

CSA Second Notice of Consultation

Draft Regulation 52-112 respecting Non-GAAP and Other Financial Measures Disclosure

Draft Policy Statement to Regulation 52-112 respecting Non-GAAP and Other Financial Measures Disclosure

Related Draft Consequential Amendments and Changes

February 13, 2020

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period the following materials:

- Revised version of draft *Regulation 52-112 respecting Non-GAAP and Other Financial Measures Disclosure* (the **Draft Regulation**);
- Revised version of draft *Policy Statement to Regulation 52-112 respecting Non-GAAP and Other Financial Measures Disclosure* (the **Draft Policy Statement**);
- Related draft consequential amendments or changes to:
 - *Regulation 45-108 respecting Crowdfunding*¹;
 - *Policy Statement to Regulation 45-108 respecting Crowdfunding*;
 - *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations*;
 - *Policy Statement to Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*²;
 - *Policy Statement to Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*.

(collectively, the **Draft Materials**).

The Draft Regulation sets out disclosure requirements for 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 Draft Regulation).

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 Policy Statement because Regulation 45-108 does not apply in these jurisdictions.

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

The original versions of the Draft Materials (the **Original Materials**) were first published on September 6, 2018. During the 90-day comment period we conducted 38 outreach sessions across seven cities in Canada allowing us to actively engage with stakeholders. The comment period ended on December 5, 2018. We received 42 comment letters from various stakeholders, including issuers, investors, accounting firms, standard setters, industry associations and law firms. The list of commenters is attached as Annex A. We wish to thank all commenters for contributing to the consultation. A summary of the comments we received and our responses to those comments are attached as Annex B. In response to the feedback we received, we have reduced the scope of the application of the Draft Regulation and simplified the disclosure requirements, with the aim of ensuring investors receive appropriate disclosure without an overall increase in regulatory burden.

We understand that non-GAAP financial measures, non-GAAP ratios, and other financial measures can provide valuable information to investors when supplemented with useful disclosures. Considering the substantive changes made in response to comments received on the Original Materials, we are publishing the Draft Regulation and the Draft Policy Statement for a second comment period. We are also publishing for information the related draft consequential amendments or changes in their original form.

The text of the Draft Materials and of local amendments, if any, is published with this Notice and will, with this Notice, 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.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

Summary of Changes to the Original Materials

Many comment letters expressed support for the objectives of the Original Materials. Commenters agreed with the analysis that non-GAAP financial measures and other financial measures disclosures lack standardized meaning under financial reporting frameworks, lack context when disclosed outside of the issuer's financial statements, and lack transparency as to their calculation or vary significantly by issuer and industry. However, concerns were expressed on the application and scope of the Draft Regulation, definitions proposed, and perception of increased regulatory burden that the Draft Regulation would have in comparison to current CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures (SN 52-306)*, and SEC rules.

Following our extensive review and analysis of the comment letters, through the substantive changes to the Original Materials, we have aimed to:

- reduce the scope of application to certain issuers,
- exempt certain disclosures, financial measures, and types of documents,
- narrow and clarify various definitions,

- simplify the disclosure for non-GAAP financial measures that are forward-looking information and non-GAAP ratios,
- limit disclosures for capital management measures and total of segments measures,
- permit cross-referencing in certain circumstances,
- better align disclosure requirements with those adopted by other securities regulators,
- enhance readability, and
- reduce uncertainty regarding disclosure obligations by clarifying disclosure requirements and including significant guidance.

More information on the changes made in the Draft Regulation is included in Annex C.

A second publication for comment will allow for stakeholder input on these changes.

Substance and Purpose

The Draft Regulation addresses the disclosure surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures.

In some cases, non-GAAP financial measures, non-GAAP ratios, and other financial measures are helpful to investors to assess an issuer's financial performance. The Draft Regulation does not contain specific limitations or industry-specific requirements; rather, it provides clarity and consistency with respect to an issuer's disclosure obligations and improve the quality of information provided to investors.

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 clarified, the Draft Materials have substantially incorporated the disclosure guidance in SN 52-306 for non-GAAP financial measures.

