual funds as some funds may include them as non-GAAP measures disclosure and some may not. Further, applying the disclosure, reconciliation and other requirements of the Proposed Instrument imposes undue costs to the fund (discussed below), especially given these items are required to be included by securities law to begin with.

Non-specific Calculations/Requirements

NI 81-106 requires several disclosure items that could be considered “specific financial measures” but for which there are not clearly prescribed requirements. For example, the Management Discussion of Fund Performance (MDFP) section of the MRFP will typically include, both implicitly by the language in NI 81-106 as well as in general industry practice, some sort of performance attribution analysis (by investment type, geography, currency, etc). There is a risk that these types of required disclosures could meet the definition of an Other Financial Measure, especially when comparisons to other periods are included for context. This would create a scenario where some funds are, for example, reporting attribution characteristics as non-GAAP measures and some are not, reducing comparability and potentially causing confusion. Further, such additional disclosure would create undue costs on the fund as noted above.

IFIC feels this is especially problematic given the explicit direction in NI 81-106 for a fund manager to use their judgment in deciding how to discuss the fund’s performance. NI 81-106 states that the MDFP is “intended to give the reader the ability to look at the investment through the eyes of management by providing both a historical and prospective analysis.” Further, NI 81-106 says “**(t)he description of the disclosure requirement is intentionally general**” and “**(t)his Form contains a minimum number of specific instructions in order to allow, as well as encourage, investment funds to discuss their activities in the most appropriate manner and to tailor their comments to their individual circumstances.**”

We believe that fund managers will be discouraged from a more meaningful discussion of the fund’s performance ‘tailored to their individual circumstances’ if they are required to include additional disclosures, reconciliations, etc. for non-GAAP measures. Similarly, they may be discouraged if they run the risk of including attribution and other relevant analysis that subsequently gets identified as a non-GAAP measure but has not been disclosed as such. Further, we believe it will encourage more boilerplate and less useful disclosure, despite the caution included in NI 81016 to “**(a)void the use of boilerplate language**” and not to “**simply disclose the amount of change in the financial statement item from period to period.**”

The Secretary
Me Anne-Marie Beaudoin

Re: 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 and Changes
December 5, 2018

Impact

Were any of the items highlighted above to be construed as non-GAAP financial measures or other financial measures, the additional disclosures and required reconciliations would make the disclosures required by NI 81-106 more unwieldy, and unnecessarily so as there do not appear to be non-GAAP issues for investment funds subject to NI 81-106. Without further clarity it could also make the required disclosures under NI 81-106 less comparable, with some funds reporting measures as non-GAAP while other funds do not. The Proposed Instrument would impose unnecessary additional costs on a fund, and ultimately the investor, through the administrative costs of producing the additional disclosures or in seeking exemptive relief from them. Finally, it could encourage less meaningful disclosure by fund managers in areas like performance attribution where the requirements of NI 81-106 are not explicit.

Conclusion

We understand that there were no specific concerns raised regarding non-GAAP measures used by investment funds subject to NI 81-106. Further, we believe investors understand and are accustomed to the disclosures currently being provided for funds under NI 81-106. We believe that investment funds subject to NI 81-106 should therefore be exempt from the Proposed Instrument. This would maintain the comparability of key disclosures between individual funds and continue to meet the extensive, prescriptive and well-understood disclosure requirements of NI 81-106. This will also limit the risk of unintended consequences that reduce meaningful discussion in areas such as performance attribution.

IFIC appreciates the opportunity to comment on the Proposed Instrument. We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email at jparker@ific.ca or by phone at 416-309-2319.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



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The Secretary
Ontario Securities Commission
20 Queen Street West, 19th Floor, Box 55
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December 4th, 2018

Submitted via electronic email

Re: CSA 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 Ontario Securities Commission,

Thank you for the opportunity to comment on the *CSA 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.

REALPAC and its members support providing quality information to investors, analysts and other financial measures users. In 2004, REALPAC issued non-authoritative guidance on Funds from Operations (FFO), one of the industry-wide standard measures of a real estate entity’s operating performance. Since the introduction of the definition, the term has come to be widely used by Canadian public companies and REITs¹. Over time, many investors and analysts made adjustments to FFO in order to better evaluate the dividend/distribution policy of these entities, entitling this measure Adjusted Funds from Operations (AFFO). In 2017, when, in consultation with users and preparers, it was determined there was diversity in how AFFO was calculated and utilized, REALPAC and its members responded, developing a standard definition of AFFO and introducing a new metric: Adjusted Cashflow from Operations (ACFO).

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.

¹ Additionally, the term FFO is widely employed by the much larger U.S. publicly-traded real estate sector and it has become a widely recognized metric by listed property investors around the globe.



Our specific comments on the *CSA Proposed National Instrument 52-112* (and its accompanying Companion Policy and Consequential Amendments and Changes) follow.

1. Labelling and Prominence of non-GAAP financial measures: Proportionate Share of Joint Ventures

Regarding Proposed National Instrument 52-112 PART 2 DISCLOSURE REQUIREMENTS Non-GAAP financial measures:

3. An issuer must not disclose a non-GAAP financial measure in a document unless all of the following apply:

(a) the non-GAAP financial measure is labelled appropriately given its composition and in a way that distinguishes it from totals, subtotals and line items presented in the primary financial statements;

and

PROPOSED COMPANION POLICY 52-112

NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE - Paragraph 3(b) –

Prominence of a non-GAAP financial measure:

The following are examples that we view as causing a non-GAAP financial measure to be more prominent than the most directly comparable measure presented or disclosed in the financial statements:

- *Presenting a full statement of profit or loss and other comprehensive income of non-GAAP financial measures without presenting it in the form of a reconciliation of each non-GAAP financial measure to the most directly comparable measure, sometimes referred to as a single column approach;*

REALPAC comments:

In the real estate industry, a common disclosure in an entity's Management Discussion and Analysis involves providing information on its proportionate share in joint arrangements.

As a result of common legal structures used in many jurisdictions for real estate projects, many real estate joint arrangements are classified under IFRS as joint ventures and therefore recorded as a one-line net equity investment in the statement of financial position. However, investments in joint ventures are not passive investments for real estate entities. They are typically actively managed as part of ongoing, operating activities. One of the most significant adjustments made by real estate investors and analysts to value the earnings of a real estate entity is an adjustment to include the proportionate share of the revenue and expenses from these joint arrangements. This adjustment is made to acknowledge that management teams, investors and analysts all view the proportionate share of profit and loss from these joint ventures as part of operating profit. In supplementary documents, preparers include the revenue and expenses from joint ventures and consolidated entities in order for investors and analysts to calculate operating income from real estate operations that more accurately represents the entity's operating business. Despite legal structures around the arrangements, real estate entities run the operating activities within joint operations and



joint ventures the same way, and as such, preparers, investors and analysts view the revenues and expenses from these activities as part of the regular operating business of the entity – regardless of IFRS-mandated of accounting construct.

One of the key measures used by investors and analysts for real estate entities in several jurisdictions is Net Operating Income (NOI). In supplemental documents provided by management, the proportionate share of profit and loss from joint arrangements is included in the calculation of Net Operating Income (NOI). NOI is a well established and ingrained management performance metric in the real estate industry that is used for many purposes, including purchase decisions for investment properties, monitoring ongoing operating performance, and comparing real estate entities across asset classes and jurisdictions.

Real estate entity management teams, investors and analysts around the globe agree that the proportionate share of profit and loss from joint ventures is a significant and integral part of a real estate entity's operating profit and should be presented and analyzed as such.

As noted by the IASB in their current Primary Financial Statements project, "users of financial statements told us they need information that aides them in assessing the persistence or sustainability of an entity's financial performance and management performance measures are useful for that purpose." For real estate entities, developing the most appropriate calculation of this measure necessitates the inclusion of their proportionate share of operating profit from joint arrangements that are operated in the same manner as fully-owned properties. In recognition of this challenge – and not only limited to the real estate industry – one of the tentative decisions in the IASB's project to date is to require entities to separately disclose the results of integral and non-integral joint ventures and associates directly in the statement of financial performance.

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. It is our understanding that this presentation will continue to be acceptable under the CSA *Proposed National Instrument 52-112* (and its accompanying Companion Policy and Consequential Amendments and Changes), 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.

2. Reconciliation of Non-GAAP Financial Measures to Most Directly Comparable GAAP Amounts

Regarding [PROPOSED COMPANION POLICY 52-112](#)



NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE – Subparagraph 3(d) (iv): *Subparagraph 3(d)(iv) of the Instrument requires a quantitative reconciliation between the non-GAAP financial measure and the most directly comparable financial measure. An issuer may satisfy this requirement by providing a reconciliation in a clearly understandable way, such as a table. An issuer must ensure that its disclosure is not misleading and will have to consider the level of detail required to provide the necessary context. The Instrument does not define the “most directly comparable financial measure” and therefore the issuer needs to apply judgment in determining the most directly 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 directly 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 directly comparable measure is, consideration should be given to the nature, number and materiality of the reconciling items.*

REALPAC comments:

In January 2015, the OSC published *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 would appreciate any additional guidance from the OSC to clarify this point, so as to eliminate confusion on the interplay between *Staff Notice 51-724* and *CSA Proposed National Instrument 52-112*.

In addition, we seek clarification whether or not 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 are unclear on if and how these amounts should be reconciled to IFRS rental revenue on a quarterly basis, and question how this could be presented in a clear and useful manner to users.

3. Usefulness of Non-GAAP Financial Measures Disclosures

Regarding [PROPOSED COMPANION POLICY 52-112](#)
[NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE](#) Subparagraph 3(d)(iii) –
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 level of detail is a matter of judgment, which takes into account the complexity of the information and how familiar a reasonable person would be with the measure.

REALPAC comments:

We are concerned 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."

In addition, regarding:

[PROPOSED COMPANION POLICY 52-112](#)

[NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE](#)

[PART 2 DISCLOSURE REQUIREMENTS Paragraph 3\(b\) – Prominence of a non-GAAP financial measure](#)

The following are examples that we view as causing a non-GAAP financial measure to be more prominent than the most directly comparable measure presented or disclosed in the financial statements:

- *Multiple non-GAAP financial measures being used for the same purpose thereby obscuring disclosure of the most directly comparable measure;*

We are also 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.

4. Definition of Non-GAAP

Regarding [Proposed National Instrument 52-112 PART 1 DEFINITIONS AND APPLICATION: Definitions - "non-GAAP financial measure" means](#)



(a) a financial measure of financial performance, financial position or cash flow that is not disclosed or presented in the financial statements and that is not a disaggregation, calculated in accordance with the accounting policies used to prepare the financial statements, of a line item presented in the primary financial statements

and

PROPOSED COMPANION POLICY 52-112

NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE

Section 1 – Definition of a non-GAAP financial measure

Paragraphs 55 and 85 of IAS 1 Presentation of Financial Statements require the presentation of additional subtotals when such presentation is relevant to an understanding of the issuer’s financial position or financial performance. An issuer that presents an additional subtotal in the primary financial statements, such as Earnings Before Interest, Taxes, Depreciation and Amortization (“EBITDA”), would be presenting the subtotal in accordance with the accounting policies used to prepare its financial statements, if it has determined such presentation is relevant to an understanding of its financial performance. That financial statement measure would not meet the definition of a non-GAAP financial measure if it were also disclosed outside the issuer’s financial statements.

Disaggregation of subtotals and totals presented in the primary financial statements are captured by the definition of non-GAAP financial measures. For example, if EBITDA is not presented in the primary financial statements, it would be inappropriate to conclude that it is not a non-GAAP financial measure on the basis that it is a disaggregation of profit as presented in the statement of profit or loss. Likewise, a measure calculated by combining numbers disaggregated from different line items would also meet the definition of a non-GAAP financial measure, unless that measure is separately disclosed in the notes to the financial statements, for example, when expenses in the statement of profit and loss are presented by function and then also presented by nature in the notes to the financial statements.

REALPAC comments:

It is our understanding from reading these sections that where, for example, EBITDA is disclosed in the IFRS financial statements, it is defined as a GAAP measure, and where it is not disclosed in the IFRS financial statements, it is defined as non-GAAP measure. This distinction will result in EBITDA being a GAAP measure for some entities and a non-GAAP measure for others – across different entities, different industries and across entities within the same industry. This will result in inconsistencies that are most likely to be confusing to investors and other users. These inconsistencies also have the potential to result in unintended consequences for reporting issuers. We suggest 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.

