



VIA EMAIL

June 26, 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

Attention:

The Secretary
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Me Philippe Lebel
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**Re: CSA Second Notice and Request for Comment
Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosures
Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosures**

Dear Sirs/Mesdames,

The purpose of this letter is to provide comments on the proposed National Instrument and related Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosures* (together the “*Proposed NI*”). We appreciate the opportunity offered by the Canadian Securities Administrators (“CSA”) to share our perspective on this proposed regulation.

Intact Financial Corporation is a publicly traded company listed on the Toronto Stock Exchange and is the largest provider of property and casualty insurance in Canada, with a 17% market share and a market capitalization of approximately \$19 billion. The quality of our financial disclosure is fundamental to us, as evidenced by our recognition by Brendan Wood International (BWI) as 2018 Global Top Gun Company for Transparency and Reporting, alongside four other insurance companies.

We acknowledge the efforts of the CSA to improve the overall clarity of the Proposed NI and progress towards implementing practical and effective disclosure. We understand the importance of complete and transparent disclosure given the challenge of comparability from one company to the other. However, we have continued concerns on two issues:

1. We still believe that the “equal or greater prominence of GAAP financial measures over non-GAAP financial measures”, as described, is too prescriptive. We are concerned that the Proposed NI will result in **unnecessarily heavy and burdensome disclosure that will dilute key messages and potentially confuse investors**. Our experience has shown that non-GAAP financial measures often better respond to investor needs than GAAP financial measures. Our view is that **equal or greater prominence should be given to GAAP financial measures when it would be misleading not to do so**. To significantly improve the overall quality of disclosure for investors, we believe that we should apply **materiality and judgement** to the level of disclosure provided to investors

2. We also disagree with the decision to not permit cross referencing in the case of a press release issued or filed by the issuer to a section of the MD&A containing all pertinent and required disclosure. We believe that **disclosure effectiveness principles** should guide how to best disclose the information.

You will find our detailed comments in the appendix attached to this letter.

Yours truly,



Frédéric Cotnoir
Senior Vice President, Corporate and Legal
Services and Secretary
Intact Financial Corporation



Louis Marcotte, FCPA, FCA
Senior Vice President and Chief Financial Officer
Intact Financial Corporation

OVERALL COMMENTS

1. Progress towards practical and effective disclosure

We acknowledge the progress made in some areas to improve disclosure effectiveness by:

- permitting cross-referencing in certain documents back to the MD&A (*see item 2 below*);
- reducing disclosure requirements in some areas; and
- reducing the scope of application (e.g. excluding transcripts of an oral statement).

2. Cross-referencing in a news release back to the MD&A should be permitted

Section 5 - Incorporating information by reference

(3) Subsection (1) does not apply if the document that contains the specified financial measure is

- (a) the MD&A filed by the issuer, or
- (b) a news release issued or filed by the issuer.

We question the rationale **not to permit cross-referencing in a news release back to the MD&A**, which is filed on SEDAR at the same time and contains all the required disclosures (definitions, reconciliations, etc.). We understand that readers of a news release may differ from those of the MD&A. However, we see no substantive difference if the news release is accompanied by the required disclosure and proper referencing to the MD&A, presented in a way that does not mislead investors. Rather, we believe it is confusing and ineffective to have more regulatory disclosure than content in the news release itself.

3. More disclosure should be incorporated by reference

In proximity to the first instance of the non-GAAP financial measure in the document, the document

- (i) identifies the measure as a non-GAAP financial measure,
- (ii) explains that the non-GAAP financial measure is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the measure relates and might not be comparable to similar financial measures presented by other issuers,
- (iii) explains the composition of the non-GAAP financial measure,

We believe that **cross-referencing to the MD&A should be permitted** in all documents with regards to the disclosure of the **composition** of non-GAAP financial measures, non-GAAP ratios and capital management measures. In our view, this disclosure is best placed in proximity to the reconciliation to the most comparable financial measure presented in the primary financial statements, which we consider should be included in a specific section of the MD&A.