To ensure investors appreciate the context of capital management measures and total of segments measures, the Draft Regulation 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 Draft Materials, which are intended to 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 (including ratios that include 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 regulating the use of non-GAAP financial measures as primarily a task of the CSA.

We are aware the International Accounting Standards Board (IASB) has recently issued an exposure draft, as part of its Primary Financial Statements project, on General Presentation and Disclosures. This exposure draft 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 International Financial Reporting Standards (IFRS) requirements. We will monitor the progress of the exposure draft and the overall project in order to consider whether any changes to securities legislation will be appropriate.

Internationally, securities regulators are strengthening 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.

Other Financial Measures

Over the years, we have also found that other financial measures that do not meet the definition of a non-GAAP financial measure in the Draft Regulation 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 permits 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 Draft Regulation includes disclosure requirements for such measures when disclosed outside of the financial statements. Consistent with the Original Materials, these disclosures are tailored for each measure and would require substantially less disclosure than expected under SN 52-306.

Anticipated Costs and Benefits of the Draft Regulation

Overview

Cost benefit considerations have been informed by comments received in response to the Original Materials, as well as feedback received during related stakeholder outreach sessions. In addition, the Draft Regulation has been developed in the context of various initiatives to reduce regulatory burden which, among other things, aim to ensure that regulatory costs are proportionate to the regulatory objectives sought.

We believe the Draft Regulation results in a cost-effective and proportionate regulatory framework that supports innovation and competition while maintaining appropriate investor protections.

Although the Draft Regulation codifies disclosures for non-GAAP financial measures and introduces targeted disclosure requirements for other financial measures, on balance, we believe, the Draft Regulation and the Draft Policy Statement result in an overall net reduction in regulatory burden, particularly in the long-term, because compared to current regulatory expectations as outlined in SN 52-306, the Draft Regulation and the Draft Policy Statement aim to:

- limit the application to certain issuers,
- exempt certain disclosures, financial measures, and documents,
- remove categorization of certain measures as non-GAAP financial measures,
- reduce and simplify disclosures for certain non-GAAP financial measures,
- eliminate duplication, in certain areas, through targeted provisions of incorporating information by reference,
- reduce uncertainty regarding disclosure obligations, and
- diminish the time and effort investors spend on understanding certain financial information.

We considered costs and benefits in limiting the application of the Draft Regulation to certain issuers and in the process of identifying and disclosing non-GAAP and other financial measures.

Affected Stakeholders

Issuers

The Draft Regulation only applies if an issuer that is within the scope of the Draft Regulation discloses non-GAAP or other financial measures. If such an issuer does not disclose such measures, there is no effect.

Currently, disclosure expectations in SN 52-306 apply to all issuers that disclose non-GAAP financial measures. In contrast, the Draft Regulation limits the application to certain issuers, such as reporting issuers. Investment funds, SEC foreign issuers, and designated foreign issuers are exempted – a significant reduction in scope.

Investors

We expect investors (institutional and retail) to be the primary beneficiaries of the Draft Regulation because the Draft Regulation:

- addresses many of the identified investor concerns,
- enhances the consistency, comparability and transparency of disclosure,
- reduces information-asymmetry, and
- diminishes the time and effort historically required to understand certain financial information (i.e., investor regulatory burden will be reduced).

Investors are not expected to incur additional costs.

Alternatives Considered

We considered adopting the Original Materials in their original form as well as the alternatives suggested by the commenters as detailed in Annex B.

Reliance on Unpublished Studies

In developing the Draft Regulation, we are not relying on any significant unpublished study, report or other written material.

Request for Comments

We welcome your comments on the Draft Materials.

Please submit your comments in writing on or before May 13, 2020. If you are not sending your comments by email, please send us an electronic file containing submissions provided (in Microsoft Word format).

Address your submission to all of the CSA as follows:

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

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA.

