

December 5, 2018

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
Nunavut Securities Office

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

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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consultation-en-cours@lautorite.qc.ca

Dear Madam/Sir:

Re: CSA Notice and Request for Comment -
Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures
Disclosure and Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures
Disclosure

We have reviewed the CSA Notice and Request for Comment Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure and Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure (the "Proposals") released September 6, 2018 and we thank the Canadian Securities Administrators ("CSA") for the opportunity to provide you with our comments.

CCGG's members are Canadian institutional investors that together manage approximately \$4 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. While CCGG is focused on governance, our member institutional investor organizations are also, of course, more broadly interested in the integrity of financial reporting generally and that it reflects economic and business reality, given that investors rely on financial reporting and management's representations of such financial information to make investment and voting decisions. CCGG also seeks to improve Canada's regulatory framework to promote the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

General Comments

We welcome the CSA's attention to the matter of disclosure of non-GAAP and other financial measures and are encouraged to see comprehensive guidance in this area. We believe the Proposals, if adopted, will improve financial reporting in Canada. We also believe that enacting the Proposals in the form of a rule rather than a staff notice will allow for better enforcement capability.

The clarity and reliability of all financial information publicly released by issuers is of the utmost importance to investors, since this is the basis chiefly relied on by investors for their investment and voting decisions. Because CCGG's mandate is to improve the corporate governance of Canadian issuers, we primarily focus on disclosure in management information circulars ("Circulars") released by issuers in connection with their annual general meetings. Circulars are

not specifically referred to in the Proposals as documents covered by the Proposals, but the Proposals are highly relevant to Circulars because of the disclosure found therein under the Compensation Discussion & Analysis (CD&A) regarding executive compensation. CD&A disclosure often includes reference to non-GAAP financial measures when describing the corporation's executive compensation programs and payouts, an important area of shareholder focus.

All the issues associated with the disclosure of non-GAAP measures that are described in the Proposals apply to CD&A disclosure as well and CCGG is currently undertaking its own research on the prevalence and nature of non-GAAP measures used in connection with executive compensation. Accordingly, CCGG is pleased that the CSA is reviewing the issues associated with the disclosure of non-GAAP and other financial measures. It can be challenging for investors to understand and assess the quality of executive compensation decisions based on non-GAAP measures unless Circulars include, at the very least, the board's views on why the use of a non-GAAP financial measure was preferred over the most comparable GAAP financial measure and why each material adjustment which was made to the most comparable GAAP financial measure to arrive at the non-GAAP financial measure was necessary. The ability to assess executive compensation decisions is vitally important to shareholders in part because they serve as a proxy for reviewing the quality of board oversight of management, one of the board's most important functions. Guidance to elucidate the use of non-GAAP measures in this area is therefore essential.

In particular, CCGG is pleased to see that under the Proposals:

- The onus is on the issuer to explain (hopefully in plain language) how a non-GAAP financial measure provides useful information and why each material adjustment (or reconciling item) was necessary
- An adjustment (or reconciling item) cannot be called nonrecurring, infrequent or unusual when a similar loss or gain is reasonably likely to occur within the next two years or has occurred during the prior two years.
- Issuers will be required to justify changes to the definition of a non-GAAP measure.

Specific questions

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 examples.*

We believe that the proposed definition captures the specific financial measures that should be captured.

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.*

The CSA should consider requiring additional disclosure to capture issuers that excessively use one-directional (usually positive) adjustments to GAAP financial figures, namely, to explain why doing so makes sense. For example, while an issuer would not need to explain why it makes frequent adjustments for two-directional factors, such as removing foreign exchange gains and losses from an earnings figure, an issuer would be required to explain in plain language why they frequently use one-directional adjustments such as “restructuring costs”. Disclosure could be triggered by adjustments occurring, for example, in two of five succeeding years.

Further, CCGG supports disclosing how the non-GAAP measures used in compensation are related to disclosure of the measures in other documents, for example whether adjusted EBITDA used in the Management Discussion & Analysis is defined differently than adjusted EBITDA used for compensation calculations.

