

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,

A handwritten signature in blue ink, appearing to read 'Murray Harris', with a long horizontal stroke extending to the right.

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.