In addition, it is unclear whether certain aggregations of amounts fall into the definition of non-GAAP measures: such as rolling 12-month information of a line item in the IFRS financial statements or an annualized balance.



5. Disclosure Requirements for Ratios

Regarding Proposed National Instrument 52-112 PART 2 DISCLOSURE REQUIREMENTS – Non-GAAP financial measures that are ratios

4. (3) Subparagraph 3 (d)(iv) does not apply if:

(b) the first time the ratio appears in the document, the document describes how the ratio is calculated and

(ii) provides a quantitative reconciliation to the ratio as calculated using the most directly comparable financial measures presented in the primary financial statements.

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. Under IFRS, there is no comparable payout ratio (i.e. the concept of payout ratio does not exist under IFRS). We question whether the above noted reference from the Proposed National Instrument 52-112 requires preparers to create a "GAAP" payout ratio, such as, for ACFO, to compare it to cash flow from operations and distributions (as a ratio). If this is the requirement, there are two specific issues with this:

- 1) As noted in our comment above, it is our understanding that where a financial measure or ratio is not reported or disclosed in the IFRS financial statements, reporting it outside the financial statements thereby defines it as a "non-GAAP" measure. Since there is no IFRS defined payout ratio (and therefore payout ratio is not included in a real estate entity's IFRS financial statements), creating a "GAAP" payout ratio (such as distributions as percentage of cash flow from operations) would essentially be creating an additional non-GAAP measure and comparing it to another non-GAAP measure; and
- 2) Reporting a payout ratio using distributions as a percentage of cash flow from operations is misleading to investors and users because of the inclusion or exclusion of some amounts under IFRS. For example, cash flow from operations as calculated under IFRS does not include maintenance capital expenditures, which will tend to overestimate cash available for distribution; nor does it include the results of joint ventures, which will tend to understate cash available for distribution. In addition, distributions on Limited Partnership B units are classified as interest expense for an open-ended REIT and are not classified as distributions for IFRS purposes.

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.

It is our understanding that the intended purpose of this requirement is not to "create" a GAAP ratio outside the financial statements, however clarification is required on the applicability of this clause.



6. Reducing Regulatory Burden

In 2017, in publishing the *CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*, it was noted that a key initiative of the CSA's 2016-2019 Business Plan was to review the regulatory burden on reporting issuers, and that the purpose of the consultation was to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers that could benefit from a reduction of undue regulatory burden. REALPAC and its members are very supportive of the CSA's initiative to ease the regulatory burden on non-investment fund reporting issuers and submitted a comment letter supporting several of the suggestions.

Other jurisdictions are also considering ways to decrease regulatory burdens. In the U.S., the Securities and Exchange Commission ("SEC") recently acknowledged that public companies are weighed down with too much regulation, and that increased disclosures and other burdens are making the public markets less attractive. In his address on July 2017, SEC Chairman Jay Clayton stated that, "(w)hile there are many factors that drive the decision of whether to be a public company, increased disclosure and other burdens may render alternatives for raising capital, such as the private markets, increasingly attractive to companies that only a decade ago would have been all but certain candidates for the public markets. And, fewer small and medium-sized public companies may mean less liquid trading markets for those that remain public. Regardless of the cause, the reduction in the number of U.S.-listed public companies is a serious issue for our markets and the country more generally."

In Canada, we are facing similar issues. Many have argued that companies are choosing the private market over public markets when faced with the prospect of producing onerous quarterly reports and increasing regulatory burden. As acknowledged in *CSA Staff Notice 51-353 Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* in March of this year, the majority of commenters expressed support for the initiative to reduce regulatory burdens. It was noted in the feedback summary that "the indication in some studies that public markets and the number of IPOs are in decline is a concern and we believe that the regulators have a role to play in helping to stem or reverse this trend." We suggest that developing the granular, prescriptive rules as proposed for NI 52-112 does not assist in this goal, but instead increases regulatory burden and costs.

7. Exclusion of Oral Statements

We agree with the proposal to exclude oral statements from the *CSA Proposed National Instrument 52-112*, as including these would prove exceedingly onerous for issuers, and difficult for users to understand.

We seek clarification that the exclusion extends to written transcripts of oral communications that are not issued or referenced directly by the issuer (such as those issued by external parties).



8. Background: Comparison to Other Jurisdictions

In the Background section of the Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure, it is noted that other securities regulators, including IOSCO, ESMA and the U.S. SEC have “recently strengthened” their efforts to regulate the disclosure of certain financial measures. To better understand the nuances of such regulations, we shared the CSA Notice and Request for Comment with our international colleagues and sought their feedback.

U.S. SEC regulations:

We received feedback from our colleagues in the U.S. that, under existing U.S. law, the SEC does not have rules or regulations related to non-GAAP disclosure that are comparably prescriptive and granular. It was noted that existing U.S. SEC Guidance on non-GAAP disclosure does address similar issues, such as labeling of non-GAAP, comparability, prominence of placement, reconciliation to comparable GAAP metrics, and segment reporting, albeit it less forcefully. SEC regulatory guidance (as opposed to actual regulations) has less “bite” than a formal, SEC adopted prescriptive regulation.

Our colleagues commented that under SEC regulation there are no specific requirements regarding quantitative reconciliation, as set forth in the Proposed National Instrument 52-112; nor is there a comparative “reasonable person” requirement as per *Proposed National Instrument 52-112 PART 2 DISCLOSURE REQUIREMENTS Non-GAAP financial measures 3 (d)(iv)*

(A) is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items,

and

(C) is explained in such a way that it provides a reasonable person an understanding of each reconciling item,

We also received feedback that for segment and capital ratios, U.S. Reg G is broader and less prescriptive on things like segment ratios and capital ratios.

European ESMA guidance:

We received feedback from our European colleagues that the ESMA APM (Alternate Performance Measures) guidance is used by national regulators to assess APMs/non-GAAP. It was noted by our colleagues that this is guidance and not as strict or prescriptive as the Proposed National Instrument 52-112. We reviewed ESMA’s current guidelines and noted that they are principles-based and not as granular nor prescriptive as Proposed National Instrument 52-112. For example, with regards to the presentation of APMs, ESMA guidance simply states: “APMs disclosed should be given meaningful labels reflecting their content and basis of calculation in order to avoid conveying misleading messages to users.” For reconciliations, the guidance simply states: “A reconciliation of the APM to the most directly reconcilable line item, subtotal or total presented in the financial statements of the corresponding period should be disclosed, separately identifying and explaining the material reconciling items.”

Based on our review of the Proposed National Instrument 52-112, discussions with our international counterparts, and review of guidance from the U.S. SEC and ESMA, we



posit that the regulations proposed are too prescriptive and granular and may result in management teams not having enough flexibility to communicate their results to investors, analysts and other users sufficiently. We suggest that the CSA consider more principles-based guidance more similar to that which is developed by ESMA.

We thank the OSC for the opportunity to provide our input on the *CSA Notice and Request for Comment – Proposed National Instrument 52-112, Proposed Companion Policy 52-112, 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,

A handwritten signature in blue ink that reads "NAnderson".

Nancy Anderson, Vice President, Financial Reporting and Chief Financial Officer
REALPAC



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 Leslie McCallum

Rima Ramchandani
 David Seville
 Michael Zackheim

December 5, 2018

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 (NB)
 Superintendent of Securities, 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

Attention:

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

Me Anne-Marie Beaudoin, Corporate Secretary
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 800, rue du Square-Victoria, 22e étage
 C.P. 246, tour de la Bourse
 Montréal QC H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* and Related Proposed Companion Policy

This is our firm's response to your Request for Comment dated September 6, 2018 regarding proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the "**Proposed Instrument**") and the related Proposed Companion Policy 52-112 of the same name (the "**Proposed Companion Policy**").

We support the overriding objective of the Canadian Securities Administrators to reduce instances of misleading disclosure of non-GAAP financial measures among Canadian issuers. More specifically, we agree with the CSA's view that issuers should:

- present non-GAAP financial measures consistently from period-to-period or explain changes in their components or method of calculation;
- label non-GAAP financial measures appropriately based on their components; and
- reconcile non-GAAP financial measures to the closest GAAP measures and explain and disaggregate reconciling items in sufficient detail for a reasonable investor to understand how non-GAAP measures are calculated.

However, we do not believe it is necessary to adopt the Proposed Instrument and Proposed Companion Policy to achieve these key objectives. Instead, we recommend that Staff Notice 52-306 be amended or additional guidance be published to highlight deficiencies in the disclosure of non-GAAP financial measures, provide clarity regarding what constitutes a non-GAAP financial measure and provide examples of best practices regarding such disclosure. This approach would provide clarity to issuers as to securities regulators' expectations and reinforce the imperative that non-GAAP financial measures must not be misleading, while preserving flexibility for issuers to present non-GAAP financial measures according to the expectations of their investor base and in a manner consistent with their industry peers. If the Proposed Instrument and Companion Policy are adopted as proposed, we believe this will result in the incurrance of unnecessary administrative, legal and accounting costs as issuers attempt to interpret and apply the new rules.

Below are our more specific comments on the Proposed Instrument and Proposed Companion Policy, organized as follows:

I. Non-GAAP Financial Measures

- 1. Prohibition on Cross-Referencing*
- 2. Financial Measures Specified by Other Regulatory Bodies*
- 3. Reasonable Person vs. Reasonable Investor*
- 4. Ratios*
- 5. Prominence of Financial Measures*

II. Segment Measures and Capital Management Measures

III. Substantive Items in the Proposed Companion Policy

- 1. Disaggregation*
- 2. The Meanings of "Presented" and "Disclosed"*
- 3. Definition of "Documents"*

IV. SEC Foreign Issuers and Designated Foreign Issuers

V. Oral Statements and Transcripts

VI. Transition Period

I. Non-GAAP Financial Measures

1. Prohibition on Cross-Referencing

Prohibiting issuers from cross-referencing from one document to another as a means of providing investors with access to reconciliations and related disclosures about non-GAAP financial measures is a significant change from Staff Notice 52-306. Sections 3(d), 6(a), 7(2)(b) and 8(a) of the Proposed Instrument, together with the Proposed Companion Policy guidance:

- are at odds with the general approach of securities regulation which permits incorporation by reference;
- will disrupt market practice and thereby impose unnecessary compliance burdens and costs on issuers;
- will result in more repetitive and voluminous disclosure documents; and
- will not impact the substance of the information that is readily available to investors.

We believe that many investors read issuers' financial information online, not in hard copy. Permitting issuers to cross-reference, including with hyperlinks, to a separate source of disclosure – which could be the MD&A or another core document - gives investors more contemporaneous, readable and user-friendly access to non-GAAP financial measures disclosure, as compared to requiring investors to scroll down to an appendix in every single document. Accordingly, the approach described on page 7 of the Proposed Companion Policy – allowing cross-referencing when non-GAAP financial measures are disclosed on an issuer's website – should be adopted for documents universally.

2. Financial Measures Specified by Other Regulatory Bodies

Section 2(2) of the Proposed Instrument provides a general exemption for financial measures that are disclosed in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada. Some issuers, such as banks and insurance companies, are regulated and supervised by administrative bodies that require or recommend reporting to the regulator and the public of certain measures calculated in accordance with regulatory guidelines or best practices. These measures are not required to be disclosed in accordance with the laws of a jurisdiction of Canada but it is a common industry practice for issuers to disclose these measures in their continuous disclosure filings. An example is the Life Insurance Capital Adequacy Test (LICAT) specified by the Office of Superintendent of Financial Institutions (OSFI) and OSFI's LICAT Public Disclosure Requirements Guideline.

In deference to the specialized expertise and authority of such regulatory bodies, and in light of the fact that these regulated issuers do not have discretion in how certain measures are to be calculated, the general exemption in Section 2(2) should be broadened to cover (i) financial measures that are disclosed in accordance with a requirement of securities legislation or the laws of a jurisdiction of Canada and (ii) financial measures that are required or recommended to be reported to any regulatory agency or to the public by any regulatory agency. Since the concerns about lack of standardized meanings and comparability across issuers are not applicable in this context, we believe that the benefits of applying the Proposed Instrument to these financial measures would not outweigh the significant additional compliance burden on

issuers.

3. Reasonable Person vs. Reasonable Investor

The Proposed Instrument refers to a “reasonable person” in respect of various disclosure requirements, e.g., the requirement to explain how a non-GAAP financial measure is useful to a reasonable person and the requirement for a reconciliation to be disaggregated in such a way that it provides a reasonable person with an understanding of the reconciling items.

