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c/o
The Secretary
Ontario Securities Commission
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Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Dear Sirs/Mesdames:

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

Chartered Professional Accountants of Canada (CPA Canada) appreciates the opportunity to respond to the Canadian Securities Administrators (CSA) on Proposed National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (the Proposed Instrument or proposals) and the accompanying Proposed Companion Policy (collectively the Proposed Materials).

We support the CSA's efforts to expand and formalize disclosure expectations related to non-GAAP and other financial measures and view this as an important step toward enhancing investor confidence.

CPA Canada is one of the largest national accounting organizations in the world, representing more than 210,000 members. CPA Canada conducts research into current and emerging business issues and supports the setting of accounting, auditing and assurance standards for business, not-for-profit organizations and government. CPA Canada also issues guidance and thought leadership on a variety of technical matters, publishes professional literature and develops education and professional certification programs.

In formulating our response on the Proposed Materials, we have drawn on our knowledge of corporate reporting practices and challenges and solicited the input of strategic advisors to CPA Canada and our extensive network of volunteers representing small, medium and large issuers, investors, and auditors. We consulted with approximately 75 highly qualified, experienced professionals, including our Canadian Performance Reporting Board. We have also conducted a limited amount of field testing to better understand how the proposals might actually be applied by an issuer.

The following are some key themes that emerged from our work and outreach and on which there was general consensus:

- We did not find any objection to the development of a rule in this area.
- There is consensus on the need for improvements in the reporting of non-GAAP and other financial information.
- We found a consensus that the proposals are unclear and difficult to understand.
- We also discovered high levels of uncertainty and conflicting views on how the proposals would be applied.
- There are concerns about unintended consequences, anomalous results, and undesirable outcomes.
- There are concerns with a lack of consistency with U.S. Securities and Exchange Commission (SEC) requirements and the related consequences.
- There is a need for a significant amount of application guidance.
- There is concern that a significant amount of additional disclosure might be required compared to what is required now.
- In some areas, the additional disclosures required would not be helpful.
- The proposals on non-GAAP financial measures that are financial outlooks raised the most concerns related to complexity, the possibility of significant additional disclosure and questions of usefulness.
- There is also concern the additional requirements could discourage the reporting of certain measures considered important to users.

We note that in the Request for Comments, the CSA expects that issuers will incur only some additional immaterial administrative costs. We found significant concerns that this may not be the case and that there may be a substantial increase in regulatory burden. This burden may disproportionately fall on the large number of smaller issuers we have in Canada.

We recognize the inherent conflict between improving disclosure and increasing regulatory burden. More work needs to be done to establish proposals that achieve the most appropriate balance between them.

We believe it is essential that the CSA conduct extensive field testing of the proposals. Our impression is that many preparers are not considering the proposals with the level of depth necessary to identify the issues that need to be considered. We are concerned that they are looking only at high-level summaries of the proposals published by service providers that may suggest minimal changes from current practice will be required. We found that users have been unable to complete an in-depth review of the proposals because of their complexity.

We elaborate on some of our preceding concerns and provide additional comments for your consideration below. Responses to your specific questions are included in the Appendix to this letter.

1) Objectives of the Proposed Instrument

The proposals now have a much broader focus than existing Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (CSA Staff Notice 52-306). This new focus raises questions about the objectives of the proposals and how to best accomplish them. Some discussion of the objectives of the proposals and what the requirements are intended to achieve would be helpful.

The reporting landscape has changed dramatically since securities commissions first started addressing the disclosure of non-GAAP measures. In addition to the continuing proliferation of non-GAAP measures as currently defined, we have seen increased reporting of other customized performance measures. These include key performance indicators (KPIs), non-financial information, and other operating and industry measures for which there are no rules governing their construction and disclosure. This has led to varied reporting of these measures, even among entities in the same industry, which has led users to call for standardization and more transparency. As a result, we believe there is need for more consideration of what requirements should be in place regarding all types of performance measures. We have developed guidance to help enhance reporting practices in this area.

