

June 29, 2020

Delivered 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

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

The Canadian Bankers Association (CBA)¹ is pleased to provide feedback to the Canadian Securities Administrators (the CSA) on their revised Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the Proposed Instrument) and the accompanying revised Proposed Companion Policy 52-112 published on February 13, 2020 (the Proposed Companion Policy, and together with the Proposed Instrument, the Proposal).

As stated in our previous correspondence, we are generally supportive of the Proposal and agree that adopting comprehensive disclosure requirements rather than limits and industry-specific requirements will improve the overall quality of disclosure and be of benefit to investors as well as general users of our reports which will be scoped in by the Proposal. We appreciate the updates and clarifications in certain areas and

¹ The CBA is the voice of more than 60 domestic and foreign banks that help drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals. www.cba.ca.

find the examples useful for financial reporting preparers to ensure that we are in alignment with the expectations of the CSA.

Improving the quality of information provided to investors can enable them to better analyze financial measures. However, this can only be achieved if communications with investors are clear and concise, avoiding complex disclosures which provide little to no benefit to readers. With this in mind, we would like to highlight the following observations with respect to the Proposal for your consideration:

- **Cross-referencing:** We acknowledge the expansion of the cross-referencing provisions in the Proposed Instrument to permit cross-referencing to the issuer's MD&A. However, section 5(3) of the Proposed Instrument expressly prohibits the cross-referencing to the issuer's MD&A of the non-GAAP information required by the provisions of the Proposed Instrument in a news release issued or filed by the issuer. This implies the requirement to provide duplicate non-GAAP reconciliation disclosures for the same non-GAAP financial measures in multiple documents that are filed/posted concurrently. For example, reconciliations would be required for the identical non-GAAP financial measures for the same reporting period in an issuer's quarterly news release and report to shareholders which is inconsistent with the CSA's general assent to cross-referencing. We believe cross-referencing should be explicitly allowed between all documents which are filed/posted concurrently, including news releases and investor presentations, in order to avoid duplicative disclosures and to ensure that the disclosure process is practical for shorter documents. We also note that this would be consistent with other core disclosure documents such as an issuer's annual information form.
- **Scope:** Section 2 of the Proposed Instrument is overly broad. We believe that certain qualifiers presented in the first draft of the Companion Policy outlining reasonable exclusions to the Proposal, including whether or not the document is required to be filed under securities legislation, and/or whether its content would reasonably be expected to affect the market price or value of a security of the issuer should be maintained in the revised Proposal. To clarify, if a measure is intended to be made available to the public and is not disclosed in accordance with securities legislation and is also not reasonably expected to affect the market price or value of an issuer's security, then the measure should be explicitly exempted. We request that the CSA consider limiting the Proposal to documents that are intended to be used by the investment and/or analyst community as it would be inappropriate to include unrelated documents, such as marketing documents, for which the user of the information would not expect the data to be in accordance with IFRS standards.
- **Required by Law and SRO:** We acknowledge the revisions to the Proposal in section 4(e), which state that the requirements of the Proposed Instrument are not applicable to a financial measure where disclosure "is required under law or by an SRO to which the issuer is a member". As issuers in a highly regulated industry, a number of our disclosures are required or recommended by regulators other than securities regulators and other than through laws or legislation in or outside of Canada (i.e. Tier 1 capital and liquidity ratios). We would appreciate confirmation from the CSA that "a requirement under law" as stated in section 4(e) of the Proposed Instrument encompasses both required and recommended disclosure from any system of regulation or governmental authority (i.e. BoC, OSFI, CDIC, etc.). We recommend expanding the exception to include both required and recommended disclosures as well as all regulatory bodies, whether by law or otherwise. We note that this would be consistent with other securities regulators' approach to non-GAAP financial measures, including the US Securities and Exchange Commission (SEC).
- **Definitions:** The definitions of "capital management measure" and "total of segments measure" in section 1 of the Proposed Instrument implies that a financial measure under either of these definitions that is not in either the notes to the financial statements or presented in the primary

financial statements would not be required to comply with the Proposal. We would appreciate confirmation that this is the intention of the CSA or further clarification on what a “capital management measure” is intended to include for different industries. For example, financial institutions have significant regulatory capital management disclosures but few, if any, adjusted debt figures or traditional capital management measures.

- **Non-GAAP ratios:** Section 8(b) of the Proposed Instrument states “the non-GAAP ratio is presented with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the entity to which the non-GAAP ratio relates.” As a number of non-GAAP ratios would not have a similar financial measure presented in the primary financial statements of the entity (i.e. adjusted operating leverage), we would appreciate clarification that the Proposed Instrument is meant to require that a non-GAAP ratio be presented with no more prominence than that of a similar supplementary financial measure ratio presented using components that are not non-GAAP financial measures.

We would be pleased to elaborate on our comments in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Hannah". The signature is written in a cursive style with a large initial "D".

Darren Hannah