Adopting a “reasonable person” standard is a change from Staff Notice 52-306, which focusses on investors. If this was a drafting error, it should be corrected before the final version of the Proposed Rule and Proposed Companion Policy are adopted. If this was not a drafting error but an intentional change, we believe additional explanation and guidance is required as to whether securities regulators meant to impose a different and more onerous standard.

To maintain consistency with the general scheme of securities laws, which are aimed at protecting investors (e.g., the MD&A form advises issuers, in considering the materiality of information, to consider whether a reasonable investor’s decision to buy, sell or hold securities would be affected), we believe that references to “reasonable person” in the Proposed Instrument should be replaced by “reasonable investor.”

4. Ratios

Under Section 4(2) of the Proposed Instrument, ratios do not have to be identified as non-GAAP financial measures if all financial components of the ratio

- are disclosed or presented in the financial statements, or
- constitute disaggregations, calculated in accordance with IFRS, of line items presented in the primary financial statements.

In these circumstances, it also makes sense not to require issuers to state that the ratio does not have a standardized meaning and may not be comparable to ratios of other issuers. Accordingly, the lead-in to Section 4(2) would be “Subparagraphs 3(d)(i) and 3(d)(ii) does not apply if...”

5. Prominence of Financial Measures

Market practices regarding the presentation of non-GAAP financial measures have developed over time in part because investors view such measures as material and often view them as more meaningful than the financial measures disclosed in an issuer’s financial statements. If adopted, we believe that the Proposed Instrument and Proposed Companion Policy needs to strike the right balance between allowing issuers to present information in an investor-friendly manner and curbing misleading disclosure practices.

In particular, we believe that the comments in the Proposed Companion Policy about prominence are overly prescriptive. We believe that issuers should be permitted to exercise their best judgment as to prominence and other style elements of non-GAAP disclosure, taking into account the context and circumstances under which the financial measures are disclosed, including the particular document or other location where they appear and the particular audience.

II. Segment Measures and Capital Management Measures

We believe that the addition of “segment measures” and “capital management measures” to the regulatory scheme governing non-GAAP financial measures will impose unnecessary compliance burdens and administrative costs for issuers, with little to no benefit for investors. These measures are, by definition, disclosed in the notes to the financial statements and are thus required or permitted to be disclosed under IFRS-IASB. Accordingly, we do not believe that securities regulations need to impose additional requirements when totals of segment measures or capital management measures are disclosed outside the notes. Instead, it should suffice for the Companion Policy to remind issuers that all financial measures - whether or not they fall within the definition of non-GAAP financial measures and regardless of whether they are derived from the financial statements or notes - must be presented in a manner that is not misleading. This reminder could be accompanied by a caution that segment measures and capital management measures, when presented outside the notes, may need to be accompanied by additional explanatory disclosure (or presented with a cross-reference to the applicable note in the financial statements) to prevent them from being misleading.

III. Substantive Items in the Proposed Companion Policy

Our comments below are in response to your question #3 *“Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?”*

1. Disaggregation

A definition of “disaggregation” should be added to the Proposed Instrument because disaggregation is a significant component of several of the proposed definitions and rules, constituting more than interpretive guidance.

2. The Meanings of “Presented” and “Disclosed”

In plain English, the words “presented” and “disclosed” have similar meanings and their explanation should be moved from the Companion Policy to the Definitions section of the Proposed Instrument so as to avoid confusion among non-accountants. An even better approach would be to simplify the confusingly similar phrases that include these two words. For example, the phrase “presented or disclosed in the financial statements” could be replaced by “in the financial statements” and the phrase “presented in the primary financial statements” could be replaced by “on the face of the financial statements.”

3. Definition of “Documents”

The Proposed Companion Policy indicates that the rules will apply to materials beyond traditional documents, such as website pages, social media postings and other electronic communications. Such a broad interpretation of “documents” is significant in terms of issuers’ disclosure obligations and should appear in the Application section of the Proposed Instrument and not just in the Companion Policy.

IV. SEC Foreign Issuers and Designated Foreign Issuers

This is in response to your question #4 *“Is the proposed exemption for SEC foreign issuers appropriate?”*

The proposed exemption for SEC foreign issuers is appropriate because it is consistent with the overall scheme of extra-territorial application of Canadian securities laws as reflected in National Instruments 71-101 and 71-102. For the same reason, an exemption should be provided for designated foreign issuers. Sound policy reasons underlie the exemptions provided to designated foreign issuers from compliance with Canadian rules on preparing AIFs, MD&A and many other disclosures. Non-GAAP financial measures should not be an anomaly that disrupts our existing regulatory scheme, imposing potentially significant burdens on designated foreign issuers in having to comply with both their home country requirements and Canadian requirements. A sensible alternative would be to add a caution in National Policy 71-102 that non-GAAP financial measures, like other disclosures, are not permitted to be misleading.

Similarly, we believe that an exemption should be provided for non-GAAP financial measures that are included in offering materials delivered to permitted clients in connection with distributions of eligible foreign securities. This would be consistent with regulatory accommodations that were introduced with the intention of removing disincentives to extend these offerings to Canadian purchasers. Foreign issuers and/or international dealers may not be prepared to undertake a separate Canadian compliance review in relation to non-GAAP financial measures. The result would likely be reduced access to these offerings by Canadian institutional investors, who we believe are capable of assessing non-GAAP financial measures themselves.

V. Oral Statements and Transcripts

This is in response to your questions #5 and #6 *"Is the proposed exclusion of oral statements appropriate?"* and *"Is the proposed inclusion of all documents appropriate?"*

We agree that oral statements should be excluded from the rules as it would not be practical for issuers to comply with the rules orally. Moreover, the rules should not apply to transcripts of oral statements. Transcripts are, by definition, recordings of oral proceedings and their purpose should remain limited to capturing exactly what was said. Applying the rules to transcripts will incent issuers not to provide transcripts to the marketplace. Alternatively, it should suffice for issuers to cross-reference from their transcripts to another source where the non-GAAP financial measures disclosure appears.

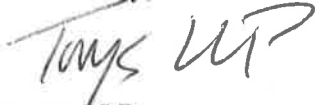
VI. Transition Period

We believe that a substantial transition period, e.g., at least one financial year, should be provided to enable issuers to prepare for implementation of the new requirements. This is especially the case in respect of the matters addressed in Sections I and II above, should you determine that you disagree with some or all of our comments on those matters and decide against adopting the revisions we have suggested.

* * * * *

We would be happy to discuss any of our above comments with you by phone or e-mail.

Yours truly,

A handwritten signature in black ink, appearing to read "Torys LLP", written in a cursive style.

Torys LLP

INCLUDES COMMENT LETTERS



VERITAS
INVESTMENT
RESEARCH

December 5, 2018

ACCOUNTING ALERT

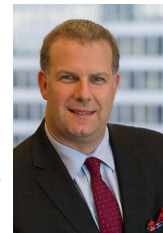
BRIDGING THE NON-GAAP GAP

*The State of Non-GAAP & a Review of
Proposed National Instrument 52-112*

Accounting & Special Situations

Anthony Scilipoti, FCPA, FCA, CA (Illinois)
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BRIDGING THE NON-GAAP GAP

Over the years, Veritas has consistently warned that the increasing use of non-GAAP metrics and their relatively weak regulation poses a risk to Canada's financial reporting system. In the past, our review of company filings has highlighted frequent departures by S&P/TSX 60 companies from even the minimum requirements for non-GAAP disclosures.

Canadian Securities Administrators (CSA) have clearly taken notice. On September 6, 2018, the CSA issued, for comment, Proposed National Instrument 52-112 – Non-GAAP and Other Financial Measures Disclosure. The Proposed Instrument is intended to address among other things, the ambiguity and lack of enforceability of the existing Staff Notice 52-306. If ratified, the Proposed Instrument will be applied in conjunction with the Securities Acts of the various jurisdictions in Canada, in particular, those statutes that make it an offense to provide false or misleading information to investors. As a result, the Proposed Instrument will offer an authoritative legal framework for Canadian issuers that disclose non-GAAP financial measures and other financial measures.

In Volume III of our series, we update our analysis on members of the S&P/TSX 60 ("TSX 60") using 2017's annual financial reports. Specifically, we measure the prevalence of non-GAAP measures in Canadian financial reporting and evaluate TSX 60 members' compliance with existing SN 52-306. In addition, we are responding to the CSA's request for comments with a detailed review of how the NI 52-112 rules may affect currently disclosed measures found in recent financial reporting. The highlights from our analysis include:

- **Non-GAAP measures continue to feature prominently in Canadian financial reporting. Although the use of non-GAAP measures in TSX 60 members' regulatory filings has declined from 80% to 70% and is now in line with members of the S&P 500.** We find that over 95% of TSX 60 members rely on a non-GAAP metric to report their performance; EBITDA and Adjusted Earnings continue to be the most prominent.
- **Potential violations of SN 52-306 have improved slightly:** Based on our review recent annual filings for TSX 60 members, we identified 26 violations down from 31 in the prior two years.
- **52-112 significantly broadens the scope of what is considered a non-GAAP measure.** If ratified, measures such as same-store-sales, net backs and other similar metrics not previously considered non-GAAP, are likely to be captured by the Proposed Instrument.
- **Compliance with NI 52-112 will require significant additional disclosures for reporting issuers.** Our review of recent annual filings for TSX 60 members revealed that most, if not all, companies would need to significantly increase their disclosures to meet the requirements of the Proposed Instrument in its current form.
- **NI 52-112 appears to have a much broader scope than its SEC counterpart Regulation G:** While we welcome the efforts to improve the financial reporting system in Canada, NI 52-112 will expand the breadth of non-GAAP metrics covered beyond Financial Measures to include: Segment, Capital Management, and Supplementary measures. It also includes a general anti-avoidance provision. We think many filers may complain that NI 52-112 is more onerous than the SEC's Regulation G. If the provisions of NI 52-112 become too onerous, companies may simply scale back their non-GAAP disclosures in response, which may not leave readers of the financial statements better off.

Since we wrote our first report in the fall of 2016, concerns over non-GAAP metrics have been steadily building. Accounting standard setters, securities regulators and the audit industry have all taken notice. NI 52-112 is an excellent step in the right direction by expanding the non-GAAP reporting framework and heightening the tone of enforcement. But it cannot stop there. We think auditors should have a greater role in assessing and promoting non-GAAP regulatory compliance. Users of the financial statements should also hold management teams to account by questioning each measure presented to ensure transparency. Ultimately, financial statements are prepared for users and if users say and do nothing, nothing will occur. We welcome being an integral part of the discussion.



REPORT OVERVIEW

For capital markets to function effectively and attract investors, a high-quality financial reporting system is required. The system must include:

1. Detailed and universally accepted accounting standards;
2. A clear legislative framework and a regulatory system with the resources to enforce compliance; and
3. As a last resort, a well-functioning judicial system to prosecute crimes and resolve disputes.

Unfortunately, in our view, the shift in reporting towards non-GAAP metrics in recent years has greatly weakened the ability to apply these necessary elements in a uniform way across companies, as each company is able to frame its non-GAAP reporting according to its own needs and biases.

In Part I of this report, we extend our analysis from our report in October of 2017 and assess the compliance of non-GAAP metrics for S&P/TSX 60 companies under the existing guidelines per CSA Staff Notice 52-306.

In Part II of this report, we review the Proposed National Instrument 52-112 ('the Proposed Instrument') that, if passed, updates Canadian disclosure requirements for non-GAAP metrics. We perform a hypothetical assessment of S&P/TSX 60 members for compliance under the Proposed Instrument, outline the key differences and provide our comments and recommendations. We are submitting our report in response to the CSA's request for comments.

Our analysis includes members of the S&P/TSX 60 Index. The primary source of information used was each index member's most recent annual report at the time of analysis. We have contacted very few individual companies for information and did not share our findings with the companies prior to the publication of our report. As a result, the findings and conclusions derived from our analysis represent Veritas' interpretation of available disclosures. As discussed later in this report, these disclosures often have limitations requiring us to make interpretations and judgments. Investors should study carefully not only our conclusions but the assumptions used in obtaining our conclusions.

Note: Where commonly used, we refer to companies in this report by their Canadian listed ticker symbol rather than by name.

For the purposes of this report, "adjusted EBITDA", can refer to various metrics including adjusted operating earnings, or any EBITDA metric calculated in a manner that excludes items such as interest, taxes, depreciation, and amortization, etc.