We note the CSA has attempted to deal with the increased use and broader range of financial measures by expanding the definition of non-GAAP financial measures. This has contributed significantly to the confusion related to the application of the proposals and raises a number of fundamental questions:

- What is the common attribute of a “non-GAAP financial measure”? Does “non-GAAP” now just mean all financial measures reported outside of the financial statements?
- Is the term “non-GAAP financial measures” still appropriate? Non-GAAP financial measures have a generally well understood definition today – they are derivations of financial statement amounts which adjust their GAAP counterpart in some way. The scope now includes many more financial measures than what are currently considered non-GAAP measures.
- Should the disclosure requirements be the same for all financial measures? Under the proposals, why are the disclosure requirements different for different types of financial measure based on somewhat arbitrary distinctions?
- Why are the disclosure requirements related to capital management measures different from non-GAAP financial measures? Should the same principles not apply to all capital management measures reported outside of the financial statements, regardless of whether they are disclosed in the financial statements?
- Are the disclosure requirements for supplementary financial measures sufficient? These measures are growing in number and significance and many argue should be subject to a greater degree of transparency.

We believe there is a need for broader consideration of the strategic aspects of the proposals.

If you wish to proceed with an approach similar to what you have proposed, we believe it would be better to work more closely with the existing approach in CSA Staff Notice 52-306. This could be accomplished by, for example, keeping the existing definition of non-GAAP financial measures and developing requirements for new categories of measures that are separate and distinct. We found that the existing staff notice is clear and well understood. Such an approach would make it more clear what incremental requirements go beyond what would be necessary for compliance with SEC requirements, which is important to our large population of Canadian SEC registrants. With the high degree of integration in the North American capital markets, it seems differences from SEC requirements should only be created when there is a compelling reason to do so. There is still, however, a concern that Canadian issuers may be at a competitive disadvantage relative to their U.S. counterparts because of the additional Canadian requirements.

2) Readability of the Proposed Instrument

We heard that the Proposed Instrument is difficult to read, in particular because of dense text, awkward wording, and too frequent use of negative phrasing. This is exacerbated by the need to frequently jump from one part to another to understand how to apply the requirements.

We identified a number of inconsistencies in the wording of requirements for issues that are similar if not identical. For example, in paragraph 3, the requirements are focused on whether the non-GAAP financial measure should be disclosed whereas in paragraphs 7 and 8 the focus is on the disclosures that must be provided for capital management measures and supplementary financial measures.

For the most part we found the Proposed Companion Policy more readable and easier to understand than the Proposed Instrument but believe that is not sufficient or the appropriate way to rectify issues with the Proposed Instrument.

We also heard that a summary of key differences between the Proposed Instrument and CSA Staff Notice 52-306 would be helpful.

3) Proposed definitions

The existing definition of non-GAAP financial measures is generally considered to be clear, understandable and capable of consistent application. Most of the proposed definitions are lacking in one or more of these respects. For example,

- Capital management measure
    - It is not clear what constitutes such a measure. For example, would it capture all the measures disclosed in a note required by IFRS® standards on capital management? We believe the Proposed Companion Policy should provide guidance on this matter. It is not always evident what kind of disclosure is required in the financial statements as a result of capital management disclosure requirements as opposed to other disclosure requirements such as those related to long-term debt or a note dealing with going concern issues.

- Non-GAAP financial measure
    - The material on “disaggregation” is complex, unclear and counter intuitive even after consideration of what is included in the Proposed Companion Policy.
    - It is not clear what is meant by an issuers’ “accounting policies.” Is this only applicable to measures defined within IFRS standards or does it extend more broadly? Non-GAAP measures are by their nature not determined in accordance with an issuer’s accounting policies.

    - The addition of reference to a financial outlook seems to unnecessarily complicate the definition. Requirements related to a financial outlook perhaps might be better addressed with the existing requirements on forward looking information.

- Segment measure
    - The definition in paragraph 1 is inconsistent with what is said in paragraph 6. The former deals broadly with segment measures while the latter deals with totals of segment measures. The Proposed Companion Policy is unclear and seems to contradict the definition.

- Supplementary measures
    - It is not clear how to apply the "periodic basis" attribute, particularly in relation to differences between interim and annual reporting.

Below are some examples of financial measures for which we heard questions regarding classification:

- available liquidity
- a ratio derived from supplementary financial measures
- sales order backlog (in dollars, average selling price)
- sustaining and maintenance capital expenditures
- more detailed financial disclosure of a subsequent event disclosed in the financial statements.

4) Application of the disclosure requirements

In general, we find applying the disclosure requirements challenging and question the usefulness of some disclosures in certain instances. We offer some high-level comments below.

- Reconciliation of a non-GAAP financial measure

A number of measures (e.g., KPIs) might be captured under the proposed non-GAAP financial measure definition for which it is difficult to identify and provide a quantitative reconciliation to the most directly comparable GAAP measure as required under paragraph 3.

