

CSA Notice of Publication
National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*
Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure*
and Related Consequential Amendments and Changes

May 27, 2021

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing in final form the following materials:

- National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Instrument**);
- Companion Policy 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the **Companion Policy**);
- Related consequential amendments or changes to:
 - Multilateral Instrument 45-108 *Crowdfunding*¹;
 - Companion Policy 45-108CP *Crowdfunding*;
 - Companion Policy 51-102CP *Continuous Disclosure Obligations*;
 - Companion Policy 51-105CP *Issuers Quoted in the U.S. Over-the-Counter Markets*²; and
 - Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards*.(collectively, the **Materials**).

The original proposals for the Materials (the **Original Materials**) were published on September 6, 2018. In connection with the Original Materials we conducted 38 outreach sessions across seven cities in Canada and received 42 comment letters. In response to the original feedback received, we made substantive changes, and reissued the proposals for the Materials (**Revised Materials**) on February 13, 2020. In connection with the Revised Materials we conducted 14 outreach sessions across four cities in Canada allowing us to further actively engage with stakeholders. We received 26 comment letters from various stakeholders, including issuers, investors, accounting firms, standard setters, industry associations and law firms.

The list of commenters on the Revised Materials is attached as Annex A. We wish to thank all commenters for contributing to the second consultation. A summary of the comments we

¹ The securities regulatory authorities in British Columbia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut are not proposing these consequential amendments or the changes to the related Companion Policy because MI 45-108 does not apply in these jurisdictions.

² The Ontario Securities Commission is not proposing this consequential change as Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* and its Companion Policy do not apply in Ontario.

received and our responses to those comments are attached as Annex B. In response to the feedback we received, we have made targeted, non-material, changes that primarily clarify and streamline the application and disclosure requirements. As these changes are not material, we are not republishing the Materials for a further comment period.

The text of the consequential amendments and changes of the Materials is contained in Annexes E through I of this Notice.

Annex J to this Notice includes additional text, as required, to respond to local matters in a local jurisdiction. Each jurisdiction that is proposing local amendments will publish an Annex J.

This Notice will also be available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

nssc.novascotia.ca

www.fcnc.ca

www.osc.gov.on.ca

www.fcaa.gov.sk.ca

www.mbsecurities.ca

The Instrument is expected to be adopted by each member of the CSA. In some jurisdictions, Ministerial approvals are required for the implementation of the Instrument. Provided all necessary ministerial approvals are obtained, the Instrument will come into force on August 25, 2021.

Substance and Purpose

The Instrument addresses the disclosure surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures (i.e., capital management measures, supplementary financial measures, and total of segments measures, as defined in the Instrument).

In some cases, non-GAAP financial measures, non-GAAP ratios, and other financial measures are disclosed by an issuer to provide additional insight, from management's perspective, about financial performance, financial position, or cashflow. The Instrument does not contain specific limitations or industry-specific requirements on how to calculate a measure; rather, it provides clarity and consistency with respect to an issuer's disclosure obligations aimed at improving the quality of information provided to investors about such measures.

We acknowledge that some stakeholders continue to prefer that we limit, in specific circumstances, the disclosure of certain financial measures, and develop industry-specific requirements for certain financial measures. However, due to the numerous types of ever-evolving financial measures disclosed across a range of industries, we continue to believe that disclosure requirements are best suited to respond to investor needs for quality information without being overly prescriptive. These requirements would allow investors to better analyze different financial measures within an industry or among different industries.

Although the definition of a non-GAAP financial measure has been updated, the Instrument has substantially incorporated the disclosure guidance in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures (SN 52-306)* for non-GAAP financial measures. To ensure investors appreciate the context of other financial measures, the Instrument introduces disclosure requirements if such financial measures are disclosed outside of the financial statements.

Background

Non-GAAP Financial Measures

Various activities have contributed to the development of the Materials, which will replace the guidance provided in SN 52-306.

Many issuers, in all industries, disclose a range of financial measures that may lack standardized meanings under the financial reporting framework used in the preparation of the issuer's financial statements and lack transparency as to their calculation or vary significantly by issuer and industry.

Common terms used to label non-GAAP financial measures may include "adjusted earnings", "adjusted EBITDA", "free cash flow", "pro forma earnings", "cash earnings", "distributable cash", "cost per ounce", "adjusted funds from operations" and "earnings before non-recurring items".

In Canada, the guidance in SN 52-306 is intended to help ensure that non-GAAP financial measures do not mislead investors. Although we have updated SN 52-306 several times to respond to changing circumstances and published various staff notices and reports that comment on the topic, we continue to find that disclosure practices surrounding non-GAAP financial measures vary. Our findings are consistent with those of other stakeholders, particularly investors, who share our desire for quality disclosure.