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Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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Québec (Québec) G1V 5C1
Fax: 514 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto ON M5H 3S8
Fax: 416 593-2318
comment@osc.gov.on.ca

Please refer your questions to any of the following:

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Ontario Securities Commission

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Alex Fisher, Senior Accountant, Ontario Securities Commission
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Jonathan Blackwell, Senior Accountant, Ontario Securities Commission
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Katrina Janke, Senior Legal Counsel, Ontario Securities Commission
416 593-8297 | kjanke@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

ANNEX A

List of Commenters

We received comment letters on the Original Materials from the following:

- Auditing and Assurance Standards Board
- Bennett Jones LLP
- Blakes, Cassels & Graydon LLP
- British Columbia Investment Management Corporation
- Burnet, Duckworth & Palmer LLP
- Canadian Accounting Standards Board
- Canadian Bankers Association
- Canadian Coalition for Good Governance
- Canadian Natural Resources Ltd.
- Canadian Public Accountability Board
- Cassels Brock & Blackwell LLP
- Cenovus Energy Inc.
- CPA Canada
- Davies Ward Phillips & Vineberg LLP
- Deloitte
- Ernst & Young LLP
- Financial Executives International Canada
- Freehold Royalties Ltd.
- Goodmans LLP
- Great-West Lifeco Inc.
- InPlay Oil Corp.
- Institute of Corporate Directors
- Intact Financial Corporation
- Inter Pipeline Ltd.
- Keyera Corp.
- KPMG
- Lynessa Dias
- Manulife Financial Corporation
- Norton Rose Fullbright Canada LLP
- Ontario Power Generation
- OSC Investor Advisory Panel
- Pembina Pipeline Corporation
- PricewaterhouseCoopers LLP
- Québec Bourse Inc.
- Seven Generations Energy
- Stikeman Elliott LLP
- Suncor Energy Inc.
- The Canadian Advocacy Council for Canadian CFA Institute Societies

- The Investment Funds Institute of Canada
- The Real Property Association of Canada
- Torys LLP
- Veritas Investment Research Corporation

ANNEX B

Summary of Comments and CSA Responses

This annex summarizes the comment letters and our responses to these comments.

This annex contains the following sections:

1. Introduction
2. Responses to comments received on the Draft Regulation and the Draft Policy Statement

1. Introduction

Drafting Suggestions

We received a number of drafting suggestions and comments. While we incorporated many of these suggestions, this annex does not include a summary of all the drafting changes we made.

Categories of comments and single responses

In this annex, we consolidated and summarized the comments and our responses by the general themes of the comments. We have included section references to the Draft Regulation for convenience.

2. Responses to Comments Received on the Draft Regulation and the Draft Policy Statement

General Comments on the Original Materials		
Subject	Comment	Response
General comments	There was widespread support for the general objective of the proposals, with commenters noting that this will enhance investor confidence and improve financial reporting in Canada.	We thank the commenters for their submissions.
General comments	Commenters agreed with the CSA decision to not limit the issuers' ability to disclose different types of measures and to not prescribe industry-specific non-GAAP financial measures.	No change. Fundamental to the CSA's approach to regulating non-GAAP financial measures, non-GAAP ratios, and other financial measures is a disclosure-based regime with an overall goal to improve the

		quality of information provided to investors. Due to the numerous types of ever-evolving financial measures disclosed across a range of industries, we believe that disclosure requirements are better suited to respond to investor needs for quality information. In our view, the requirements in the Draft Materials allow investors to better analyze different financial measures within an industry or among different industries without the CSA limiting or prescribing certain measures.
General comments	A number of commenters raised concerns with a lack of consistency with international regulators, specifically the U.S. Securities and Exchange Commission (SEC), and perception that there may be a competitive disadvantage.	The Draft Materials have been revised for better alignment with the SEC.
General comments	Commenters expressed the need for a long transition period leading up to the effective date, and that the regulation should be effective for the beginning of an annual financial reporting period to ensure consistent and comparable reporting over periods.	We agree with the comment and will consider this in determining the effective date before a final regulation is published.
General comments	A few commenters suggested that the CSA could stagger adoption dates to reduce implementation burden with different documents. For example, the CSA could replace CSA Staff Notice 52-306 (Revised) <i>Non-GAAP Financial Measures</i> (SN 52-306) with a rule for non-GAAP financial measures only, and delay disclosure requirements for other financial measures.	No change in the fundamental approach to regulate both non-GAAP financial measures, non-GAAP ratios, and other financial measures. Based on the CSA's experience, other financial measures may be equally problematic if not accompanied by appropriate disclosure. This approach is consistent with other international regulators, including the SEC.

