

June 29, 2020

The Secretary
Ontario Securities Commission
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M^e Anne-Marie Beaudoin
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Dear:

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

**Re: CSA Second Notice and Request for Comment – Proposed National Instrument 52-112
Non-GAAP and Other Financial Measure Disclosure – Proposed Companion Policy 52-112
Non-GAAP and Other Financial Measures Disclosure – Related Proposed Consequential
Amendments and Changes**

The Canadian Auditing and Assurance Standards Board (AASB) is pleased to provide its comments on the Canadian Securities Administrators' (CSA) Second Notice and Request for Comment on the:

- Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure;
 - Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure; and
 - Related Proposed Consequential Amendments and Changes;
- collectively referred to as "Rule 52-112" throughout this letter.

Overall comments

Consistent with our 2018 response to the CSA proposals on Rule 52-112, we continue to support the Canadian Securities Administrators' (CSA) efforts to strengthen the disclosure requirements surrounding non-GAAP financial measures and other financial measures. This topic is one of increasing importance to a variety of stakeholders.

Conflict between proposed Rule 52-112 and the IASB ED

Proposed Rule 52-112 defines a non-GAAP financial measure as one that depicts historical or expected future financial performance that is not presented in the financial statements. The International Accounting Standards Board (IASB) Exposure Draft (ED), *General Presentation and Disclosures* (IASB ED) uses a different term, Management Performance Measures (MPMs). The IASB is proposing to require that information about any MPMs included in public communications outside the financial statements be disclosed in a single note in the financial statements.

Some non-GAAP financial measures as defined in proposed Rule 52-112 would also meet the definition of MPMs in the IASB ED. For example, adjusted EBITDA that is not presented in the financial statements would be a non-GAAP financial measure as defined in proposed Rule 52-112 and the disclosure requirements relating to non-GAAP financial measures would presumably apply. However, under the IASB ED, the same adjusted EBITDA would be required to be disclosed in a single note in the financial statements. Because of the required financial statement disclosure under the IASB ED, this would serve to exclude the adjusted EBITDA from being a non-GAAP financial measure as defined in proposed Rule 52-112.

The above example demonstrates that there is a conflict between the proposed Rule 52-112 and the IASB ED. This conflict, if unresolved, will likely result in challenges for auditors and management and confusion for users of financial information. We are therefore pleased that the CSA is monitoring the progress of the IASB ED and the overall project in order to consider whether changes to securities legislation will be appropriate.

Confusion about the categories of specified financial measures

Our outreach on proposed Rule 52-112 indicates that stakeholders find the proposed rule hard to understand. The proposed rule segregates specified financial measures into different categories with different disclosure requirements. Stakeholders found it unclear which category

would apply to certain financial measures and consequently, which set of disclosure requirements would apply. For example, a financial measure comprising of a capital management ratio that includes non-GAAP numbers may fall into one of the following two categories:

- a non-GAAP ratio, which has disclosure requirements relating to labelling as required by paragraph 8(a) of the proposed Rule and cautionary language that the non-GAAP ratio is not a standardized financial measure as required by paragraph 8(d)(ii) of the proposed Rule; or
- a capital management measure, which has no disclosure requirements relating to labelling and cautionary language.

The lack of clarity as to whether the financial measure in the above example is a non-GAAP ratio or a capital measure raises a question as to which set of disclosure requirements apply.

We encourage the CSA to consider further clarifying the proposed Rule 52-112 and to develop guidance to help stakeholders navigate the proposed rule. For example, the CSA may wish to consider whether the number of categories (i.e., sets of disclosure requirements) may be reduced without compromising investor protection and developing guidance when a financial measure falls into more than one defined category. The CSA may also wish to consider the corresponding SEC Rule on non-GAAP financial measures.¹ Our stakeholders have informed us that they found the SEC Rule to be clearly drafted and we understand that the SEC Rule is substantially aligned with proposed Rule 52-112.

Distinction between the primary financial statements and notes to the financial statements

The definitions of some of the specified financial measures make a distinction as to whether the measure appears in the primary financial statements or the notes to the financial statements. In our view, this distinction is unnecessary and may result in the unintended consequence of users misinterpreting the notes to the financial statements as being less important than the other parts of the financial statements. We suggest that the CSA consider basing the definitions of the specified financial measures on whether the measures appear in the financial statements, regardless of whether they are in the primary financial statements or the notes to the financial statements.

Other assurance implications

The AASB recognizes the increasing importance stakeholders ascribe to information beyond the audited financial statements. *CAS 720, The Auditor's Responsibilities Relating to Other Information*, enhances the auditor's responsibilities to read the other information and consider whether there is a material inconsistency between the other information and the financial statements or the auditor's knowledge obtained in the audit. CAS 720 does not impose an obligation on the auditor to obtain assurance about the other information. We encourage the CSA to continue to monitor the use of, and reliance on, such information by users and consider whether it is in the public interest for the credibility of that information to be enhanced by independent assurance.

¹ Regulation G, *Conditions for Use of Non-GAAP Financial Measures*

Non-financial measures

We note that proposed Rule 52-112 does not address disclosures of non-financial measures or operational measures. As indicated in our 2018 response to the CSA proposals on Rule 52-112, we continue to believe there is significant scope for improvements to the quality of such measures. Accordingly, we recommend that the CSA explore whether there is a role it can play in enhancing the disclosures of all performance measures through regulatory changes.

We hope that these comments will be useful to the CSA in determining the appropriate next steps relating to this key project. We also note the helpful comments set out in the Canadian Accounting Standards Board's response to proposed Rule 52-112. If you have any questions or require additional information, please contact Eric Turner at (416) 204-3240 or eturner@aasbcanada.ca.

Yours very truly,



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