

December 4, 2018

VIA EMAIL

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8

- 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