		Refer to above comment regarding the need for a long transition period.
General comments	A few commenters expressed the emphasis on the CSA reducing regulatory burden strategic initiative and that the CSA should consider whether there is an alternative approach to achieve the CSA’s objective.	<p>As part of developing the Draft Materials, we considered a number of alternatives to address stakeholder concerns regarding the quality of disclosures surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures, including careful consideration of updating SN 52-306 instead or developing other forms of staff guidance to supplement. Based on this work, we concluded that development of the Draft Materials would be more effective in addressing the significant stakeholder concerns regarding quality disclosures. We also considered and agree with certain commenter responses who expressed that the Draft Materials provide more guidance and less uncertainty regarding an issuer’s disclosure obligations.</p> <p>To address concerns regarding regulatory burden, we have significantly revised the Draft Materials, reducing the application of the Draft Materials and disclosure requirements.</p>
General comments	A few commenters expressed the need for the CSA to clarify that disclosures of non-GAAP financial measures and other financial measures are within the scope of <i>Regulation 52-109 respecting Certification of Disclosure in Issuers’ Annual and Interim Filings</i>	<i>Policy Statement to Regulation 52-109 respecting Certification of Disclosure in Issuers’ Annual and Interim Filings (Policy Statement 52-109)</i> states that the forms included in Regulation 52-109 require each certifying officer to certify that

	<p>(Regulation 52-109), and that the CSA should encourage issuers to establish a written disclosure policy in consideration of <i>National Policy 51-201 : Disclosure Standards (NP 51-201)</i>. One commenter recommended adding specific disclosure requirements regarding internal controls over non-GAAP financial measures.</p>	<p>an issuer’s financial statements and other financial information (which includes non-GAAP financial measures, capital management measures, total of segments measures and supplementary financial measures) included in the annual or interim filings fairly present, in all material respects, the financial condition, financial performance and cash flows of the issuer, as of the date and for the periods presented. In addition, both section 6.8 of Policy Statement 52-109 and part 6 of NP 51-201 provide guidance to assist an issuer with the adoption of good disclosure practices.</p>
General comments	A number of commenters expressed the need for application guidance.	We agree with the comment and have provided more application guidance in the Draft Policy Statement.
General comments	Some commenters expressed that specific regulation on non-financial measures or operational measures should be considered.	<p>Non-financial measures and financial measures that do not meet one of the defined terms are excluded from the scope of the Draft Materials, although disclosures are subject to provisions in applicable securities legislation which, among other things, prohibits misleading statements.</p> <p>We caution against the general statement that operating measures are not within the scope of the Draft Regulation, as certain measures may meet one of the defined terms within the Draft Regulation.</p>
General comments	Some commenters expressed the view that the CSA should monitor the use of information outside the financial statements and whether it	We thank the commenters for their submissions. The use of non-GAAP financial measures continues to evolve, and we are

	is in the public interest for the credibility of this information to be enhanced by independent assurance.	actively monitoring developments in this area.
General comments	One commenter expressed that disclosure requirements should be the same for all financial measures.	No change. Disclosure requirements have been scaled to address specifically identified concerns.
General comments	Some commenters suggested delaying the Draft Materials to allow the CSA to consider how the proposals interact with other initiatives, including the International Accounting Standards Board's (IASB) various projects under its headline theme "Better Communication in Financial Reporting".	We note that IASB project is still in the early stages of development. We are aware of the project and are monitoring developments. If necessary in the future, we may update the Draft Materials (or other securities legislative requirements) to respond to these and other marketplace changes (if any).
General comments	A few commenters suggested that requiring additional disclosures of GAAP measures when disclosed outside the financial statements (total of segments measures and capital management measures) may create confusion or a perception that the CSA considers these measures non-GAAP. One commenter encouraged the CSA to be more explicit by indicating that the Draft Materials are not intended to suggest that segment and capital management measures are non-GAAP.	The Draft Materials explicitly exclude the financial measures that are presented or disclosed in the financial statements, such as total of segments measures or capital management measures, from the definition of a non-GAAP financial measure. Disclosure requirements under the Draft Materials are intended to ensure that when these measures are disclosed outside the financial statements, that investors and other users appreciate the context.
General comments	Many commenters expressed desire to cross-reference between documents for compliance with the Draft Materials.	Change made. We thank commenters for the suggestions on how to implement a cross-referencing framework. We agree that a form of cross-referencing would be a beneficial feature of the Draft Materials. Refer to section 5 of Draft Materials.
Part 1 – Definitions		
s. 1	We received a significant number of comments regarding the proposed definitions, and how those	Changes made. Defined terms have been revised. We have also expanded examples