- Comparative periods

There are a number of issues related to different approaches to reporting comparative information. For example, it is not clear what is required to be disclosed when an issuer includes information in its Management's Discussion & Analysis (MD&A) for its preceding quarter when no financial statements are provided for that quarter.

For supplementary measures, it is not clear what the expectations are for comparative period disclosures.

- Non-GAAP financial measures that are financial outlooks

Issuers we consulted expressed the most concerns regarding the proposals on non-GAAP financial measures that are financial outlooks, how they would be operationalized and whether all the additional disclosures required would be helpful to users. We find this area particularly in need of clarification, application guidance and field testing.

- Capital management measures

There are concerns that the application of the disclosure requirements for capital management measures could result in excessive disclosures of little value to users. In particular, it is not clear what level of detail is expected for descriptions of calculations where such measures are calculated in accordance with complicated formulas prescribed by lending agreements.

- Segment measures

It is not clear how to apply the quantitative reconciliation requirement ─ what is the directly comparable measure for a total of segment measures? How are the differing IFRS reporting requirements for interim and annual periods addressed ─ should disclosure in an interim MD&A differ from disclosure in an annual MD&A because of this?

- Supplementary financial measures

There are questions about the usefulness of the qualitative disclosures for supplementary financial measures. Transparency around the calculation of supplementary measures is important and there are concerns that compliance with the Proposed Instrument may result in only boilerplate and non-detailed disclosure. We heard that users would like to see in detail the composition of the supplementary measures and not just a description of how they are calculated.

It is also not clear what would constitute a change in "composition." For example, would it include matters such as having a current portion of long-term debt included in one period and not in another because there is no current portion in a period? It seems having more guidance in the Proposed Companion Policy would be helpful.

- Specific measures

As part of our limited field testing, we focused in some depth on particular measures. Two of those are Average Revenue Per User (ARPU) and Return on Capital Employed (ROCE). We offer some observations based on our analysis:

- Average Revenue Per User
  - We were not sure how to classify the measure.
  - We were not sure how to apply the "disaggregation" criteria. We were not sure how to interpret the "calculated in accordance with the entity's accounting policies" criterion.
  - We observed that issuers are currently not providing reconciliations or detailed breakdowns of this number.
  - Assuming the non-GAAP financial measure classification is appropriate, a significant amount of additional disclosure may be required.
  - Assuming the supplementary measure classification is appropriate, it may not be necessary to do anything different and we question whether keeping the status quo on these important measures is helping users.

- Return on Capital Employed
  - We noted inconsistency between the definition of a capital management measure and the application requirements in paragraph 7(1)(b); it is not clear what would constitute a

"disaggregation" in relation to capital management measures. There is no discussion on this in the Proposed Companion Policy.
    - It is not clear why disclosure requirements differ for this measure depending on whether it is included in the notes to the financial statements; might this create incentives for disclosing the information in a particular location in the financial statements?
    - We do not see issuers treating this information in the way they would treat non-GAAP information. As a result, it appears that a significant amount of additional disclosure may be required.
    - There are also issues in how a quantitative reconciliation would be done. There is no definition for "capital."

5) Non-financial information

Investors are increasingly relying on a variety of non-financial information to make investment decisions. These measures are often viewed as more unreliable than financial measures.

While we agree these measures should not be within the scope of the Proposed Instrument, we encourage the CSA to review the adequacy of disclosure requirements related to non-financial information and address disclosure expectations in a separate project.

6) Disclosure controls and procedures and audit committee responsibilities

We encourage the CSA to consider whether the Proposed Companion Policy should also emphasize the need for governance and internal controls surrounding the reporting of non-GAAP and other financial measures. Clarifying that such reporting should be subject to appropriate disclosure controls and procedures[1] would be helpful. We suggest the CSA may wish to encourage issuers to establish a written disclosure policy related to non-GAAP reporting that takes into account the guidelines on establishing a corporate disclosure policy set out in National Instrument 51-201 *Disclosure Standards*.

Given the wide recognition of the benefits of increased audit committee oversight and involvement with non-GAAP reporting, we also recommend the Proposed Companion Policy clarify that non-GAAP reporting falls within the responsibilities of the audit committee as described in NI 52-110 *Audit Committees*.[2]

7) Transition

Given the number of measures and documents to which the Proposed Instrument would apply, we believe significant implementation effort will be required by preparers. The CSA should consider a longer transition period to ensure the Proposed Instrument is implemented as intended.

