



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

Care of:

The Secretary Ontario Securities Commission
comment@osc.gov.on.ca

Me Philippe Lebel Corporate Secretary and Executive Director, Legal Affairs Autorité des marchés financiers
consultation-en-cours@lautorite.qc.ca

Re: CSA Second Notice and Request for Comment, Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure and the related proposed Companion Policy, Consequential Amendments and Changes

We would like to thank the Canadian Securities Administrators (“CSA”) for their work to date on proposed National Instrument 52-112 and its Companion Policy and related Consequential Amendments. In particular, we would like to thank the CSA for its work on addressing the comments from stakeholders on the first draft of 52-112, and appreciate the opportunity to respond to such important proposals.

Although we believe that substantial progress has been made in addressing comments raised in the first request for comment, we have some additional observations on the second draft of the proposals.

IASB Project

We understand that the CSA continues to monitor the International Accounting Standard Board’s (“IASB’s”) General Presentation and Disclosures Project. Although we agree that this project should not be halted to wait for the conclusion of the IASB project, we believe it will be important to understand directionally where the IASB is headed and to ensure that there is sufficient flexibility to deal with such measures. The IASB is expected to receive comments on its proposals by September 30, 2020. We understand that you will consider a transition period for these proposals and during that transition period there may be opportunities for further outreach or discussions with stakeholders on the implications of the

PricewaterhouseCoopers LLP
PwC Tower, 18 York Street, Suite 2600, Toronto, Ontario, Canada M5J 0B2
T: +1 416 863 1133, F: +1 416 365 8215, www.pwc.com/ca



IASB's proposals with a need for an accelerated process if there are any fundamental incompatibility issues that arise.

Non-Financial Reporting

We agree with the CSA's response to comments on the first draft of the proposals which explain certain non-financial measures may be outside the scope of these proposals. However, note that the European Union ("EU") is currently undertaking consultations on its Non-Financial Reporting Directive¹. We believe that the CSA should monitor the EU's project and stakeholder's reactions to it and consider both the impact on Canadian companies with listings in Europe in terms of information that will be required to be reported and to monitor whether there is any need for additional reporting on such information in Canada. Furthermore, Accountancy Europe has released a paper on Interconnected Standard Setting² which explores the need for global standard setting in this area. Although implementing global standards is likely to be a long-term process, Canada should remain connected to the initiatives that are occurring, so we are able to proactively provide input into such initiatives.

SEC Issuer

We note that the second draft proposes to provide exemptions for certain SEC Issuers from complying with the requirements of 52-112 for non-GAAP financial measures that are forward-looking information and allows SEC Issuers to label a total of segments measured as a non-GAAP measure. We believe that companies filing under the Multi-Jurisdictional Disclosure System (MJDS) are primarily required to comply with Canadian rules in the area of financial reporting and disclosures. Accordingly, we believe that the exemption should be limited to those entities that are SEC Issuers filing outside of the MJDS system. For those entities that are fully compliant with US non-GAAP rules (e.g. those foreign private issuers filing on Form 20-F or domestic issuers filing on Form 10-K) we continue to believe an exemption from the scope of 52-112 in its entirety would be appropriate.

More broadly given the number of dual-listed companies and the understanding of non-GAAP measures driven by the SEC regulations, we believe the CSA should carefully consider the cost vs. benefits of significant differences in the regulatory approach to non-GAAP measures.

¹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non-Financial-Reporting-Directive>

² <https://www.accountancyeurope.eu/publications/interconnected-standard-setting-for-corporate-reporting/>



Investment Fund Managers

We welcome the CSA's proposals to exclude funds subject to 81-106.

However we don't believe the CSA has addressed concerns regarding investment fund managers or other entities reporting KPIs in dollar amounts which are not part of their financial statements.

Mutual fund managers (who are not subject to 81-106) frequently use Assets under Management (AUM) based on net asset values of underlying funds under management as a key performance metric.

Although these numbers are stated as dollar amounts they do not relate to assets consolidated by the fund manager.

We believe that based on the current definition of a "non-GAAP financial measure" these may be captured, but as there is no directly comparable measure presented in the financial statements it would not be possible to provide a reconciliation.

A similar issue may arise in other situations where an issuer acts as an agent for revenue recognition but reports underlying volumetric information, or for certain financial information for underlying investees reported at fair value (e.g. for certain investment companies). We believe that the final instrument should consider the appropriate disclosure in cases where it is not possible to provide a reconciliation because there is not a comparable GAAP measure.

Forward-Looking Information

We welcome the CSA's attempt to simplify the disclosure for forward-looking non-GAAP measures. We note that in the summary of the changes the revised requirement is discussed as "a requirement to describe each reconciling item between the non-GAAP financial measure that is forward-looking information". In the proposed national instrument the requirement is described as "a description of any significant difference between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure".

We do not believe it is clear whether the requirement is to discuss differences in the composition of the measure (i.e. is it prepared on the same basis) or to discuss the underlying assumptions used in the forward-looking measure as compared to actual results in the historical measure.

If the requirement is the former, we believe that issuers may simply disclose that the measure is prepared on a consistent basis without providing any of the significant assumptions that have been made in making an estimate of such forward-looking information.

We believe that issuers providing forecasts of either GAAP or non-GAAP information in their continuous disclosure documents that the underlying assumptions are relevant. In some cases may be discussed as a percentage (e.g. "our adjusted EBITDA forecast assumes that sales will increase by 10% and margins will remain relatively stable") or be more quantitative (e.g. "our adjusted EBITDA forecast assumes sales will increase by \$1M). Although we support flexibility in the nature of the disclosures, we believe the objective of such disclosures should be to provide an understanding of the key inputs used in such measures.



Other Comments

- Although we believe the current proposal has enhanced readability compared to the previous version, we encourage the staff to continue to look for opportunities to simplify the guidance and consider the level of cross-referencing within the proposed national instrument which can make understanding the rules more complex.
- The proposal in 5(3)(b) is not to permit cross-referencing from a news release to the MD&A. While we understand the rationale that this wouldn't be permitted in certain circumstances where for example an earnings release is filed as a news release prior to the MD&A for the period being filed, we do not understand the rationale for not permitting the cross-referencing within news releases if they are filed subsequent to or contemporaneously with the MD&A that contains the required disclosure.
- It would be helpful to clarify whether in place of footnotes a section of endnotes would be acceptable to avoid clutter (i.e. the same endnote could be referenced multiple times throughout the document).
- S. 8(d)(i) notes that the issuer must "identify" the non-GAAP financial measure used as a component of the ratio. Where such measures are not presented elsewhere in the document, should this section clarify that the quantitative reconciliation information concerning those non-GAAP measures is required to be provided.

Should you have any questions regarding our response please contact Michael Walke (416-815-5011) or Scott Bandura (403-509-6659).

Yours truly,

PricewaterhouseCoopers LLP

Chartered Professional Accountants