PART I

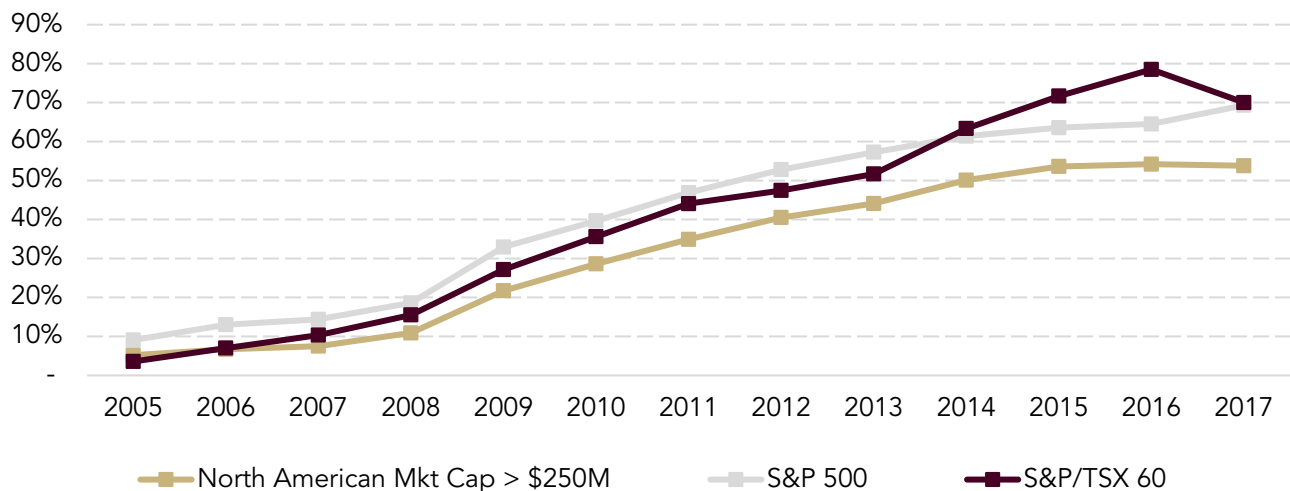
UPDATING OUR S&P/TSX 60 NON-GAAP DISCLOSURE ANALYSIS: NEW YEAR, SAME ISSUES

Non-GAAP measures continue to feature prominently in North American corporate reporting, consistent with our analysis in the last two years. Whether because investors demand more simplified performance metrics or companies want to better guide the interpretation of their performance, the use of non-GAAP measures remains prevalent.

We gauge the prominence of non-GAAP measures using Bloomberg data since 2004 when non-GAAP guidance was introduced. Figure 1 reports the proportion of each index's members that include a non-GAAP net income measure in their regulatory filings. During 2017, we generally saw flat usage among the North American companies reporting non-GAAP net income metrics, suggesting that new adoption has at least slowed. Interestingly though, usage among the TSX 60 companies declined while the S&P 500 increased, some of which we attribute to the changing sectoral composition of the two indexes – the TSX, for example, saw a significant changeover in its Materials components.

Figure 1

Percentage of Companies That Include Non-GAAP Net Income in Their Regulatory Filings



Source: Bloomberg

We can see that non-GAAP metrics continue to be used in most North American companies with ~70% of both the S&P 500 and S&P/TSX 60 reporting an Adjusted Net Income (NI) on their financial statements. It is key to note that the chart only illustrates the use of Adjusted Net Income whereas the scope of non-GAAP earnings measures is much broader and includes anything from Adjusted EBITDA to Free Cash Flow.

Once we broaden our analysis to each issuer's annual report, the use of non-GAAP measures increases substantially from the Bloomberg calculations. Based on our review, 95% of S&P/TSX 60 members utilize some non-GAAP calculation as their most prominent financial performance metric. Though prevalence in the use of non-GAAP metrics has been growing, they have long been viewed as 'part of the toolkit' for management reporting.

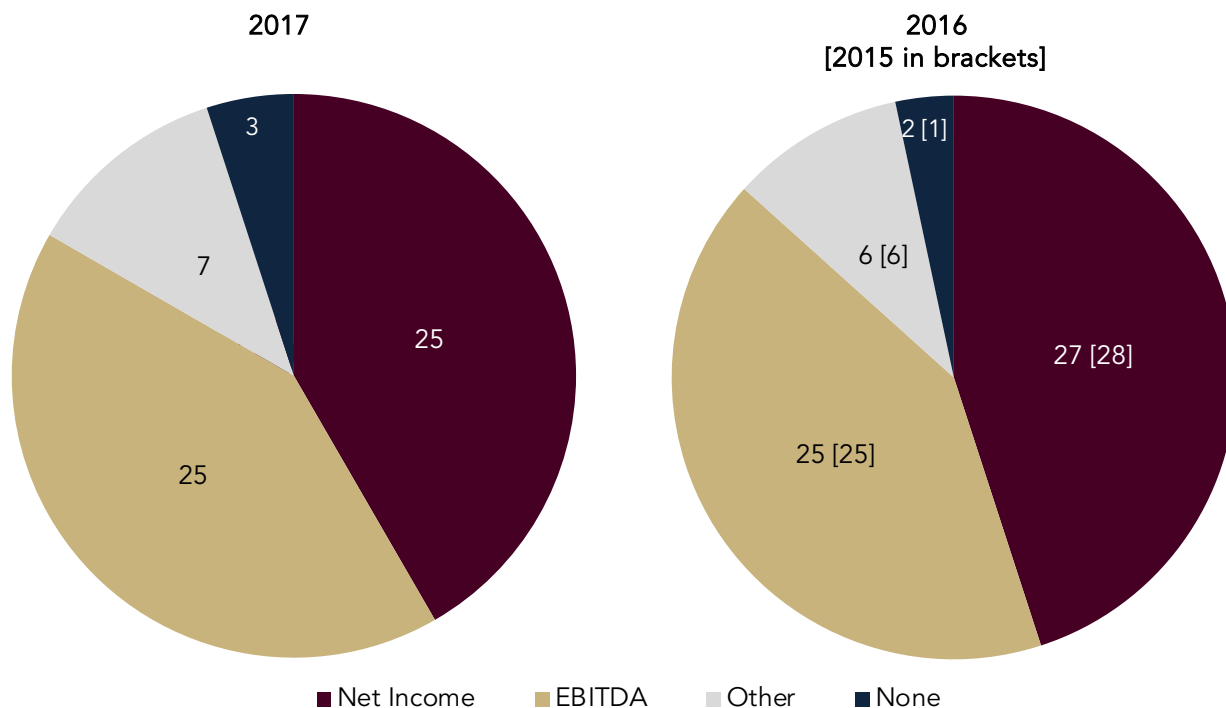
The difficulty with these metrics lies in the fact that the calculations are unaudited and subject to considerable management adjustment and redefinition, which makes them unlike much of the standard GAAP-reported metrics. Even where there is guidance on non-GAAP measures, we find that there is a relatively high non-compliance rate among filers. As a result, we continue to recommend caution in interpreting or accepting non-GAAP measures, as there are often substantially different methodologies and adjustments across issuers.



As in prior years, we have tracked each filer’s “primary key earnings metric” or key non-GAAP metric, as determined by our assessment of available disclosures. We have grouped these key earnings measures into four categories: EBITDA, Net Income, Other or None. Within these categories, the measures used can also range from Adjusted EBITDA to Funds from Operations which we determined in some cases to be the “primary key earnings metric”. For our analysis, we continued to assess companies using the same “primary key earnings metric” as determined in previous reports unless otherwise noted.

As shown in Figure 2 below, the most prevalent primary key earnings metrics remain Adjusted EBITDA and Adjusted Net Income – making up 50 of the 60 measures we determined to be primary. There has been a small shift away from the use of Adjusted Net Income and a slight pickup in the use of other primary metrics. Three companies do not use non-GAAP metrics as their primary, up slightly from prior years.

Figure 2
S&P/TSX 60 by Primary Non-GAAP Earning Metric Used 2017, 2016 and 2015



Source: Veritas estimates, Company information, Ontario Securities Commission, Canadian Securities Administrators

Over the year, CCL industries (EBITDA), Nutrien (EBITDA), Open Text (EBITDA) and Waste Connections (Net Income) were added to the TSX 60 while Yamaha Gold (Net Income), Agrium (EBITDA) and Eldorado Gold (Net Income) were removed. Bausch Health Companies (formerly Valeant Pharmaceuticals) removed all non-GAAP earnings metrics. Meanwhile, Encana stopped reporting Operating Earnings and therefore, leaving non-GAAP Cash Flow as their next key primary metric, based on our determination.

RECENT OSC ENFORCEMENT EFFORTS

Based on our review of restatements and refilings by the OSC, we noted few official restatements that referenced non-GAAP metrics. Chartwell Residences is one noted example that relates to the prominence given to its non-GAAP metric. As a result, Chartwell restated their MD&A for the year of 2016 and the first two quarters in 2017 along with a note describing the change in disclosure.



Unfortunately, there have been a limited number of official restatements issued in relation to SN 52-306 even though we note that the OSC has identified other situations of non-compliance. We expect NI 52-112 to provide the regulators with a broader ability to enforce these issues.

THE SLIPPERY SLOPE OF NON-GAAP USAGE

The chain of logic behind non-GAAP metrics is clear to us, which we would summarize as follows:

- Management promotes non-GAAP metrics that they view as less volatile or better representations of their earnings;
- Because of exclusions, these measures are, on average, higher than GAAP metrics;
- The non-GAAP metrics show investors higher 'real' earnings; and
- Investors, if using these metrics in the place of GAAP figures, are encouraged to award the company a higher valuation.

As we have emphasized in past reports, the incentives for management to make use of and benefit from non-GAAP metrics are exceedingly high, with the resulting complexity in disclosures making any efforts at standardization or enforcement very difficult for regulators. Thus, we are encouraged by the CSA's Proposed National Instrument 52-112 as it seeks to clarify the disclosure requirements for these measures.

A LOOK AT THE ADJUSTMENTS MADE

Perhaps one of the most interesting findings of our 2017 analysis of S&P/TSX 60 filers is the size and direction of the adjustments recorded between GAAP and non-GAAP metrics, especially when compared to prior years. We measure the disparity between GAAP and non-GAAP metrics by segmenting S&P/TSX 60 filers based on their primary key earnings metric: Adjusted EBITDA and Adjusted Net Income and by segmenting filers by industry, resource or non-resource. Based on our experience, the segmentation is required because resource companies tend to show larger adjustments especially in times of volatile commodity prices. Figure 3 presents the findings of our 2017 analysis and compares it to the cumulative results from current and prior year numbers.

Figure 3
2017 Adjustments Increasing Adjusted Earnings Metric

| % Change in Adjusted Earnings Metrics vs. Standard | Adj. EBITDA Resource | Adj. EBITDA Non-resource | Adj. Net Income Resource | Adj. Net Income Non-resource |
|--|----------------------|--------------------------|--------------------------|------------------------------|
| 2017 | -21% | 4% | -22% | - |
| 2011 to 2017 cumulative* | 46% | 9% | 104% | 8% |
| 2011 to 2016 cumulative** | 80% | 9% | 740% | 17% |

* Calculated based on the current TSX 60 population

** As reported in our prior report

Source: Veritas estimates, Company information, Ontario Securities Commission, Canadian Securities Administrators



Not surprisingly and consistent with business performance since the financial crisis, volatility in reported earnings and non-GAAP adjustments have been very common. While historically we have typically seen non-GAAP earnings metrics that exceed GAAP metrics, 2017 actually saw lower non-GAAP earnings metrics for resource companies relative to GAAP. For non-resource companies, the difference between GAAP and non-GAAP narrowed considerably in 2017, to an average of 4% higher for the latter. See Appendix D for a summary of the adjustments between GAAP and non-GAAP metrics.

For the Adjusted EBITDA number, we can attribute most of the discrepancy at resource companies to impairment reversals as commodity prices recovered during the year. For example, Barrick gold recognized an impairment reversal of \$275 million, whereas it has charged average annual impairments of ~\$5 billion since 2011. For non-resource companies, one effect was notable in the narrowing of the GAAP/non-GAAP difference: George Weston (and Loblaw) reversed a gain on selling gas operations, lowering its non-GAAP measure relative to GAAP earnings.