4. Equal or greater prominence of GAAP financial measures over non-GAAP financial measures remain too prescriptive

We still believe that the equal or greater prominence of GAAP financial measures over non-GAAP financial measures **as described (see below) remain overly prescriptive** (like the SEC Regulation G)

- Analysts and investors are looking for management’s insights into a company’s core performance, in terms of quality of earnings and performance over time – in other words, **narrative explanation, through the eyes of management. This is the purpose of the MD&A.**
- In situations where the conclusions drawn from the non-GAAP financial measure and the GAAP financial measure would be substantially the same, due to an immaterial difference between the two, this criterion would unnecessarily burden disclosure. In such cases, duplication of financial measures (i.e. adding the GAAP measure alongside each non-GAAP measure) will **dilute key messages and could confuse readers.**
- We found the **disclosure of U.S. peers** (which are presumably in compliance with SEC Regulation G) **very heavy and the key messages unclear** given the duplication of information in the headlines, tables, narrative and graphs.
- **Our view is that equal or greater prominence should be given to GAAP financial measures when it would be misleading not to do so; and that equal or greater prominence criteria should consider materiality.**

Extracts from Proposed NI

Determining the relative prominence of a non-GAAP financial measure **is a matter of judgment, considering the overall disclosure and the facts and circumstances in which the disclosure is made.**

The following are examples that would cause a non-GAAP financial measure to be **more prominent than the most comparable measure presented in the financial statements:**

- Presenting a non-GAAP financial measure in the form of a statement of profit or loss and other comprehensive income without presenting it in the form of a reconciliation to the most comparable measure, sometimes referred to as a “single column approach”;
- Omitting the most comparable measure from a news release headline or caption that includes a non-GAAP financial measure;
- Presenting a non-GAAP financial measure using a style of presentation (for example, bold, underlined, italicized, or larger font) that emphasizes the non-GAAP financial measure over the most comparable measure;
- Multiple non-GAAP financial measures being used for the same purpose thereby obscuring disclosure of the most comparable measure;
- Providing tabular or graphical disclosure of non-GAAP financial measures without presenting an equally prominent tabular or graphical disclosure of the most comparable measures or without including the most comparable measures in the same table or graph; and
- Providing a discussion and analysis of a non-GAAP financial measure in a more prominent location than a similar discussion and analysis of the most comparable measure. For greater certainty, we take the view that a location is not more prominent if it allows an investor who reads the document, or other material containing the non-GAAP financial measure, to be able to view the discussion and analysis of both the non-GAAP financial measure and the most comparable measure contemporaneously. For example, within the previous, same or next page of the document.

The above list is not exhaustive.

Considering the non-exhaustive list of examples provided in the Proposed NI, we question how much judgement can be applied to ensure compliance with the “Equal or greater prominence of GAAP financial measures over Non-GAAP financial measures” in the Proposed NI.

5. Overall clarity

Overall, we find the Proposed NI much easier to understand.

- Definitions of the various financial measures and related disclosure requirements are much clearer.
- Proposed companion policy helps understand the various definitions and how the disclosure requirements apply to each measure. However, we think that Annex C in the Original Proposed NI or a similar visual representation should be reinstated to summarize the definitions and disclosure requirements in a visual or tabular format.
- Webinars and interpretation guidance should be considered.

6. IASB Exposure draft on General Presentation and Disclosure

The International Accounting Standards Board (IASB) has recently issued an exposure draft on *General Presentation and Disclosures* aimed to replace *IAS 1 - Presentation of Financial Statements*. As mentioned, the exposure draft could change the structure and content of the income statement and result in some non-GAAP financial measures being included in a note to the financial statements with accompanying disclosure. This may have an impact on the Proposed NI requirements.

We are supportive of the CSA monitoring the progress of the exposure draft and considering any changes to securities legislation as appropriate. Disclosure effectiveness is important to providing quality information to stakeholders.

We intend to respond to the IASB's exposure draft in a separate letter by September 30, 2020.