

June 29, 2020

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: Revised version of Proposed National Instrument 52-112 (the "Proposed Instrument"), Proposed Companion Policy 52-112 (the "Proposed Companion Policy"), Related Proposed Consequential Amendments and Changes (collectively, the "Proposed Materials")**

Dear Sirs/Mesdames,

We are pleased to provide our comments on the Proposed Instrument, related companion policy and consequential amendments and changes. We continue to be 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.

We acknowledge the CSA's efforts to address comments received on the previously issued draft materials and the usefulness of the additional examples and clarifications included the Proposed Materials.

Our comments on the Proposed Material, in order of significance, are as follows:

- Given the various classifications, it would be helpful if the Proposed Instrument clearly set out the steps in assessing financial measures. For example, the Proposed Instrument should clearly state that the first step in the assessment is to determine whether the financial measure is a non-GAAP measure thus requiring the disclosures set out in Section 6 through 8. If the financial measure does not meet the definition of a non-GAAP measure, then the Proposed Instrument should specify the next assessment an issuer should undertake. We believe this could be easily achieved by providing a flow chart in the Proposed Companion Policy that outlines the steps to be followed.

- The requirements in Section 10 (Capital management measures) of the Proposed Instrument continue to be difficult to navigate. In assessing the disclosures required, preparers must consider numerous exceptions [emphasis added]. Due to these exceptions, preparers may not appropriately assess the criteria resulting in either non-compliance or in unnecessary disclosure being included.

*"... in proximity to the first instance of the capital management measure in the document, the document*

- *explains the composition of the capital management measure, and*
  - ***unless presented*** *in the notes to the financial statements of the entity to which the measure relates,*
    - *provides, directly or by incorporating it by reference as permitted by section 5, an explanation of how the capital management measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the capital management measure, and*
    - ***unless the capital management measure is a ratio, fraction, percentage or similar representation,*** *provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation of the capital management measure to the most comparable financial measure presented in the primary financial statements of the issuer;*
- In several instances, the Proposed Instrument suggests that disclosure of financial measures and reconciliations in the notes to the financial statements results in the amounts becoming "GAAP" numbers when they may not be defined by IFRS or another accounting framework. For example, working capital would be a GAAP measure if disclosed in the notes to the financial statements as part of going concern disclosures, despite not being defined in IFRS. As such, there is some concern that preparers may try to include measures that are not defined by GAAP in their financial statements in order to avoid providing non-GAAP disclosures in the other documents.
  - The proposed SEC exemption wording may not address all SEC filer scenarios. We continue to be concerned that issuers such as Canadian voluntary 10-K filers (i.e. domestic Canadian companies choosing to file on US domestic forms) would be required to address both Canadian and U.S. requirements. In addition, it is not clear how the guidance would apply to a non-Canadian domiciled reporting issuer (who does not meet the definition of a designated foreign issuer) and therefore should be subject to the requirements of the Proposed Instrument, however, they also meet the definition of an SEC foreign issuer. We suggest additional guidance be provided in the Proposed Companion Policy to clarify this definition.
  - Inconsistencies exist between the Proposed Instrument and U.S. requirements, which could create issues and create confusion for cross-listed issuers. These differences may also have the unintended consequence of causing differences in disclosure among entities depending on whether they are cross-listed or only listed in Canada. In addition, the optionality within the Proposed Instrument may create diversity in how entities in the same industry reconcile their non-GAAP financial measures. Some specific differences we note are as follows:
    - Total segment measures when presented outside of the financial statements are considered non-GAAP under U.S. guidance however are viewed as a 'total segment measure' under the Proposed Instrument with reduced disclosure requirements. Given the different classification under the two jurisdictions, entities who are subject to both Canadian and US regulations may struggle when complying the rules. We acknowledge that the Proposed Companion Policy states "[a]n SEC issuer may characterize a total of segments measure as a non-GAAP financial measure in compliance with SEC rules on non-GAAP financial measures" but does not provide automatic relief from providing the total segment measure. Given the Proposed Companion Policy is non-authoritative, we would suggest the Proposed Instrument provide automatic relief.

- The Proposed Instrument has now been modified to require a reconciliation to the “most comparable” versus “most directly comparable” measure. While the Proposed Companion Policy states that judgment should be applied, it is not evident why this change was made, and would appear to create more diversity in practice. In addition, this is also a difference to U.S. guidance, which requires a reconciliation to the most directly comparable GAAP measure.
- In presenting the required reconciliation, the Proposed Instrument allows an issuer to begin with the non-GAAP financial measure or the most comparable financial measure presented in the primary financial statements, provided the reconciliation is presented in a comprehensible and consistent manner. The option of allowing the non-GAAP financial measure to be the starting point for the reconciliation is inconsistent with the U.S. guidance, which requires the reconciliation to start with the most directly comparable GAAP measure.
- The Proposed Companion Policy provides ‘rolling 12-month results’ as an example of financial information that does not meet the definition of a non-GAAP measure. We would suggest that this example be omitted or revised to include such amounts as non-GAAP measures or supplementary measure, requiring associated disclosures, as it is not evident to us how ‘rolling 12 month results’ would always be in compliance with IFRS. For example, the ‘rolling 12-month results’ ended March 31, 20XX would not correspond to the financial periods presented in the March 31, 20XX financial statements, and therefore arguably not in compliance with IFRS.
- The Proposed Instrument also scopes out disclosures required under National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, such as “other cash costs”. It is our view that the Proposed Materials should clarify that disclosures provided under other securities regulations are specifically labelled as such in order to differentiate such other measures from financial measures that would otherwise be within the scope of the Proposed Instrument.
- Part 2, Item 6(e) of the Proposed Instrument states that disclosure is provided “in proximity to the first instance of the non-GAAP financial measure in the document”. It is not clear whether all the non-GAAP disclosures set out in item 6 need to be included in close proximity to the non-GAAP financial measure (i.e. on the same page) or whether preparers can continue the practice of using footnotes to reference the non-GAAP financial measure and providing the disclosure later in the document. The wording in the Proposed Instrument appears to contradict the statement in the Proposed Companion Policy that allows preparers to “identify the non-GAAP financial measure as such when it first appears in the document and then reference a separate section within the same document that contains the disclosure.” We would suggest amending the Proposed Instrument to remove the “close proximity language” in order to be consistent with the language in the Proposed Companion Policy. We also suggest revising the total segment measure definition as follows: “is a subtotal or total of financial measures of two or more reportable segments measures of an entity...” to clarify that the guidance applies to segment measures as defined in GAAP.

We will be pleased to discuss any of our comments further if required. Any questions can be directed to Julia Suk ([jsuk@deloitte.ca](mailto:jsuk@deloitte.ca)) or Andrew Macartney ([amacartney@deloitte.ca](mailto:amacartney@deloitte.ca)).

Yours truly,

The signature is written in a cursive, handwritten style. It reads "Deloitte LLP".

Chartered Professional Accountants  
Licensed Public Accountants