	definitions in the Original Materials may capture more financial measures than desired.	provided within the Draft Policy Statement.
Part 1 – Application		
General comments	Commenters generally noted that the Original Materials are overly broad, and it was unclear on the policy rationale for why new disclosure-related requirements should be applied to issuers who are not otherwise subject to obligations of continuous disclosure. One commenter recommended that the Draft Materials should apply to reporting issuers, and non-reporting issuers that disseminate non-GAAP financial measures in the context of securities distribution.	Change made. Part 1 has been revised.
s. 2	Several commenters submitted that investment funds subject to <i>Regulation 81-106 respecting Investment Fund Continuous Disclosure (Regulation 81-106)</i> should be excluded on the basis that there are no specific concerns raised on non-GAAP financial measures used by investment funds, and investors understand and are accustomed to disclosures currently provided under Regulation 81-106.	Change made. See s. 4(a)
s. 2(1)	<p>Commenters generally expressed that the SEC foreign issuer exemption is appropriate.</p> <p>A number of commenters also recommended that the same exemption should apply to Canadian SEC issuers.</p> <p>A few commenters also questioned the appropriateness of exempting SEC foreign issuers on the basis that different information presented for Canadian issuers and SEC foreign issuers will reduce comparability of information provided.</p>	No change made. The exemption for SEC foreign issuers is consistent, and based on similar rationale, to other exemptions provided to these issuers under current Canadian securities legislation.

s. 2(1)	Some commenters expressed confusion as to what constitutes an SEC foreign issuer, and whether it applies to Canadian “foreign private issuers” as that term is defined under SEC rules and regulations.	Refer to s. 4(b) in the Draft Policy Statement. Clarification regarding application made.
s. 2(1)	A few commenters recommended that the exemption for SEC foreign issuers be expanded to also include designated foreign issuers.	Change made.
Application to executive compensation	A number of commenters requested for clarification on how the Draft Materials relate to executive compensation disclosure. While some commenters provided a strong recommendation that executive compensation disclosure be added to the explicit list of documents included in the Draft Materials and we should increase disclosure requirements for these specific measures, we heard contrary views that executive compensation should be excluded.	We thank commenters for their views. Non-GAAP financial measures are used for a variety of purposes and we did not see the policy rationale specific to executive compensation that should be different than other uses of non-GAAP financial measures.
Application to documents	Commenters provided mixed views on the application to documents made available to the public in the local jurisdiction. While we received support for this, we also received comments that the Draft Materials should be more limited to documents that are intended to be used by the investment and/or analyst community.	Change made. We are limiting the scope of the Draft Materials for non-reporting issuers to specific documents. However, we have retained the scope for reporting issuers and instead excluded certain disclosures required under specific securities legislation as well as disclosures in certain filings.
Application to documents	Commenters requested clarity in defining what constitutes a “document”.	Change made.
Application to documents	Commenters requested clarity in the term “made available to the public”. They questioned whether the concept noted in NP 51-201 regarding dissemination broadly to the investing public (s. 1.1(1)) may be a more appropriate standard.	We note that “made available to the public” is a common concept used in securities legislation. For example, a document filed electronically in accordance with <i>Regulation 13-101 respecting System for Electronic Document Analysis and Retrieval (SEDAR)</i> may be