Adjusted Net Income for resource companies was lower than the reported GAAP number during the period because of the removal of impairment reversals triggered by the increase in commodity prices during the period. In addition, the removal of two gold companies from the S&P/TSX 60 during the year, reduced volatility among resource companies. Also noteworthy was that Canadian Natural Resources reversed a material unrealized foreign exchange gain that contributed to the aggregate lower non-GAAP number within the resource group. The difference between GAAP and non-GAAP net income at non-resource companies was driven by the reversal of certain U.S. tax reform benefits realized by companies during the year. Excluding the one-time tax reform benefits, we calculate the net difference between GAAP and non-GAAP measures would have been approximately ~7%.

Overall, it is encouraging to see that non-GAAP measures can be lower than their corresponding reported GAAP figures. Nevertheless, we remain cautious of non-GAAP metrics as early indications through 2018 suggest that the historical trend will be re-established.

Figure 4 lists each adjustment by type as a percent of the total net difference between the corresponding GAAP and non-GAAP metrics segmented by resource and non-resource companies. During the year, there were extremely large fluctuations in Adjusted Net Income adjustments for non-resource companies. A key factor was the reversal of GAAP effects from U.S. tax reforms which reduced the overall net adjustment to negative \$235 million (compared to a historical average of \$4 billion). As a result, when taken as a percentage of this smaller number, our calculations experience large fluctuations on an annual basis. For a company-specific summary, please refer to Appendix D.



Figure 4
2017 Adjustment by Type as a Percent of the Total Net Adjustment

| | Adj. EBITDA Resource | Adj. EBITDA Non-resource | Adj. Net Income Resource | Adj. Net Income Non-resource |
|---------------------------------|-------------------------|-----------------------------|--------------------------------|------------------------------------|
| 2017: | | | | |
| Depreciation & amortization | - | - | (8%) | (587%) |
| Income tax | - | - | 45% | 2366% |
| Interest | - | - | - | (107%) |
| Impairments | (10%) | 59% | (33%) | (2194%) |
| Restructuring | 27% | 81% | - | (402%) |
| Fair value | (15%) | 11% | (11%) | 428% |
| Other adjustments | 98% | (59%) | 115% | 683% |
| Stock compensation | - | 9% | (8%) | (85%) |
| Total | 100% | 100% | 100% | 100% |
| 2011 to 2017 cumulative: | | | | |
| Depreciation & amortization | - | - | 4% | 30% |
| Income tax | - | - | (2%) | (35%) |
| Interest | - | - | - | 2% |
| Impairments | 118% | 69% | 102% | 80% |
| Restructuring | (5%) | 32% | 1% | 28% |
| Fair value | 4% | 7% | (1%) | 4% |
| Other adjustments | (17%) | (11%) | (5%) | (15%) |
| Stock compensation | - | 3% | 2% | 5% |
| Total | 100% | 100% | 100% | 100% |
| 2011 to 2016 cumulative: | | | | |
| Depreciation & amortization | - | - | 2% | 44% |
| Income tax | - | - | (3%) | (9%) |
| Interest | - | (%) | - | - |
| Impairments | 102% | 70% | 98% | 38% |
| Restructuring | - | 23% | 1% | 20% |
| Fair value | 2% | 7% | 2% | 5% |
| Other adjustments | (3%) | (3%) | (1%) | (1%) |
| Stock compensation | - | 3% | 1% | 2% |
| Total | 100% | 100% | 100% | 100% |

Source: Veritas estimates, Company information, Ontario Securities Commission, Canadian Securities Administrators

As illustrated above, after including 2017, the largest contributor to the overall non-GAAP net adjustment continued to be impairments, depreciation, and restructuring. With such large variations on an annual basis, we emphasize investors should assess non-GAAP adjustments over a multi-year horizon in order to get a fair picture of management's use of these measures.



REVISITING CURRENT NON-GAAP GUIDELINES

As in prior years, we have reviewed the 2017 annual reports of the members of the S&P/TSX 60 for compliance with existing CSA Guideline 52-306. Based on our understanding of the guideline and our review of 2017 annual reports, Figure 5 identifies the number of companies that are likely in breach of one or more of the seven sections of the guideline. Our analysis shows that in 2017 there was a slight improvement among S&P/TSX 60 members over the prior two years. We identified ~25% of the members of the S&P/TSX60 would fail the current 52-306 guideline compared to ~30% in the prior two years. See Appendix B for company specific details of potential violations.

Given the potential subjectivity in applying the OSC's current guidelines, our analysis of the TSX 60's compliance necessarily requires a degree of judgment. The companies we have identified with potential issues have not been reviewed by regulators and does not presume that regulators will agree with our assessment.

Figure 5

Summary by Category of Potential Non-Compliance with OSC Guidelines for Non-GAAP Disclosures

| # | OSC Current Guideline (52-306) | # of Potential Issues | | |
|---|--|-----------------------|------|------|
| | | 2015 | 2016 | 2017 |
| 1 | State explicitly that the non-GAAP financial measure does not have any standardized meaning under the issuer's GAAP and therefore may not be comparable to a similar measure presented by other issuers. | 2 | 1 | - |
| 2 | Name the non-GAAP financial measure in a way that distinguishes it from disclosure items specified, defined or determined under an issuer's GAAP and in a way that is not misleading. | 5 | 4 | 8 |
| 3 | Explain why the non-GAAP financial measure provides useful information to investors and the additional purposes, if any, for which management uses the non-GAAP financial measure. | 1 | 1 | 1 |
| 4 | Present with equal or greater prominence to that of the non-GAAP financial measure, the most directly comparable measure specified, defined or determined under the issuer's GAAP presented in its financial statements. | 3 | 1 | 2 |
| 5 | Provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure determined under the issuer's GAAP and presented in its financial statements, referencing to the reconciliation when the non-GAAP financial measure first appears in the document. | 14 | 14 | 6 |
| 6 | Ensure that the non-GAAP financial measure does not describe adjustments as non-recurring, infrequent or unusual when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years. | 6 | 10 | 4 |
| 7 | Present the non-GAAP financial measure on a consistent basis from period to period; however, where an issue changes the composition of the non-GAAP financial measure, explain the reason for the change and restate any comparative period presented. | - | - | 5 |

Source: Veritas estimates, Company information, Ontario Securities Commission, Canadian Securities Administrators



As in prior years, the most common deficiency among filers continues to be the failure to refer to the GAAP/non-GAAP reconciliation at the first mention of the non-GAAP metric disclosed in any written documentation. Of the noted potential violations, ~60% of are by companies that have failed the same standards in prior years (“repeat offenders”) which suggests companies are not particularly concerned about compliance. Although these may be considered minor issues, they are relatively easy to improve, which raises the question of why the deficiencies persist three years after we highlighted them in our first review.

This year, we identified five filers who changed their non-GAAP metric calculation without disclosing explanations as required by SN 52-306 item #7 in Figure 4 (“*explain the reason for the change and restate any comparative period presented*”). For the most part, when companies changed the calculation methodology of a certain non-GAAP metric, a restated comparative number was presented. However, very few filers provided what we believe was a reasonable explanation for the change. In our view, regulators must address these shortcomings because many users of financial information may not notice the change. For example, Fortis adjusted its 2016 net earnings by an unrealized loss on the mark-to-market of derivatives, reporting a total Adjusted Net Income amount of \$721 million. In the company’s 2017 filing, Fortis chose not to adjust the derivative loss from the 2016 comparative figure and instead present \$715 million for the prior year number. We were unable to find a reference to an explanation with the disclosure.

Even with the slight improvement over the two prior years, the recurring issues identified and the fact that the current guidelines remain quite broad and open-ended suggests to us that regulators have struggled with obtaining or enforcing compliance with the standards. With the Proposed National Instrument in the pipeline, we expect and hope that regulators will be able to more strictly enforce compliance on non-GAAP disclosures.

Though the requirements for disclosures under the Proposed Instrument remain relatively consistent, the wording is much more specific, which we think makes it more likely that issuers will be non-compliant more frequently. When we attempt to apply the Proposed Instrument as a hypothetical exercise, we note a considerable increase in the number of potential violations.

PART II: THE NEW NI 52-112 - WHAT NOW?

On September 6, 2018, The Canadian Securities Administrators (CSA) issued National Instrument 52-112 - Non-GAAP and Other Financial Measures Disclosure. The Proposal is intended to replace CSA Staff Notice 52-306 and subsequent revisions.

In response to the CSA’s request for comments, we attempt to apply the new Proposed Instrument to the S&P/TSX 60 filers to illustrate how the new rules may affect current reporting. We think the results provide a good basis for proceeding with the tightened framework, with the caveat that compliance and enforcement may still be problematic.

Our response is separated into three sections:

- A. A comparison of the Proposed National Instrument and existing SN 52-306.
- B. Our assessment of S&P/TSX 60 2017 members in hypothetical compliance with the Proposed National Instrument.
- C. Our comments/recommendations on the Proposed National Instrument.

Note that the Proposed National Instrument is subject to further change. Our analysis is intended for discussion purposes only. To aid with the review process, we have assumed the regulations are approved as currently presented and have reviewed the filings of the S&P/TSX 60 member’s 2017 annual filings for compliance on this basis. There is no certainty that the Proposed National Instrument will be approved or what adjustments will be made during the approval process.



Our assessment of compliance requires considerable judgment and interpretation. It should not be construed that any Canadian filers are non-compliant with the Proposed National Instrument, rather we have attempted to identify key areas where some filers could be at odds with the new rules. Our analysis and conclusions are hypothetical in nature and have not been reviewed by regulators; readers should not presume that regulators will agree or have agreed with our assessment.

A) COMPARING NI 52-112 TO SN 52-306

Further Details in Appendix A

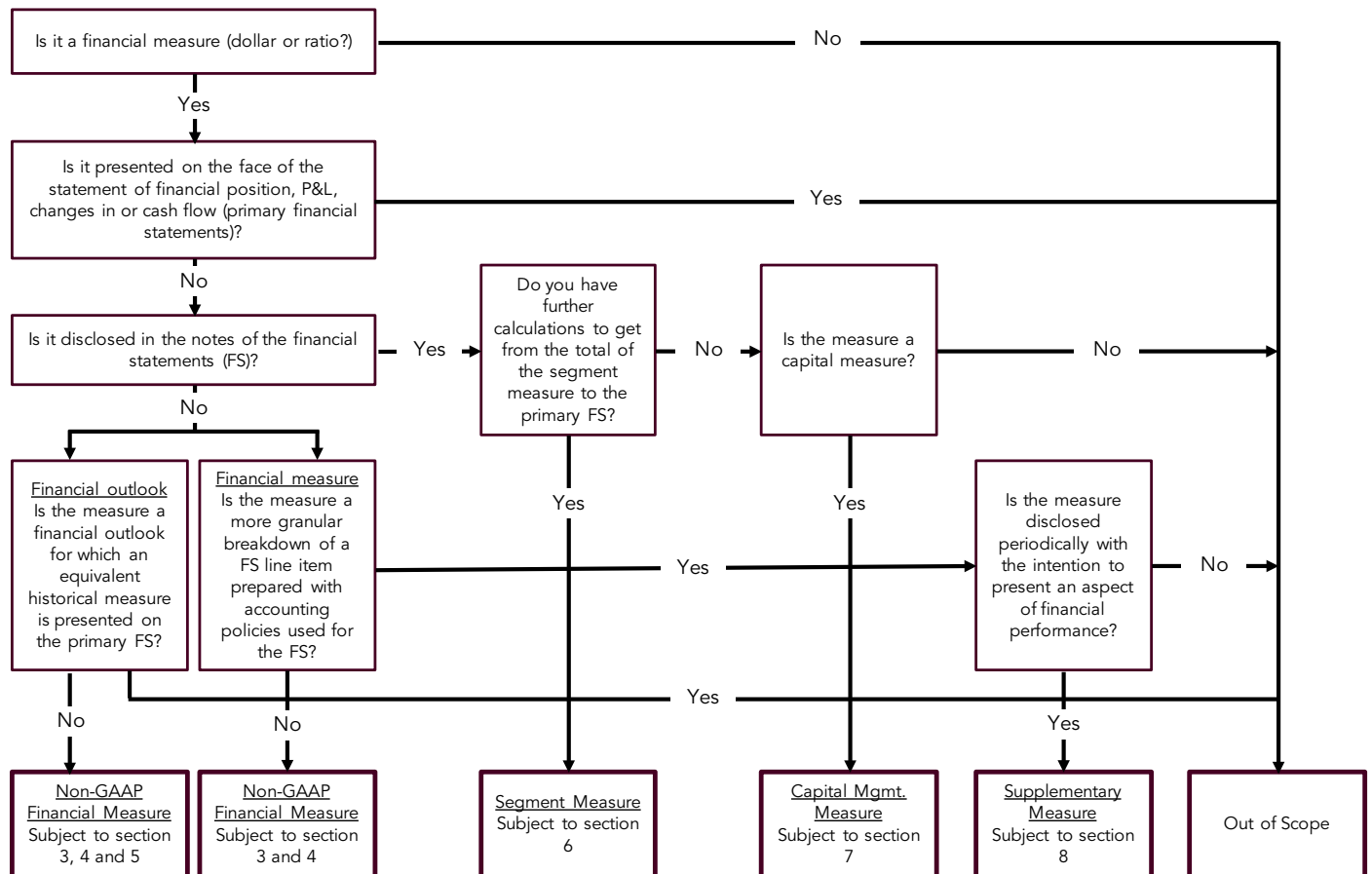
1) The scope and definition of non-GAAP metrics have been broadened and will capture many metrics not previously categorized as non-GAAP:

The Proposed National Instrument provides a new framework to determine whether a financial measure is a non-GAAP metric. Under the Proposed National Instrument, if a financial measure is determined to be a non-GAAP metric, it will be categorized under one of the five segments: Future Outlook, Financial, Segment, Capital, or Supplementary measure. Unlike the SN 52-306, all non-GAAP measures will be subject to Section 3, but depending on each measure's category, other rules may modify the fundamental requirements. (Please see Appendix A for more details.) In other words, measures such as Same Store Sales will be considered a non-GAAP number under the Proposed Instrument. As illustrated in Figure 6, there are essentially only four situations whereby a measure will not fall under the scope of NI 52-112:

- 1) The measure is not a financial measure (i.e. total square footage).
- 2) It appears on the face of one of the statements – Balance Sheet, Profit & Loss, Changes in Equity or Cash Flows.
- 3) It appears in the notes to the financial statements but does not qualify as a segment or capital measure.
- 4) It is disclosed in written documents outside the financial statements (e.g. MD&A, press releases, etc.) **AND** does not meet the requirements of a future outlook, non-GAAP financial or supplementary measures.



Figure 6

Non-GAAP Financial Measure Flow Chart – Most Metrics Should Fall Under this Flow Chart

Source: Veritas, Ontario Securities Commission, Canadian Securities Administrators

Based on our analysis of the S&P/TSX 60 members' recent regulatory filings and our understanding of NI 52-112, we suspect most, if not all, companies will need to update their disclosures to meet the Proposed Instrument's requirements because of its expanded scope. We expect companies will have at least one metric, but more likely multiple metrics, that will require additional disclosures.

2) Proposed National Instrument wording is more specific and prescriptive:

The CSA has described the depth of the Proposed National Instrument to be similar to the current guidelines. This appears to suggest that, if a company passed under prior guidelines, it should pass under the Proposed Instrument. However, while Financial Metrics are already governed under the old notice, given the expanded scope of NI 52-112 to include Financial, Future Outlook, Segment, Capital, or Supplementary measures, we expect reporting issuers will be challenged to meet the new regulations without additional disclosure. More detail is provided in the companion policy provided by the OSC, but the specificity of the new regulations may cause many companies to stumble in presenting their financial measures, in our view. For example, this includes requirements for the disclosure of income tax effects as well as the use of vague terms such as "other" or "adjusting items" as reconciling items. More interestingly, the requirement to refer to 'Identification, Cautionary, Usefulness, Reconciliation, and Change' disclosures at the first mention of the metric has been included, where previously it was only required for the reconciliation. While compliance with the first mention requirement may seem relatively easy, based on our experience with SN 52-306, companies may find compliance challenging.



3) Greater enforcement abilities by the CSA:

We think one of the most important changes to the Proposed Instrument is that Canadian Securities Regulators have been given greater ability to enforce the presentation of non-GAAP metrics. Not only will securities regulators be provided with greater enforcement power, but the inclusion of a general-anti-avoidance rule is likely to ensure that loopholes are minimized. Ultimately, the CSA can deem an adjustment misleading if, in substance, it misrepresents performance to the investors. The general-anti-avoidance provision gives us more comfort that misleading adjustments will be caught. However, the onus is now on securities regulators to deem metrics as misleading. As a result, we continue to caution investors to monitor non-GAAP metrics closely, including underlying adjustments, as in our experience the first line of defense is always users of the financial statements.

B) ASSESSING POTENTIAL S&P/TSX60 COMPLIANCE WITH NI 52-112. *FURTHER DETAILS IN APPENDIX C*

For the members of the S&P/TSX 60, we reviewed 2017 annual report filings in two stages for hypothetical compliance with the NI 52-112.

First, we test the Financial Metrics requirements using the same methodology shown earlier in our report (see Figure 5) by considering the compliance of each entity's key primary non-GAAP financial measure.

Second, we considered each member's 'Other non-GAAP' metrics (i.e. non-Financial metrics) for compliance with the new NI 52-112 rules for Future Outlook, Segment, Capital and Supplementary metrics.

COMPARING THE NOTICES: NON-GAAP FINANCIAL METRICS

As shown in Figure 7, despite the similarities between the two regulatory notices, the number of companies we find to be potentially non-compliant with their key primary earnings metric increases from 17 under our SN 52-306 assessments to 20 under the Proposed Instrument. We attribute the increase mainly the new notice's more prescriptive disclosure requirements. See Appendix C for a more detailed review of our findings.

Figure 7
Summary by Category of Potential Non-Compliance with CSA Proposed National Instrument 52-112 for Non-GAAP Disclosures

| # | New Proposed National Instrument | Proposed Criteria* | # of Potential Issues under NI 52-112 |
|----|----------------------------------|--|---------------------------------------|
| 1. | Labeling | Labeled appropriately | 8 |
| 2. | Prominence | Presented with no more prominence | 2 |
| 3. | Comparability | Includes a comparative | - |
| 4. | Identification | Identified as a non-GAAP financial measure | - |
| 5. | Cautionary | State that there is no standardized meaning and may not be comparable | - |
| 6. | Usefulness | Explains how it is useful and how management uses it | 1 |
| 7. | Reconciliation | Provides quantitative reconciliation to the primary FS | 11 |
| 8. | Changes | Explains the reasons for the changes | 5 |
| 9. | Reference at first mention* | Refers to Identification, Cautionary, Usefulness, Reconciliation and Change criteria the first-time non-GAAP metric is mentioned in the document | 6 |

* Please refer to Appendix A for a detailed summary of the Proposed National Instrument.

Source: Veritas estimates, Company information, Ontario Securities Commission, Canadian Securities Administrators



As seen in Figure 7, we find more potential violations under 52-112 than under the current SN 52-306. We have identified criteria #7 – Reconciliation to GAAP – as the most likely area of concern. Based on our review, we think many companies will have difficulty complying with the prescriptive nature of the Proposed Instrument. For example, there are proposed criteria to disclose income tax impacts of adjustments and provide additional information around catch-all reconciling items, both of which face no specific reconciliation requirements under the current notice.

While we consider the expansion of criteria #9 to be a positive – Reference at first mention – we think it may continue to be an area of weak compliance. The new guidelines require not only referencing the location of the GAAP reconciliation, but also provide additional references at the first mention (tied to criteria 4 through 8). Again, these types of disclosures need not be cumbersome and should be easy to provide, however compliance has been relatively weak for the comparable criteria under the current standard.

NEW RULES: OTHER NON-GAAP METRICS

Because 2017 filings were not prepared with the new set of rules in mind, any assessment we make of how the ‘Other non-GAAP metric’ rules may fare requires considerable speculation. Still, we think the new rules may pose significant challenges for compliance. Below, we consider specific examples for each type of measure and the challenges companies may face in meeting the individual NI 52-112 requirements. We highlight instances of how particular metrics are currently presented and what changes may need to be made:

1. ***Future Outlook measures:*** As an example, Thomson Reuters currently provides a ‘*Target Leverage Ratio*’ for ‘*Net Debt to Adjusted EBITDA*’ in its MD&A (see page 3 of its 2017 annual report). The measure is a ‘financial measure ratio’ that is not presented in any part of the financial statements. A historical measure is not presented in the primary financial statements, therefore, considering the flow chart presented in Figure 6, the metric would be considered: a non-GAAP metric – NI 51-112 Section 3; a ratio – Section 4; and a future outlook – Section 5. As a result, TRI would need to provide a range of new references and disclosures beyond what it currently provides.
2. ***Segment measures:*** As an example, First Quantum reports a segmented cost of sales by project that excludes depreciation (see page 86 of its 2017 annual report). The measure is a financial measure that is disclosed in the notes to the financial statements and requires considerable secondary calculations beyond the primary reported statements. Therefore, in our view, the metric meets the criteria for a ‘segmented measure’ – Section 6 of 52-112. The lack of a reconciliation to a comparable GAAP measure – in this case, the cost of sales as presented on the Income Statement – would require some updates under 52-112.
3. ***Capital measures:*** Dollarama reports an Adjusted Total Debt / EBITDAR ratio (see page 39 of its Q4 2018 financial statements). The measure meets the definition of a ‘*financial measure ratio reported in the notes of the financial statement*’, it does not represent a segment, but does measure capital management. Therefore, in our view, the metric meets the criteria for a ‘Capital Management’ measure and would be subject to Section 7 of NI 52-112. Overall, Dollarama does provide a reconciliation of the metric to GAAP numbers, but because the company does not consider it a non-GAAP metric, NI 52-112 rules would require additional disclosures; specifically there is a requirement to state “*accounting policies used to prepare the financial statements do not specify how the capital management measure is calculated*”.
4. ***Supplementary measures:*** Telus presents a Blended Average Revenue per User metric (ARPU, see page 36 of its 2017 annual report). The measure is a ‘financial ratio, not disclosed in the financial statements’ and is best described as a breakdown of revenue (i.e. revenue on a per unit basis). Based on our analysis, requirements will generally be met where a comparative metric is provided, and the calculation is explained. The potential issue noted is that Telus does not directly refer to the explanation of how blended ARPU is calculated the first time it is mentioned in the document, a key requirement under 52-112.



Figure 8 presents a summary of where we think the greatest changes to disclosure are likely to be required to comply with NI 52-112 rules. We have subdivided the S&P/TSX 60 members relatively evenly to test their compliance with each of the 52-112 sections: Financial, Future Outlook, Segment, Capital, or Supplementary measures. We then identify a specific non-GAAP measure under each category that we think may currently require significant disclosure changes under NI 52-112:

Figure 8
Based on Current Reporting: Risk of Non-Compliance by Category of Non-GAAP Measure

| Category | Criteria | | | | |
|-----------------------------------|-----------|----------------|--------------|--------------|---------------|
| | Financial | Future Outlook | Segment | Capital | Supplementary |
| Labeling | Low risk | Low risk | Not required | Not required | Not required |
| Prominence | Low risk | High risk | Low risk | Low risk | Not required |
| Comparability | Low risk | High risk | Not required | Not required | Not required |
| Identification | High risk | Low risk | Not required | Low risk | Not required |
| Cautionary | High risk | Low risk | Not required | High risk | Not required |
| Usefulness | High risk | Low risk | Low risk | High risk | Low risk |
| Reconciliation | High risk | Low risk | Low risk | Low risk | Low risk |
| Changes | Low risk | Low risk | NA | NA | Low risk |
| Reference at first mention | High risk | High risk | High risk | High risk | High risk |

* When a company does not consider a non-GAAP metric, management will likely not provide these details.

Source: Veritas estimates, Company information, Ontario Securities Commission, Canadian Securities Administrators

Based on our assessments above, more often than not, we think compliance will come down to recognizing whether a specific measure is non-GAAP as defined under 52-112 and then appropriately treating according to the standard.

We expect that companies will find the most difficult part to be determining which reported metrics will be considered GAAP or non-GAAP. Once identified as a non-GAAP, complying with the disclosure requirements should be relatively straightforward in most cases. The strain will be if the company is currently reporting too many metrics and therefore needs to create multiple new disclosures from scratch. In addition, though the Proposed Instrument provides remedies for instances where a comparable GAAP number may not be available, the additional calculations required to reconcile may be costly to track or something companies will not want to disclose. Metrics with no easy GAAP comparison include oil & gas netbacks and same store sales, for example.

