



Canadian Accounting Standards Board
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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.