We also encourage the CSA to explore practical approaches to adopting the Proposed Instrument to reduce the implementation burden. Several issuers we consulted proposed staggering the adoption dates for different documents and communications.

[1] As defined in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
[2] Section 2.3(6)

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We appreciate the opportunity to participate in this important consultation. Given the extensive number and nature of our findings, we have only been able to report some of them. We would be pleased to discuss our findings in greater detail and answer any questions you may have. Please contact Rosemary McGuire, Director, Research, Guidance and Support (rmcguire@cpacanada.ca).

Yours truly,

Gordon Beal, CPA, CA, M.Ed.
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Appendix A

Please find below our responses to the six questions in the Request for Comments.

1) **Does the proposed definition of a non-GAAP financial measure capture (or fail to capture) specific financial measures that should not (or should) be captured? Please explain using concrete examples.**

As outlined in our letter, we found the proposed definitions and requirements unclear and challenging to apply so it is difficult to answer this question. It appears that financial measures appearing in financial statement notes dealing with long-term debt, going concern and likely other ones, perhaps because they are required for fair presentation, and then disclosed outside the financial statements are not caught by the proposals. We do not believe this result is consistent with your intent.

2) **Are there any specific additional disclosures not considered in the Proposed Instrument, that would significantly improve the overall quality of disclosure and be of benefit to investors? Please explain using concrete examples.**

We identified the following for consideration:

- Restatement of comparative periods

  We note paragraph 3 (d)(v) requires an issuer to explain “the reason for a change, if any, in the label, composition or calculation of the non-GAAP financial measure.” We recommend that in such cases the issuer restate any comparative periods presented. This is consistent with current disclosure practices and CSA Staff Notice 52-306.

- Identification of non-GAAP and other financial measures

  We note the Proposed Companion Policy indicates a non-GAAP financial measure be identified as such only the first time it appears in a document.

  Given the diverse ways users access information, we believe non-GAAP financial measures need to be clearly identified as such throughout the document with cross references to the appropriate section containing all the required disclosures. We note that this is consistent with existing disclosure practices for many issuers.

  We also note that there is no requirement to identify supplementary financial measures, segment or capital management measures as such throughout the document and cross reference to the required disclosures. We believe such identification is important to users.

  We also recommend the CSA review the MD&A material and determine whether consequential changes are necessary as a result of the Proposed Instrument.

3) **Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed Instrument?**

In addition to the matters we have identified in our letter, we have identified instances where the Proposed Companion Policy is unclear or inconsistent with the Proposed Instrument. We have provided a few specific examples below:

- What is the definition of a “reasonable person” and how does this differ from “reasonable investor”?
- The material in the Proposed Companion Policy on disaggregation of a line item introduces the concept of “disaggregation of subtotals and totals” which is inconsistent with the Proposed Instrument.
- In relation to the “periodic basis” attribute included in the supplementary financial measure definition, why is disclosure different depending on the frequency with which it is reported? In addition, it is not clear how intent should be determined and why intent is relevant. It is not clear that an absence of intent to disclose in future should negate the requirements for disclosure.
- There appears to be an inconsistency between sections 2 and 3(d) of the Proposed Companion Policy with regard to social media disclosures. Section 2 indicates that non-GAAP financial measures should not be disclosed if the full disclosure requirements are unable to be met (e.g., Twitter) however, section 3(d) appears to allow it if a link to the additional disclosures is included.

4) Is the proposed exemption for SEC foreign issuers appropriate? If not, please explain.

We have no comment on the proposed exemption for SEC foreign issuers. During our outreach, there was significant confusion as to what constitutes an SEC foreign issuer and we recommend including the definition in the Proposed Instrument or Proposed Companion Policy.

5) Is the proposed exclusion of oral statements to the application appropriate? If not, please explain.

From a practical perspective, we agree that oral statements should be excluded from the scope of the Proposed Instrument, however, several questions have been raised as to the applicability of the Proposed Instrument where a third party provides a written transcript. We encourage the CSA to clarify its expectations in these circumstances.

6) Is the proposed inclusion of all documents to the application appropriate? If not, for which documents should an exclusion be made available? Please explain.

During our consultations, we heard it would be helpful if the CSA clarified the specific documents to which the Proposed Instrument applies.

We also encourage the CSA to review references to “documents” in other related materials and consider whether amendments are necessary to align definitions with the Proposed Instrument.