The use of non-GAAP financial measures is a topic raised frequently by the financial reporting community, locally and abroad. In Canada, several organizations have undertaken research and issued guidance on how to disclose non-GAAP financial measures. Stakeholders generally have expressed the view that the CSA is best suited to regulate the use of non-GAAP financial measures.

Internationally, securities regulators have strengthened their efforts to regulate non-GAAP financial measure disclosure, including the International Organization of Securities Commissions (**IOSCO**) and the European Securities Markets Authority (**ESMA**). In addition, the U.S. Securities and Exchange Commission (**SEC**), which has formalized requirements for disclosure of non-GAAP financial measures in its rules, continues to provide further guidance on how to comply with applicable requirements.

We are aware the International Accounting Standards Board (**IASB**) continues to discuss feedback on the December 2019 Exposure Draft *General Presentation and Disclosures*, which

sets out proposals to improve how information is communicated in the financial statements, with a focus on information in the statement of profit or loss. Changes to International Financial Reporting Standards (IFRS) could, among other things, change the structure and content of the income statement and result in some traditional non-GAAP financial measures being included in a note to the financial statements with accompanying disclosure. As the IASB proposals are at an early stage, it is difficult to determine what changes, if any, will be made to IFRS. We will monitor the progress of the Exposure Draft, as well as other related initiatives, and if changes are made to IFRS we will consider at that time whether any changes to securities legislation are necessary.

Other Financial Measures

Over the years, we have found that other financial measures that do not meet the definition of a non-GAAP financial measure can present similar issues if not accompanied by appropriate disclosure. Such financial measures include certain measures disclosed in the notes to the financial statements that lack context when disclosed outside of the financial statements. For example, IFRS permit disclosure of a broad range of capital management or segment measures but do not specify how such measures must be calculated in most circumstances. As a result, such measures can differ materially from amounts presented in the primary financial statements and may not be prepared in accordance with the recognition and measurement accounting policies used to prepare the issuer's primary financial statements.

To ensure investors were not confused or misled, such measures were frequently identified as "non-GAAP" and issuers provided disclosures consistent with our expectations in SN 52-306. To ensure investors continue to appreciate the context of such measures, the Instrument includes disclosure requirements for such measures when disclosed outside of the financial statements. These disclosure requirements have been carefully tailored for each measure and result in substantially less disclosure than expected under SN 52-306.

Summary of Materials

The Materials:

- apply to all reporting issuers, except investment funds, SEC foreign issuers, and designated foreign issuers;
- apply to non-reporting issuers in certain documents in connection with certain offerings or transactions;
- pertain to the disclosure of financial measures that are non-GAAP financial measures, non-GAAP ratios, and other financial measures (i.e., capital management measures, supplementary financial measures, and total of segments measures, as defined in the Instrument);
- include an updated definition of a non-GAAP financial measure which builds upon and incorporates the disclosure guidance in SN 52-306;
- introduce the concept of capital management measures, supplementary financial measures, and total of segments measures, together with associated disclosure requirements,
- include extensive guidance and examples; and

- for a reporting issuer, apply to disclosures for a financial year ending on or after October 15, 2021 and for an issuer that is not a reporting issuer for filings after December 31, 2021.

The Instrument is included in Annex C. The Companion Policy is included in Annex D.

Summary of Changes to the Revised Materials

Many comment letters expressed support for the objectives of the Revised Materials. Commenters continued to agree with the analysis that non-GAAP financial measures (including non-GAAP ratios) and other financial measures lack standardized meaning under financial reporting frameworks, lack context when disclosed outside of financial statements, and lack transparency as to their calculation or vary significantly by issuer and industry. In addition, many comment letters supported the changes to the Original Materials that address identified concerns relating to application and definitions. Although some commenters expressed a desire for further substantive changes in these areas, on balance, we considered that such changes would be contrary to the objectives of the proposals.

Following our review and analysis of the comment letters, through the changes to the Revised Materials, we have:

- introduced new application exceptions (e.g., a document prepared by a registered firm that is provided or is intended to be provided to a client or prospective client of the registered firm, disclosure of a financial measure where its calculation is derived from a financial covenant in a written agreement, certain disclosures in the Statement of Executive Compensation);
- narrowed and clarified various definitions and disclosure requirements;
- permitted incorporation by reference, for certain disclosures, in an earnings release;
- expanded incorporation by reference, for certain disclosures, across all specified financial measures, and
- enhanced readability.

Questions

Please refer your questions to any of the following:

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