		<p>accessible to the public.</p> <p><i>Regulation 43-101 respecting Standards of Disclosure for Mineral Projects (Regulation 43-101)</i> uses “made available to the public” in the definition of “disclosure”. Another example is in <i>Regulation 51-102 respecting Continuous Disclosure Obligations (Regulation 51-102)</i> where the term “public” is used in relation to proxy solicitation. In addition, the term “public” is used throughout NP 51-201.</p>
Application to non-reporting issuers	<p>Three commenters suggested that offering memorandums whose form is not prescribed by regulation should be excluded from the Draft Materials on the policy basis that these offering memorandums are prepared on a voluntary basis, and the prospectus exemption upon which issuers rely is not based on the information the investors received, but on the investors’ sophistication. Issuers are already careful to ensure offering memorandums do not contain a misrepresentation.</p>	<p>Change not made. The Draft Materials will apply to disclosures made by an issuer in a document that is filed with a securities regulatory authority in reliance on the offering memorandum exemption. There is a policy decision that non-GAAP financial measures, non-GAAP ratios, and other financial measures contained in documents being used to raise capital are included within the scope of the Draft Materials.</p>
Application to an issuer’s own financial results	<p>One commenter suggested that the Draft Materials should be limited in scope to disclosure of the issuer’s own financial results. The commenter raised the concern that an issuer may have difficulties in complying with the Draft Materials, for example, when disclosing financial measures of an acquisition target’s financial results.</p>	<p>Change not made. The Draft Materials are applicable to all disclosure of non-GAAP financial measures, non-GAAP ratios and other financial measures within documents as set out in the Application section. The concern is noted. However, disclosure of non-GAAP financial measures, non-GAAP ratios, and other financial measures is voluntary, and we did not see sufficient policy rationale to exclude these types of financial measures</p>

		provided by an issuer in their documents.
Application to oil and gas activities	One commenter expressed concern for how disclosures of measures within <i>Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities</i> will be in scope of the Draft Materials.	Change made.
s. 2(2)	A few commenters requested clarity on the term “specific financial measures”, and provided recommendations to expand the types of specific financial measures that are excluded from the scope of the Draft Materials.	The term “specific financial measures” has been removed and replaced with a broader category of financial measures that are excluded from the scope of the Draft Materials.
s. 2(2)	The majority of commenters expressed that oral statements should be excluded from the scope, including transcripts of oral statements. We also received one conflicting comment that oral statements should be covered when these are relied upon for investment or voting decisions.	We thank the commenters for their submissions. We agree with our initial policy decision to exclude oral statements from scope, and have explicitly excluded transcripts of oral statements from scope. We remind issuers of the securities legislation requirements not to disclose misleading information.
s. 2	One commenter suggested that third-party valuation reports prepared by a third party firm excluded from the Draft Materials.	Change made.
Part 2 – Disclosure Requirements for Non-GAAP Financial Measures		
General comments	A few commenters suggested additional disclosure requirements for non-GAAP financial measures, including specific labelling requirements (e.g. requiring the use of specific descriptors or terminology), and more explicit cautionary statements.	We thank commenters for their submissions. We agree with our initial policy decision to not prescribe specific labelling requirements, and consider that the cautionary language in s. 6(e)(ii) provides sufficient information to investors that non-GAAP financial measures do not have standardized meaning.
s. 3(b)	Commenters provided mixed views on the prominence requirements. While a few noted that the Draft Materials should be consistent with	Change not made. We thank commenters for their submissions. Prominence is a concern of regulators.

	the SEC rules and regulations on non-GAAP financial measures, other commenters expressed that the Draft Materials are too prescriptive.	
s. 3(c)	A few commenters requested clarity on disclosure of comparative period financial measures. A few commenters requested that the Draft Materials should contain language exempting this requirement when it is impracticable to present a comparative period.	Change made, including additional clarifying language in the Draft Policy Statement.
s.3(d)(iii), 3(d)(iv)	Some commenters expressed concerns over the term “reasonable person”, and questioned how this standard will affect expectations on issuers’ compliance with disclosure obligations.	We thank commenters for their submissions. The term “reasonable person” has been removed in relation to providing useful information and has been changed to investor, although it has been retained in relation to providing a quantitative reconciliation in s. 6(e)(v). Clarifying language has been included in the Draft Policy Statement.
s. 3(d)(iv)	Two commenters suggested there was overlap in the requirements to provide a quantitative reconciliation that is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items, and explained in such a way that it provides a reasonable person an understanding of each reconciling item.	Change made. We clarified that s. 6(e)(v)(A) is in regards to the quantitative reconciliation, and (B) is in regards to the narrative accompanying the reconciling items.
s. 3(d)(iv)	One commenter suggested that the most directly comparable financial measure for the purposes of providing a quantitative reconciliation could be to a financial measure within the notes to the financial statements, instead of only to a measure presented in the primary financial statements.	Change not made. We thank the commenter for the suggestion, but confirm the policy decision that the most comparable financial measure is to a financial measure within the primary financial statements. The notes to the financial statements are intended to provide further information regarding financial measures in the primary financial