We would also like to see a requirement that issuers disclose the approval or vetting process for adjustments. For example:

- whether adjustments above a certain threshold must be approved by the board
- whether the audit committee, or the entire board if there is no audit committee, has considered and confirmed:
 - the appropriateness of the adjustments and that they are representative of the company’s financial performance
 - that non-GAAP financial measures provide an enhanced view of the company’s financial performance compared to the closest GAAP measures.
 - that changes to definitions have been clearly explained in a way that a reasonable person would understand

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

No.

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

No comment.

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

To the extent that oral statements are relied upon for investment or voting decisions, such oral statements should be covered by the guidance and not excluded from the application of the Proposals. Investors who rely on the contents of earnings calls or investor road shows or presentations should expect the same quality of disclosure regarding non-GAAP measures to apply.

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.*

The inclusion of all documents is appropriate given the purpose of the Proposals of avoiding misleading disclosure. Investors and the public receive their information from various types of written public disclosure at different times and for different reasons and it defeats this purpose if all public sources of information are not included.

We suggest that because of the importance of the management information circular to investors, in particular the CD&A disclosure related to executive compensation and the common use of non-GAAP measures in this type of disclosure, management information circulars be added to the explicit list of documents to be included.

In addition, as we state in the previous item, oral statements that can reasonably be expected to be relied upon for investment or voting decisions should be covered as well.

Conclusion

In summary, we believe that the Proposals will go a long way towards solving the issues raised for investors by the use of non-GAAP and other financial measures, especially as they relate to governance concerns associated with executive compensation decisions based on those measures.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Catherine McCall at [REDACTED]

Yours very truly,

[REDACTED]

Marcia Moffat
Chair of the Board
Canadian Coalition for Good Governance

CCGG Members – June 2018

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund (ATRF)
Archdiocese of Toronto
BlackRock Asset Management Canada Limited
BMO Asset Management Inc.
BNY Mellon Asset Management Canada Ltd.
Burgundy Asset Management Ltd.
Caisse de dépôt et placement du Québec
Canada Pension Plan Investment Board (CPPIB)
Canada Post Corporation Registered Pension Plan
CIBC Asset Management Inc.
Colleges of Applied Arts and Technology Pension Plan (CAAT)
Connor, Clark & Lunn Investment Management Ltd.
Desjardins Global Asset Management
Electrical Safety Authority (ESA)
Fiera Capital Corporation
Franklin Templeton Investments Corp.
Galibier Capital Management Ltd.
Greystone Managed Investments Inc.
Healthcare of Ontario Pension Plan (HOOPP)
Hillsdale Investment Management Inc.
Investment Management Corporation of Ontario (IMCO)
Industrial Alliance Investment Management Inc.
Jarislowsky Fraser Limited
Leith Wheeler Investment Counsel
Lincluden Investment Management Limited
Mackenzie Financial Corporation
Manulife Asset Management Limited
NAV Canada
Northwest & Ethical Investments L.P. (NEI Investments)
OceanRock Investments Inc.
Ontario Municipal Employee Retirement System (OMERS)
Ontario Teachers' Pension Plan (OTPP)
OPSEU Pension Trust
PCJ Investment Counsel Ltd.
Pension Plan of the United Church of Canada Pension Fund
Pier 21 Asset Management Inc.
Public Sector Pension Investment Board (PSP Investments)

QV Investors Inc.
RBC Global Asset Management Inc.
Régimes de retraite de la Société de transport de Montréal (STM)
Scotia Global Asset Management
Sionna Investment Managers Inc.
State Street Global Advisors, Ltd. (SSgA)
Sun Life Institutional Investments (Canada) Inc.
TD Asset Management Inc.
Teachers' Retirement Allowances Fund
UBC Investment Management Trust Inc.
University of Toronto Asset Management Corporation
Vestcor Inc.
Workers' Compensation Board - Alberta
York University