C) FINAL COMMENTS AND RECOMMENDATIONS ON NI 52-112

In our view and based on our analysis, we view NI 52-112 as a clear improvement from the existing SN 52-306 rules for three key reasons:

- **It broadens the scope to include other key non-GAAP metrics:** By including metrics related to Future Outlook, Segmented, Capital, and Supplementary measures, users of financial information should be provided with better quality financial information.
- **It is more prescriptive:** NI 52-112 gives preparers more granular guidance that should enable better compliance and ultimately more thorough financial disclosures.
- **It enables better enforcement:** NI 52-112 is a regulation and therefore carries more weight than the previous Staff Notice 52-306. We expect that security regulators will have more power to enforce compliance, especially given the general anti-avoidance rule included in the Instrument.

In regard to areas we see for improvement:

- **Regulators should provide a list of typical measures that would be captured for each category:** The proposed National Instrument is quite technical, even with the companion document, and may be challenging for both investors and issuers to evaluate. Due to the complexity of the Instrument, we expect there to be significant judgement required when determining the categorization of each non-GAAP metric. The less the ambiguity, the greater the likely compliance.
- **Regulators should provide examples of high-quality disclosures, especially for the expanded sections of NI 52-112:** We are concerned that due to the complexity and the strength of the regulation, certain issuers may incorrectly interpret the rules, decide to reduce the number of non-GAAP metrics provided, or possibly even over-disclose in order to avoid being offside on the guidance. At the same time, the expanded number of metrics captured as non-GAAP measures by NI 52-112 may result in issuers dropping metrics rather than provide the previously undisclosed calculations necessary to reconcile between GAAP and non-GAAP measures. Clearly, less information would not be a positive outcome for both regulators and especially users of financial information.
- **Regulators should provide guidelines to determine the granularity of the non-GAAP adjustments:** NI 52-112 provides very little guidance to evaluate the individual adjustments required between GAAP and non-GAAP. The Proposed Instrument does not reference materiality in any way; therefore, an issuer could just as easily fail on technical grounds because of a \$1,000 adjustment as for a \$1 million adjustment. As well, we think more guidance could be given on the type of adjustments required in specific cases, something that may come as the standard is applied.
- **The auditors' role should be expanded:** Currently, the auditor does not have responsibility to audit non-GAAP metrics other than to ensure that they are not misleading and consistent with the information presented in the financial statements. However, given the expanded enforcement criteria contemplated by NI 52-112, including the anti-avoidance rule, we believe auditors should consider auditing non-GAAP measures specifically for compliance with NI 52-112. Such a change would provide additional comfort to users and aid securities regulators with enforcement.



Overall, we are pleased to see regulators acting to reign in the increasing use of non-GAAP metrics. Regardless on its final iteration, NI 52-112 represents a marked step forward over the existing Staff Notice in improving the quality of reported financial information in Canada.

Of course, the notice's effectiveness will also come down to the degree of its enforcement. As regulators clamp down on the disclosures of certain issuers, other filers should take notice and improve their own. While we welcome strong enforcement, we also recognize that regulators have to walk a fine line to ensure that management teams are not scared away from providing high quality financial information to users. As always, we encourage users of financial information to critically evaluate how each non-GAAP metric is calculated before relying on its conclusions.



APPENDIX A – SUMMARY OF PROPOSED NATIONAL INSTRUMENT FOR NON-GAAP METRICS COMPARED TO CURRENT GUIDELINES

Under the Proposed National Instrument 52-112, section 3 applies to all non-GAAP metrics. Depending on the classification, section 3 requirements are modified to exclude or include additional disclosures. For example, a financial ratio can avoid requiring a reconciliation if the issuer explains the calculation and all components of the ratio complies with section 3. As a result, we have highlighted the modifications allowed by each section in second chart below. Please refer to CSA's Proposed National Instrument 52-112 and Proposed Companion Policy documents for further prescribed descriptions around disclosure requirements.

| | New Proposed National Instrument (52-112) – Section 3 | Current Guidelines (52-306) |
|--|---|---|
| Labelling | a) Non-GAAP measure labelled appropriately given its composition and in a way that distinguishes from totals, subtotals and line items presented in the primary FS | 2. Name the non-GAAP financial measure in a way that distinguishes it from disclosure items specified, defined or determined under an issuer's GAAP and in a way that is not misleading. |
| Prominence | b) Non-GAAP financial measure presented with no more prominence in the document than the most comparable financial measure presented on the primary FS | 4. Present with equal or greater prominence to that of the non-GAAP financial measure, the most directly comparable measure specified, defined or determined under the issuer's GAAP presented in its financial statements. |
| Comparative | c) Presents same non-GAAP financial measure for the comparative period | |
| Requirements on first time mention in documents | d) mentions all items noted in d) at the first mention of the non-GAAP measure in the document | |
| Identification | d) i) identifies non-GAAP financial measure as such | |
| Cautionary | d) ii) State that non-GAAP financial measure does not have a standardized meaning under the financial reporting framework used to prepare the financial statements and may not be comparable to similar financial measures presented by other issuers | 1. State explicitly that the non-GAAP financial measure does not have any standardized meaning under the issuer's GAAP and therefore may not be comparable to similar measure presented by other issuers. |
| Usefulness | d) iii) Explains how non-GAAP financial measure provides useful information to a reasonable person and explains additional purposes for which management uses the non-GAAP measure | 3. Explain why the non-GAAP financial measure provides useful information to investors and the additional purposes, if any, for which management uses the non-GAAP financial measure. |
| Reconciliation | d) iv) Provides quantitative reconciliation to most directly comparable financial measure presented in the primary financial statements which... A) Disaggregated in a way that provides a reasonable person an understanding of the reconciling items B) Does not describe a reconciling item as non-recurring, infrequent or unusual when a similar loss or gain is reasonably likely to occur within the next two years or has occurred during the last 2 years C) Explained in a way that provides a reasonable person an understanding of each item | 5. Provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure determined under the issuer's GAAP and presented in its financial statements, referencing to the reconciliation when the non-GAAP financial measure first appears in the document. 6. Ensure that the non-GAAP financial measure does not describe adjustments as non-recurring, infrequent or unusual, when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years. |
| Changes | d) v) Explains reason for change if any, in the label, composition or calculation of the non-GAAP financial measure | 7. Present the non-GAAP financial measure on a consistent basis from period to period; however, where an issue changes the composition of the non-GAAP financial measure, explain the reason for the change and restate any comparative period presented. |
| Anti-avoidance rule | <ul style="list-style-type: none"> • OSC has right to deem measures misleading | Not applicable |



| New Proposed Guideline Measure: Metric Specific Rules (CSA 52-112) | |
|---|---|
| Financial Ratios (Section 4) | <ul style="list-style-type: none"> • not subject to Prominence [b]) if presented with no more prominence than similar measures in primary financial statements • not subject to Identification [d i)] if... <ul style="list-style-type: none"> ○ all financial components are disclosed or presented in the financial statements, OR ○ financial measure is a ratio for which all financial components are disaggregations of line items in the primary financial statements calculated in accordance with accounting policies used to prepare financial statements • not subject to Reconciliation if the ratio calculation is described at the first mention of the ratio in the document AND... <ul style="list-style-type: none"> ○ If all non-GAAP financial measures used to calculate the ratio complies with section 3 for each non-GAAP financial measure identified, OR ○ Provides a quantitative reconciliation to ratio as calculated using the most directly comparable financial measure presented on the FS |
| Future outlooks (Section 5) | <ul style="list-style-type: none"> • Primary financial statements must read as Future Oriented Financial Information (FOFI) if provided when applying section 3 d) iv) if considered a financial outlook AND FOFI was disclosed with the future outlook • not subject to Reconciliation [d iv)] if... <ul style="list-style-type: none"> ○ non-GAAP financial measure is a financial outlook, AND ○ FOFI has not been disclosed with financial outlook in document, AND ○ first time financial outlook appears, the document presents equivalent historical non-GAAP financial measure AND describes.... <ul style="list-style-type: none"> ▪ each material difference between outlook & comparable historical measure, OR ▪ each significant component used in the calculation |
| Segment measures (Section 6) | <ul style="list-style-type: none"> • Labelling [a]), Identification [d i)], Cautionary [d ii)] Usefulness [d iii)] & Changes [d v)] not required |
| Capital measurement measure (Section 7) | <ul style="list-style-type: none"> • Labelling [a]), Identification [d i)] & Changes [d v)] not required • Must describe how capital management measure is calculated • State that “accounting policies does not explain how measure is calculated at first mention of the metric in the document” • If a ratio, quantitative reconciliation is not required |
| Supplementary financial measure (Section 8) | <ul style="list-style-type: none"> • Labelling [a]), Prominence [b]), Identification [d i)] Cautionary [d ii)] & Usefulness [d iii)] not required • Rather than a reconciliation, need to describe how it is calculated |



APPENDIX B – SUMMARY OF POTENTIAL NON-GAAP REGULATORY CONCERNS OF S&P/TSX 60 UNDER CURRENT NON-GAAP GUIDELINES

1. State explicitly that the non-GAAP financial measure does not have any standardized meaning under the issuer's GAAP and therefore may not be comparable to similar measure presented by other issuers.
2. Name the non-GAAP financial measure in a way that distinguishes it from disclosure items specified, defined or determined under an issuer's GAAP and in a way that is not misleading.
3. Explain why the non-GAAP financial measure provides useful information to investors and the additional purposes, if any, for which management uses the non-GAAP financial measure.
4. Present with equal or greater prominence to that of the non-GAAP financial measure, the most directly comparable measure specified, defined or determined under the issuer's GAAP presented in its financial statements.
5. Provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure determined under the issuer's GAAP and presented in its financial statements, referencing to the reconciliation when the non-GAAP financial measure first appears in the document.
6. Ensure that the non-GAAP financial measure does not describe adjustments as non-recurring, infrequent or unusual, when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years.
7. Present the non-GAAP financial measure on a consistent basis from period to period; however, where an issue changes the composition of the non-GAAP financial measure, explain the reason for the change and restate any comparative period presented.

| Ticker | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 2015 Potential Violation | 2016 Potential Violation | 2017 Potential Violation |
|--------|---|---|---|---|---|---|---|--------------------------------|--------------------------------|--------------------------------|
| ABX | | | | | | | | | | |
| AEM | | | | | | | | X | X | |
| ARX | | X | | X | | X | | | X | X |
| ATD | | | | | | | X | | | X |
| BAM | | | | | | | | | | |
| BB | | | | | | | | | | |
| BBD | | X | | | | X | | X | X | X |
| BCE | | | | | | | | | | |
| BHC | | | | | | | | | | |
| BMO | | | | | | | | | | |
| BNS | | | | | | | | X | | |
| CCL | | X | | | | | | | | X |
| CCO | | | | | | | | | | |
| CM | | | | | | | | | | |
| CNQ | | | | | | | | | | |
| CNR | | | | | | | | | | |
| CP | | | | | | | | | | |
| CPG | | | | | | | | | | |
| CSU | | | | | | | | | | |
| CTC | | | | | | | | | | |
| CVE | | | | | | | | | | |
| DOL | | | | | | | | | | |
| ECA | | | | | | | | X | X | |
| EMA | | | | | | | | X | | |
| ENB | | | | | | X | | X | X | X |
| FM | | X | | | X | | X | X | X | X |
| FNV | | | | | | | | | X | |



1. State explicitly that the non-GAAP financial measure does not have any standardized meaning under the issuer's GAAP and therefore may not be comparable to similar measure presented by other issuers.
2. Name the non-GAAP financial measure in a way that distinguishes it from disclosure items specified, defined or determined under an issuer's GAAP and in a way that is not misleading.
3. Explain why the non-GAAP financial measure provides useful information to investors and the additional purposes, if any, for which management uses the non-GAAP financial measure.
4. Present with equal or greater prominence to that of the non-GAAP financial measure, the most directly comparable measure specified, defined or determined under the issuer's GAAP presented in its financial statements.
5. Provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure determined under the issuer's GAAP and presented in its financial statements, referencing to the reconciliation when the non-GAAP financial measure first appears in the document.
6. Ensure that the non-GAAP financial measure does not describe adjustments as non-recurring, infrequent or unusual, when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years.
7. Present the non-GAAP financial measure on a consistent basis from period to period; however, where an issue changes the composition of the non-GAAP financial measure, explain the reason for the change and restate any comparative period presented.

