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By Email

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

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
Montreal, QC H4Z 1G3

Re: Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

Alberta Securities Commission
British Columbia Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers (Québec)
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/Mesdames:

We commend the Canadian Securities Administrators (“CSA”) on their effort to update CSA Staff Notice 52-306 (Revised) – *Non-GAAP Financial Measures* (“**Staff Notice 52-306**”) and appreciate the opportunity to provide feedback on *Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* (the “**Proposed Instrument**”) dated September 6, 2018.

Bennett Jones LLP is a premier Canadian business law firm with Canadian offices in Calgary, Toronto, Ottawa and Vancouver. We routinely have occasion to provide advice to issuers, large and small, with respect to securities law matters in general and the use of Non-GAAP financial measures in particular.

The Proposed Instrument solicits feedback on six specific questions. We have responded to three of those inquiries in the following paragraph (#'s 4, 5 and 6). We have not provided direct answers to your other inquiries (which are, in large measure, accounting-centric), but have, instead, provided general feedback on several other points. Please note that our comments are not made on behalf of any specific Bennett Jones LLP client or group of clients.

We note our agreement with the decision to exempt SEC foreign issuers and oral statements from the Proposed Instrument's application. As well, in our view, it is unnecessary to repeat, in full, the content of Non-GAAP cautionary statements in every document in which Non-GAAP financial measures are presented. We think issuers should include Non-GAAP cautionary statements in certain core documents (primary offering documents, AIF's and MD&A), but should be permitted to rely upon cross-referencing in other documents (to the extent Non-GAAP financial measures are presented). We are concerned that the proposed approach would result in undue compliance costs to issuers with little added benefit to readers.

We encourage CSA to reconsider the language of Section 2(2), which is very broad and, if retained, could cause the final instrument to apply to a very wide array of documents and written communications. While we recognize that Staff Notice 52-306 does not confine itself to disclosure by reporting issuers, in our view, the final instrument should apply to: (i) reporting issuers; and (ii) non-reporting issuers that disseminate Non-GAAP financial measures in the context of securities distributions. We do not perceive a compelling need to extend the requirements of the final instrument to private issuers in situations where the relevant information will not be relied upon to make an investment decision and worry that doing so will cause private issuers to restrict the disclosure of certain categories of information that they would otherwise be inclined to make available to their shareholders (including in response to shareholder requests).

If CSA retains, in Section 2(2), the expansive language of the Proposed Instrument ("in a document ... that is intended to be, or reasonably likely to be, made available to the public in the local jurisdiction, whether or not filed under securities legislation"), we would encourage you to consider providing guidance with respect to the "public". That term has specialized meaning in the context of prospectus exemptions (as noted in the Companion Policy to National Instrument 45-106 – *Prospectus Exemptions*), which may be unnecessarily broad in the context of the Proposed Instrument. In our view, the final instrument should only apply in circumstances where the relevant information is made widely available to members of the public, as opposed to being made available to only a limited number of persons who may, vis-à-vis the issuer, be considered members of the public (in the prospectus exemption sense). Query whether the concept noted in National Policy 51-201 – *Disclosure Standards* regarding dissemination broadly to the investing public (Section 1.1(1)) may be a more appropriate standard.

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We perceive a potential source of ambiguity in the Proposed Instrument regarding what constitutes a "segment" (as that term is used in the definition of "segment measure"). The Proposed Companion Policy refers to "reportable segments" and it appears that the term "segment" is intended to be synonymous with "reportable segment"; if that is the case, the Proposed Instrument should clearly state that intention. Otherwise, whether a "segment" is a business unit, a profit centre, a cost centre, a division or all or none of these, could be unclear.

Section 2(3) of the Proposed Instrument excludes any "specified document" from its application. We encourage CSA to consider whether the list of specified documents should be expanded to include third-party materials filed by issuers (particularly in circumstances where such disclosure is compelled by securities laws). For example, if an issuer is required to file a prior valuation prepared by a third party firm, we do not believe the issuer should be required to include Non-GAAP cautionary language in relation to that document.

We hope you will find our comments to be of assistance.

If you have any questions concerning the foregoing, please contact the undersigned directly at your convenience.

Yours truly,

BENNETT JONES LLP

Nicholas P. Fader
Partner

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