

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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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.

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Date: DEC 4, 2018