		statements, and we do not consider this requirement difficult to comply with.
s. 3	One commenter recommended to include further disclosure requirements if a non-GAAP measure reported by an issuer ceases to be reported, and that the issuer provide disclosure allowing users to understand why the basis for reporting a non-GAAP financial measure has changed.	Change not made. We thank the commenter for the suggestion. The disclosure requirements within section 6 should provide sufficient information when there are new or changed non-GAAP financial measures.
Part 2 – Disclosure Requirements for Non-GAAP Financial Measures that are Ratios		
General comments	A number of commenters highlighted the inconsistency with the SEC.	Change made. We have revised the framework for ratios which will typically be either a non-GAAP ratio or supplementary financial measure, and we have reduced the disclosure requirements for both.
Part 2 – Disclosures Requirements for Non-GAAP Financial Measures that are Financial Outlooks		
General comments	A number of commenters suggested that the proposed disclosure requirements for non-GAAP financial measures that are forward-looking information are complex and questioned the usefulness of certain disclosure requirements.	Changes made. We thank commenters for their suggestions. We have made changes to the disclosure requirements under section 7, including a reduction in disclosure requirements.
Part 2 – Disclosure Requirements for Segment Measures		
General comments	One commenter noted that “total of segment measures” are considered non-GAAP financial measures under SEC rules and regulations for non-GAAP financial measures (Regulation G and Item 10(e) of Regulation S-K) but are defined as “total of segments measure” under the Draft Materials. Given the different classification under the two jurisdictions, the commenter was concerned about compliance of dual-listed reporting issuers.	We have added guidance in the Companion Policy that SEC issuers may refer to such measures as non-GAAP financial measures and provide, at minimum, the associated disclosures required in section 9.
General comments	Some commenters suggested that if information on total of segments	We thank commenters for their suggestion. The proposed

	measures are provided within the financial statements, this disclosure need not be repeated in documents outside the financial statements.	disclosures ensure readers appreciate the context of total of segments measures when these measures are disclosed outside the financial statements.
General comments	Some commenters requested clarity on the what constitutes a “segment” in comparison to a “reportable segment”.	Change made.
General comments	One commenter suggested that the requirement to disclose a comparative measure should be removed.	We thank the commenter for their suggestion. The disclosure requirement provides that if the total of segments measure has been previously disclosed in the comparative period, then in the current period, both must be disclosed for comparability.
Part 2 – Disclosure Requirements for Capital Management Measures		
General comments	Some commenters suggested that if information on capital management measures is provided within the financial statements, this disclosure need not be repeated in documents outside the financial statements.	Change made. We thank commenters for their suggestion. Issuers may include disclosure requirements under the Draft Materials within the notes to the financial statements for compliance.
s. 7(2)(b)(iv)	Two commenters suggested that more guidance be provided on the level of detail expected for the quantitative reconciliation requirement.	Change made. Additional clarifying language has been included within the Draft Policy Statement.
s. 7(2)(b)(iv)	One commenter suggested eliminating the quantitative reconciliation requirement for capital management measures that are ratios, as generally it is difficult to identify the most directly comparable financial measure presented in the primary financial statements.	Change made.
Part 2 – Disclosure Requirements for Supplementary Financial Measures		
General comments	Commenters provided mixed views on disclosure requirements. Some commenters were of the view that there should be additional disclosure requirements, while other commenters disagreed with	We thank commenters for their suggestions. We maintain the policy decision to require certain disclosures when supplementary financial measures are disclosed.

	including disclosure requirements for supplementary financial measures.	However, the disclosure requirements have been scaled to address specific risks. Transparency around the composition of these measures is the primary concern we identified, which is addressed in the Draft Materials.
General comments	One commenter raised questions on the requirement within the Original Materials to explain the reason for the change in label, composition and calculation and whether this is useful information.	Change made. The disclosure requirement has been removed.
General comments	One commenter recommended disclosure requirements for additional subtotals and totals within the financial statements.	Change not made. It is outside the scope of the project to set requirements for financial statement disclosures.

