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Securities Regulators Seek to Address Inconsistencies in Disclosure of Non-GAAP Financial Measures

Authors: Melanie A. Shishler, Richard Fridman and Veronika Stefanski

Over the past few years, the Canadian Securities Administrators (CSA) has increasingly scrutinized the public disclosure of numerical measures of financial performance that are not specified, defined or determined under an issuer's GAAP (non-GAAP financial measures).

In November 2003, the CSA issued Staff Notice 52-306, *Non-GAAP Financial Measures* (SN 52-306), to provide guidance to issuers with a view to ensuring that the disclosure of non-GAAP financial measures does not mislead investors. The current formulation of SN 52-306 (adopted in January 2016) states, among other things, that issuers should, when reporting non-GAAP financial measures:

- identify non-GAAP financial measures and state that they have no standardized meaning under GAAP;
- distinguish the non-GAAP financial measure from items determined under GAAP;
- explain why the non-GAAP financial measure provides useful information to investors;
- present with equal or greater prominence the most directly comparable GAAP financial measure;
- provide a reconciliation from the non-GAAP financial measure to the most directly comparable GAAP financial measure; and
- present the non-GAAP financial measure on a consistent basis from period to period.

Despite this detailed guidance, the CSA has found that disclosure of non-GAAP financial measures varies materially between issuers. The CSA has repeatedly commented on the high number of deficiencies in non-GAAP disclosure and has highlighted these deficiencies to issuers in issue-oriented reviews.

In an effort to increase the quality and consistency of disclosure, on September 6, the CSA published for comment Proposed National Instrument 52-112, *Non-GAAP and Other Financial Measures Disclosure* (Proposed Instrument). The Proposed Instrument would impose mandatory disclosure requirements on issuers that disclose non-GAAP financial measures and "other" financial measures, which are financial measures that do not meet the criteria under the Canadian GAAP for inclusion in financial statements. While substantially aligned with SN 52-306, the Proposed Instrument will provide the CSA with a stronger tool to enforce disclosure requirements.

Among other things, the Proposed Instrument:

- applies to all issuers (including investment funds) except SEC foreign issuers;
- covers all publicly filed documents as well as other written communications in websites and social media;
- pertains to the disclosure of financial measures (including ratios) that are non-GAAP financial measures, as well other financial measures that are disclosed in the notes to the financial statements and that the CSA believes lack context when disclosed outside the financial statements (i.e., segment measures, capital management measures and supplementary financial measures, as defined in the Proposed Instrument); and
- includes an updated definition of non-GAAP financial measures, which builds upon and incorporates the disclosure guidance in SN 52-306.

The Proposed Instrument reflects the CSA's commitment to reducing the improper use of non-GAAP and other financial measures and to providing clear and formalized disclosure requirements. The companion policy provides guidance on how the CSA will interpret and apply the Proposed Instrument.

The Proposed Instrument is open for comment until December 5, 2018.

Key Contacts: Melanie A. Shishler, Richard Fridman and Olivier Désilets

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