

December 5, 2018

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, ON M5H 3S8

By email: comment@osc.gov.on.ca

Re: Proposed Instrument 52-112 on Non-GAAP and Other Financial Measures Disclosure

Dear Secretary,

I appreciate the opportunity to provide my comments on the Proposed Draft Instrument on Non-GAAP and Other Financial Measures disclosure. My comments are as follows:

General Comments:

The Committee's proposal to clarify the criteria defining non-GAAP and other financial measures will greatly assist users and preparers in effectively deploying this interpretation in the preparation of primary financial statements and other documents. Additionally, other documents discussing current or future operations presented in the public domain would be read with a greater awareness of the distinction between information in accordance with the accounting standard framework and information not defined by it.

Specific Comments:

Question 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.

Response 1) The definition for non-GAAP financial measure provided in the Proposed Instrument outlines a metric as one that has not been disclosed or presented in the financial statements and that is not a disaggregation calculated in accordance with the accounting policies used to prepare financial statements or line items within primary financial statements. The Proposed Instrument notes that Section 2.3(d) (ii) requires disclosure that a non-GAAP measure does not have a standardized meaning under the financial reporting framework.

The Committee may consider requiring an expressly stated disclosure that:

- a) the non-GAAP measure discussed is not defined;
- b) is not a disclosure requirement; and

c) is outside the framework of accounting standards applied and with which the primary financial statements were prepared.

This disclosure would be followed by Section 2.3(d) (iii) stating how this information is useful, and by Section 2.3(d) (iv) providing the quantitative reconciliations as noted in the Proposed Instrument.

The Proposed Instrument states in Section 2.3 (b) that the non-GAAP financial measure should be presented with no more prominence in the document than the most directly comparable financial measure presented in the primary financial statements. While this requirement ensures that greater attention is not afforded to a non-GAAP financial measure, it has the unintended consequence of melding in seamlessly, such non-standardized metrics, with other GAAP related disclosures giving it the same level of approval or accreditation. Therefore, the Committee should consider including at each instance of a non-GAAP measure an express statement of disclaimer that the non-GAAP measure is outside the scope of the accounting standard framework and accordingly may not be comparable to other metrics bearing similar descriptions.

Question 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.

Response 2) See Response 1 above.

Question 3

Is specific content in the Proposed Companion Policy unclear or inconsistent with the Proposed instrument?

Response 3) The content included in the Proposed Companion Policy is consistent with the Proposed Instrument.

Question 4

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

Response 4) The Draft Proposal does not reference the Policy Instrument for Disclosure and Other Exemptions relating to Foreign Issuers. The distinguishing factors in the accounting practices of certain foreign issuers and foreign legislative requirements would render certain accounting references inconsistent in comparison to domestic accounting practices. Accordingly, in the case of SEC foreign issuers, where primary financial statements and other documents require other financial measure disclosures, the definition of a non-GAAP financial measure may be ambiguous. However, the Committee should consider including in the Proposed Instrument a reference to NI 71-102 *Continuous*

Disclosure and Other Exemptions Relating to Foreign Issuers to support the basis of exemption for this subset of market participants.

Question 5

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

Response 5) In determining if the Proposed Instrument should apply to oral statements, it is important to understand the intention of the speaker and its market impact on the entity's share price or the valuations of other exchange-traded instruments. Oral statements made at an earnings conference call must include finance terms that are in accordance with the accounting standard framework applied. There are some instances where non-GAAP metrics are included in earnings calls to describe improvements or accomplishments in business operations. This may underscore the notion that technology and financial milestones achieved are not adequately represented to stakeholders through the exacting application of the accounting standard framework. However, it is important to distinguish between GAAP recognized information and non-GAAP information. This can be accomplished by requiring transcripts of such oral statements to meet the requirements of the Proposed Instrument.

Question 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.

Response 6) Agree with the application of the Proposed Instrument to all documents. As noted in the Discussion Paper where a legislative requirement mandates the definition of a specific financial measure, any reference to non-GAAP financial measures should corroborate mandated disclosures for greater transparency in financial reporting.

If you have any questions please do not hesitate to contact me by email at

Yours sincerely,

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