ANNEX C

Summary of Changes Made in the Draft Regulation

This annex summarizes the substantive changes made in the Draft Regulation.

Definitions

- The defined term “non-GAAP financial measure” has been changed in response to comments received. The new definition is more consistent with CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* and with rules and guidance of other securities regulators, including the U.S. Securities and Exchange Commission (SEC). This revised definition reduces the scope of financial measures captured compared to the Original Materials. Ratios are specifically excluded from the defined term. The scope of what is captured as a “non-GAAP ratio” has also been substantially reduced. Only ratios where a non-GAAP financial measure is used in the numerator or the denominator, or both, are captured. This is dealt with in a separate section within the Draft Regulation.
- The defined term “segment measure” has been changed to “total of segments measure”, and the definition has been clarified in response to comments received. This revised term captures only a subtotal or total of two or more reportable segments. This clarifies that not all segment measures are captured within the defined term, for example, measures of a discrete reportable segment.
- The defined term “supplementary financial measure” has been changed to reflect the changes in the defined term “non-GAAP financial measure”.
- Transcripts of an oral statement are specifically excluded. Only oral statements were excluded in the Original Materials.

Application

- In addition to excluding SEC foreign issuers, we have reduced the scope of application of the Draft Regulation by:
 - only capturing disclosures by reporting issuers and issuers that are not reporting issuers in a document that is subject to prospectus requirements, filed in connection with reliance on the offering memorandum exemption, and other similar documents submitted to a recognized exchange,
 - excluding issuers that are investment funds as defined in *Regulation 81-106 respecting Investment Fund Continuous Disclosure* and designated foreign issuers as defined in *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, and
 - excluding disclosures that are required under *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects* and *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities (Regulation 51-101)*, except for voluntary disclosures using oil and gas metrics under section 5.14 of Regulation 51-101.

- We have expanded the list of specific documents and financial measures that the Draft Regulation does not apply to including valuations reports and pro forma financial statements.
- We have also excluded financial measures disclosed in compliance with a requirement under law or by an SRO to which the issuer is a member. This includes any system of regulation of a government or governmental authority or SRO that is applicable to the issuer, not just limited to the laws of a jurisdiction of Canada as originally included in the Original Materials.

Incorporating Information by Reference

- We have introduced a form of cross-referencing in certain discrete documents back to an issuer's MD&A through incorporating information by reference.

Disclosure Requirements

- Subparagraph 6(b), disclosure requirements for non-GAAP financial measures that are historical information, has been added to clarify that disclosure of a non-GAAP financial measure must be accompanied by the disclosure of the most comparable financial measure presented in the primary financial statements.
- Subparagraph 6(e)(iii), disclosure requirements for non-GAAP financial measures that are historical information, has been added to clarify that disclosure of a non-GAAP financial measure must provide an explanation of the composition of the measure.
- Section 7, disclosure requirements for non-GAAP financial measures that are forward-looking information, has been substantially revised to reduce the disclosure requirements and enhance readability. The requirement for a quantitative reconciliation has been removed and replaced with a requirement to describe each reconciling item between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure. SEC Issuers, as defined in *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards*, may instead comply with Regulation G under the 1934 Act to comply with this disclosure requirement.
- Disclosures of non-GAAP financial measures used in ratios has been separated, with reduced disclosure requirements from the Original Materials.
- Subparagraph 10(a)(ii) allows issuers to make certain disclosures related to capital management measures within their financial statements to comply with the Draft Regulation instead of directly within documents outside the financial statements.
- Section 11, disclosure for supplementary financial measures, has been revised to remove requirements to present the comparative period and explain the reason for a change, if any, from the comparative period.