

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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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,

Deloitte LLP

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