

June 29, 2020

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

The Secretary
Ontario Securities Commission
20 Queen Street West, 19th Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar, 2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

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 (collectively, the “Proposed Instrument”)

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following comments on the Proposed Instrument.

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 Canadian CFA charterholders. The council includes investment professionals across Canada

The CAC continues to agree with the analysis that non-GAAP financial measures lack standardized meaning, context when disclosed outside of financial statements, and transparency as to their calculation. The Proposed Instrument will provide for disclosure requirements when an issuer uses a non-GAAP financial measure, non-GAAP ratio and certain other financial measures. We support changes that strengthen the disclosure requirements and the creation of a set of enforceable standards that will make disclosures more meaningful to investors without inhibiting an issuer's ability to communicate the financial condition and prospects of their business or their ability to communicate industry-specific measures.

We understand that as a result of feedback, the disclosure requirements of the Proposed Instrument have been simplified. While we agree that the original proposal's scope and ambit presented some practical implementation and co-ordination concerns (particularly for specific types of issuers and cross-listed issuers), we are concerned that the Proposed Instrument now lacks substantive ambition and does not break new ground to improve the overall quality, clarity, and consistency of issuer disclosures, nor address the risk that investors will be misled by potentially confusing combinations of non-GAAP financial measures, alternative performance measures, and/or key performance indicators.

We support the CSA in following the developments on the IASB's Primary Financial Statements Project closely and believe that the CSA should continue to do so as the project evolves. We would suggest that rather than forming a policy project endpoint, the adoption of the Proposed Instrument should be a milestone in an ongoing CSA policy project to improve issuer disclosures across the range of financial and non-financial metrics that form a substantive portion of issuer disclosure, with the goal of pursuing quality, clarity, consistency, and ultimately usability, by investors. For example, a second-stage review of the requirements could include reviewing sector specific financial reporting requirements, including for oil and gas issuers and mining companies.

We also understand that the scope of application of the Proposed Instrument has been substantially narrowed. We agree with the decision to exclude certain investment funds, designated foreign issuers and SEC foreign issuers from the requirements of the Proposed Instrument. While we support the Proposed Instrument as a whole, we do note that many of the changes that have occurred since it was originally published involve deletions, and not additional investor protection safeguards.

Non-GAAP financial measures must be presented with no more prominence than the most comparable financial measure presented in the issuer's primary financial statements to which the non-GAAP financial measure relates. We believe this disclosure requirement is a key feature of the Proposed Instrument.

who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 175,000 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 158 local member societies. For more information, visit www.cfainstitute.org.

00274753-4

The Proposed Instrument will require that an issuer reconcile a non-GAAP financial measure with the most comparable financial measure found in the primary financial statements (as defined). As a matter of practice, we do not think a standing reconciliation to the closest GAAP measure on an issuer's website or most recent MD&A found on SEDAR will be sufficiently accessible in the context for an investor to utilize.

It is proposed that a "supplementary financial measure" be defined as a financial measure presented by an issuer that (a) is, or is intended to be, disclosed on a periodic basis to depict the historical or expected future financial performance, financial position or cash flow of an entity, (b) is not presented in the financial statements of the entity, (c) is not a non-GAAP financial measure, and (d) is not a non-GAAP ratio. The Companion Policy provides that where "same-store sales" are reported, it would be a supplementary financial measure to the extent it is used by an issuer to report performance from period to period. We query whether same-store sales would in fact be a supplementary financial measure. In our view it is more likely properly regarded as a non-GAAP ratio, as the denominator of the underlying measure (stores, sometimes with a highly variable definition of its own at a firm-specific level and over time), is not a GAAP measure and often the 'sales' figure utilized in the numerator of the underlying measure is commonly not the GAAP revenue or sales measure either (the figures being often adjusted for items such as specific business lines or stores, or FX variance where often presented most prominently in non-GAAP constant-currency terms (using an accounting basis not consistent with IAS 21 under IFRS) such as "constant dollar same-store sales" or "same-store sales on a constant currency basis"). We would suggest a replacement example for the Companion Policy for additional clarity and one where the common usage by issuers is not on a non-GAAP/adjusted basis such as in this case.

We agree with the guidance in the proposed Companion Policy that the Proposed Instrument would apply to Form 51-102F6 *Statement of Executive Compensation*. This information is used by investors to evaluate executive compensation and then decide how to vote at annual meetings, as well as educate themselves about an issuer's corporate governance policies. As noted, there is no policy reason to exclude performance goals or other non-GAAP financial measures from the requirements of the Proposed Instrument.

With respect to oral statements, care should be taken not to discourage the use of written disclosures in favour of oral disclosure. Written communications are typically more broadly distributed and accessible to investors than oral disclosures made in conference calls or other settings. Investors do not always make investment decisions in "real time", and investment takes place in different time zones and through different processes. It is thus important that investors have access to financial information in written form subject to the requirements of the Proposed Instrument.

In addition, we are concerned about the lack of guidance provided with respect to the use of oral statements (or transcripts thereof) in the proposed Companion Policy. While there is a note in a response to a comment that reminds issuers of their obligation not to disclose misleading information, if non-GAAP financial measures or other

supplementary measures covered by the Proposed Instrument are mentioned in an oral statement, their relationship to existing GAAP numbers must be understood.

The proposed Companion Policy indicates that an issuer should not disclose a specified financial measure using social media if it cannot include all the requisite disclosure. We are supportive of the requirement to consider website and social media platforms as documents subject to the requirements of the Proposed Instrument. There could be a potential gap with respect to implied endorsement by an issuer in oral statements or transcripts thereof containing non-GAAP financial measures or other supplementary measures that are not subject to the Proposed Instrument, but which are then repeated or redistributed without the necessary reconciliations and/or disclosures on an issuer's website or a social media platform. The Companion Policy and/or Proposed Instrument should make it clear that these oral statements or transcripts thereof, once repeated or redistributed on their website or social media with tacit endorsement, are subject to the new rules.

While the ability to incorporate certain information by reference will assist in eliminating duplication and enhance readability, it is important that the reference provide a hyperlink to the specific information being incorporated rather than require the reader to search out the information themselves in a cumbersome fashion.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

**The Canadian Advocacy Council of
CFA Societies Canada**