| Ticker | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 2015 Potential Violation | 2016 Potential Violation | 2017 Potential Violation |
|--------|---|---|---|---|---|---|---|--------------------------------|--------------------------------|--------------------------------|
| FTS | | | X | | X | | X | X | X | X |
| G | | | | | | | | | | |
| GIB | | | | | | | | X | X | |
| GIL | | | | | | | | | X | |
| HSE | | | | | | | | | | |
| IMO | | | | | | | | | | |
| IPL | | | | | X | | | X | X | X |
| K | | | | | | | | | | |
| L | | | | | | | | | | |
| MFC | | X | | | X | | | | X | X |
| MG | | | | | | | | X | | |
| MRU | | | | | | | | | X | |
| NA | | | | | | | | | | |
| NTR | | | | | | | | | | |
| OTEX | | | | | | | | | | |
| POW | | | | | | | X | | | X |
| PPL | | | | | | | | X | | |
| QSR | | | | | | | | X | | |
| RCI | | | | | X | | | | X | X |
| RY | | | | | | | | | | |
| SAP | | | | | | | | | | |
| SJR | | | | | | X | | X | X | X |
| SLF | | X | | | | | | | | X |
| SNC | | | | | | | | X | | |
| SU | | X | | | | | | X | X | X |
| T | | | | | | | | X | X | |
| TD | | | | | | | | | | |
| TECK | | | | | | | X | | | X |
| TRI | | | | | | | | X | | |
| TRP | | X | | | X | | | X | X | X |
| WCN | | | | X | | | | | | |
| WN | | | | | | | | | | |
| WPM | | | | | | | | | | |



APPENDIX C – SUMMARY OF POTENTIAL NON-GAAP REGULATORY CONCERNS OF S&P/TSX 60 UNDER PROPOSED NATIONAL INSTRUMENT 52-112

We summarize our analysis of potential violations of company key non-GAAP earnings metric (same as the ones noted above) if evaluated under the Proposed National Instrument 52-112.

Note that the Proposed National Instrument is subject to change(s). Our analysis is intended for discussion purposes only. To aid with the review process, we have assumed the regulations are approved as currently presented and have reviewed members of the S&P/TSX60 2017 annual filings for compliance on this basis. There is no certainty that the Proposed National Instrument will be approved or what adjustments will be made during the approval process. Therefore, no Canadian filers are currently not compliant with the Proposed National Instrument. Also note that our assessment of compliance requires considerable judgement. Our analysis and conclusions are hypothetical in nature and have not been reviewed by regulators; readers should not presume that regulators will agree or have agreed with our assessment.

1. Labelling - labeled appropriately
2. Prominence - presented with no more prominence
3. Comparability - includes a comparative
4. Identification - identified as a non-GAAP financial measure
5. Cautionary - state that there is no standardized meaning and may not be comparable
6. Usefulness - explains how it is useful and how management uses it
7. Quantitative Reconciliation - provides quantitative reconciliation to the primary FS
8. Changes - explains the reasons for the changes
9. First Time Mention in the Document - Refers to Identification, Cautionary, Usefulness, Reconciliation and Change criteria the first-time non-GAAP metric is mentioned in the document

| Ticker | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|--------|---|---|---|---|---|---|---|---|---|
| ABX | | | | | | | | | |
| AEM | | | | | | | | | |
| ARX | X | X | | | | | | | X |
| ATD | | | | | | | | X | |
| BAM | | | | | | | | | |
| BB | | | | | | | | | |
| BBD | X | | | | | | X | | |
| BCE | | | | | | | | | |
| BHC | | | | | | | | | |
| BMO | | | | | | | | | |
| BNS | | | | | | | X | | |
| CCL | X | | | | | | | | |
| CCO | | | | | | | | | |
| CM | | | | | | | | | |
| CNQ | | | | | | | | | |
| CNR | | | | | | | | | |
| CP | | | | | | | | | |
| CPG | | | | | | | | | |
| CSU | | | | | | | | | |
| CTC | | | | | | | | | |
| CVE | | | | | | | | | |
| DOL | | | | | | | | | |
| ECA | | | | | | | | | |



1. Labelling - labeled appropriately
2. Prominence - presented with no more prominence
3. Comparability - includes a comparative
4. Identification - identified as a non-GAAP financial measure
5. Cautionary - state that there is no standardized meaning and may not be comparable
6. Usefulness - explains how it is useful and how management uses it
7. Quantitative Reconciliation - provides quantitative reconciliation to the primary FS
8. Changes - explains the reasons for the changes
9. First Time Mention in the Document - Refers to Identification, Cautionary, Usefulness, Reconciliation and Change criteria the first-time non-GAAP metric is mentioned in the document

| Ticker | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
|--------|---|---|---|---|---|---|---|---|---|
| EMA | | | | | | | | | |
| ENB | | | | | | | X | | |
| FM | X | | | | | | | X | X |
| FNV | | | | | | | | | |
| FTS | | | | | | X | X | X | X |
| G | | | | | | | | | |
| GIB | | | | | | | | | |
| GIL | | | | | | | | | |
| HSE | | | | | | | X | | |
| IMO | | | | | | | | | |
| IPL | | | | | | | X | | X |
| K | | | | | | | | | |
| L | | | | | | | | | |
| MFC | X | | | | | | X | | X |
| MG | | | | | | | | | |
| MRU | | | | | | | | | |
| NA | | | | | | | | | |
| NTR | | | | | | | | | |
| OTEX | | | | | | | | | |
| POW | | | | | | | | X | |
| PPL | | | | | | | | | |
| QSR | | | | | | | | | |
| RCI | | | | | | | | | X |
| RY | | | | | | | | | |
| SAP | | | | | | | | | |
| SJR | | | | | | | X | | |
| SLF | X | | | | | | | | |
| SNC | | | | | | | | | |
| SU | X | | | | | | X | | |
| T | | | | | | | | | |
| TD | | | | | | | | | |
| TECK | | | | | | | | X | |
| TRI | | | | | | | | | |
| TRP | X | | | | | | X | | |
| WCN | | X | | | | | | | |
| WN | | | | | | | | | |
| WPM | | | | | | | X | | |



APPENDIX D – LOOKING AT THE ADJUSTMENTS BETWEEN NON-GAAP AND GAAP EARNINGS METRICS FOR THE S&P/TSX 60

Appendix D shows the absolute percentage differential between the non-GAAP and GAAP metric (e.g. adjusted net income/absolute net income, etc.) for each company in the TSX 60 from 2013 to 2017.

The only use this data has for investors is as a summary of the scale of the difference in any given year. Investors should not draw any conclusions whatsoever about individual companies for any given year, over time or relatively between companies based on this data alone.

Investors need to focus on the rationale for adjustments made by a company and, if the rationale is legitimate, then the scale is irrelevant.

| Ticker | Metric | 2013 | 2014 | 2015 | 2016 | 2017 |
|--------|---------------------------------------|------|-------|------|-------|------|
| ABX | Adjusted EBITDA | 166% | 1392% | 570% | -1% | -20% |
| AEM | Adjusted Net Income | 127% | 74% | 278% | -31% | -4% |
| ARX | Fund from Operations | 258% | 195% | 326% | 215% | 88% |
| ATD | Adjusted EBITDA | -3% | 2% | -2% | 1% | 2% |
| BAM | Fund from Operations | -12% | -59% | -45% | -3% | -16% |
| BB | Adjusted Net Income | 88% | 115% | 51% | 102% | -81% |
| BBD | EBITDA before special item | -2% | 999% | 123% | 155% | 77% |
| BCE | Adjusted EBITDA | 7% | 3% | 7% | 2% | 2% |
| BHC | None Reported | 0% | 0% | 0% | 0% | 0% |
| BMO | Adjusted Net Income | 1% | 3% | 6% | 8% | 4% |
| BNS | Adjusted Net Income | 1% | -3% | 1% | 5% | 1% |
| CCL | Adjusted EBITDA | 20% | 1% | 0% | 9% | 2% |
| CCO | Adjusted Net Income | 40% | 123% | 429% | 331% | 129% |
| CM | Adjusted Net Income | 7% | 14% | 7% | -5% | -1% |
| CNQ | Adjusted Net Earnings from Operations | 7% | -3% | 141% | -228% | -41% |
| CNR | Adjusted Net Income | -1% | -2% | 1% | -2% | -31% |
| CP | Adjusted Net Income | 29% | 0% | 20% | -3% | -31% |
| CPG | Operating Income | 285% | 7% | 139% | 109% | 181% |
| CSU | Adjusted EBITA | 151% | 238% | 151% | 156% | 180% |
| CTC | EBITDA | 0% | 1% | 0% | 0% | 0% |



| Ticker | Metric | 2013 | 2014 | 2015 | 2016 | 2017 |
|--------|----------------------|------|------|-------|-------|------|
| CVE | Adjusted EBITDA | 20% | 7% | -33% | 39% | -50% |
| DOL | EBITDA | 0% | 0% | 0% | 0% | 0% |
| ECA | Non-GAAP Cash Flow | 994% | -14% | 128% | 189% | 62% |
| EMA | Adjusted EBITDA | 8% | -12% | -6% | 23% | -3% |
| ENB | Adjusted Net Income | 222% | 36% | 5143% | 17% | 18% |
| FM | Comparative Earnings | 18% | -42% | 154% | -26% | 65% |
| FNV | Adjusted EBITDA | 99% | 12% | 29% | 11% | 2% |
| FTS | Adjusted Net Income | 0% | 24% | -19% | 23% | 9% |
| G | None Reported | 0% | 0% | 0% | 0% | 0% |
| GIB | Adjusted EBIT | 136% | 58% | 49% | 46% | 53% |
| GIL | Adjusted Net Income | 3% | 1% | 4% | 3% | 7% |
| HSE | Adjusted Net Income | 12% | 60% | 104% | -171% | 12% |
| IMO | None Reported | 0% | 0% | 0% | 0% | 0% |
| IPL | Adjusted EBITDA | 152% | 0% | 1% | 4% | 2% |
| K | Adjusted Net Income | 111% | 109% | 91% | 189% | -60% |
| L | Adjusted EBITDA | -2% | 51% | 11% | 6% | 1% |
| MFC | Core earnings | -16% | -18% | 56% | 37% | 117% |
| MG | Adjusted EBIT | 34% | 39% | 30% | 40% | 38% |
| MRU | Adjusted EBITDA | -28% | -5% | -7% | -9% | -9% |
| NA | Adjusted Net Income | -2% | 8% | 9% | 37% | 6% |
| NTR | Adjusted EBITDA | 2% | 1% | 0% | 12% | 43% |
| OTEX | Adjusted EBITDA | 86% | 81% | 52% | -50% | 182% |
| POW | Operating Earnings | -2% | -3% | -12% | 13% | 21% |
| PPL | EBITDA | 0% | 2% | 2% | 8% | 7% |
| QSR | Adjusted EBITDA | 13% | 204% | 21% | 3% | 12% |
| RCI | Operating Income | 2% | 4% | 3% | 21% | 3% |
| RY | Adjusted Net Income | 0% | 0% | 0% | 2% | 1% |
| SAP | Adjusted EBITDA | 5% | -3% | 3% | 0% | 3% |



| Ticker | Metric | 2013 | 2014 | 2015 | 2016 | 2017 |
|--------|--|------|------|------|-------|------|
| SJR | Operating Income | -1% | 1% | 1% | -22% | -11% |
| SLF | Operating Net Income | 15% | 9% | 5% | -6% | 18% |
| SNC | EBITDA - excluding restructuring and other costs | 13% | 17% | -11% | 21% | 0% |
| SU | Operating Earnings | 20% | 71% | 173% | -119% | -28% |
| T | EBITDA - excluding restructuring and other costs | 2% | 2% | 5% | 10% | 2% |
| TD | Adjusted Net Income | 8% | 3% | 9% | 4% | 1% |
| TECK | Adjusted EBITDA | 0% | 1% | 222% | 2% | 2% |
| TRI | Adjusted EBITDA | -9% | -24% | -1% | 0% | 7% |
| TRP | Comparable EBITDA | -1% | 1% | 233% | 46% | 4% |
| WCN | Adjusted Net Income | 13% | 9% | 356% | 60% | -1% |
| WN | Adjusted EBITDA | -3% | 40% | 6% | 6% | 3% |
| WPM | Adjusted Net Income | 0% | 34% | 230% | 36% | 380% |





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