

June 15, 2020

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 of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
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comment@osc.gov.on.ca

M^e Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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Dear Sir/Madam,

Re: CSA Second 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

We have reviewed the above referenced *Second Notice and Request for Comment on Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* (the “Instrument”) and *Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure* (the “Companion Policy”) and Other Financial Measures Disclosure and related proposed consequential amendments and changes (collectively, the “Second Proposal”). 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 \$4.5 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. We also seek to improve Canada’s regulatory framework to strengthen the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

CCGG supports the CSA’s recognition that non-GAAP and other financial measures are helpful to investors when assessing a company’s financial performance. CCGG further supports the CSA’s goals of providing clarity and consistency with respect to disclosure obligations and improving the quality of information available to investors. CCGG’s focus is on ensuring that institutional investors have the information they need to make good investment decisions and to monitor those investments.

GENERAL COMMENTS

In December 2018, CCGG submitted a [response](#) to the CSA’s first proposal with respect to a proposed National Instrument and Companion Policy for Non-GAAP and other financial measures (the “2018 Submission”). CCGG was supportive of the comprehensive approach initially taken by CSA in 2018. We note that the scope and application of the disclosure obligations in the Second Proposal have been narrowed as

the result of the feedback received by the CSA during the 2018 consultation period. Notwithstanding that the Second Proposal is not as comprehensive as the initial proposal in 2018, CCGG continues to support the issuance of clear guidance in the form of a National Instrument and Companion Policy. Our view is that, even with its narrower application, establishing disclosure obligations in the form of a National Instrument is preferable to guidance alone, in facilitating more useful and consistent disclosures of non-GAAP and other financial measures.

In addition, CCGG has recently published its own research and recommendations, on the [Use of Non-GAAP Measures in Executive Compensation](#) (the “CCGG Non-GAAP Paper”). We were pleased to note the Companion Policy’s clarification that the Instrument would apply to disclosures required of issuers in their disclosures under the Statement of Executive Compensation (Form 51-102F6), and note the additional guidance provided in the Companion Policy on the application of the Instrument to such disclosures. Overall, CCGG is of the view that the approach taken by the CSA in the Second Proposal is consistent with the kinds of disclosures recommended by CCGG in the context of executive compensation as set out in the CCGG Non-GAAP Paper (for example, both recommend clear definitions of measures used; detailed reconciliation of the measure used to their nearest GAAP equivalent; and, confirmation of year-over-year consistency in calculations, or, alternatively, disclosures of changes made to calculation methodology along with a rationale for such changes).

A notable difference, however, between the Second Proposal and the recommendations made by CCGG in both its 2018 Submission and in the CCGG Non-GAAP Paper is that the Instrument does not require disclosures delineating the board’s role in vetting and approving non-GAAP and other financial measures.

SPECIFIC COMMENTS

In light of the foregoing, CCGG encourages the CSA to incorporate into the Instrument a requirement that issuers disclose their board oversight processes for non-GAAP and other financial measures, including:

- an acknowledgement of the audit committee’s and/or the board’s responsibility for vetting non-GAAP financial measures and scrutinizing adjustments proposed by management, along with a discussion of the process involved in doing so; and

- a statement with respect to whether adjustments above a certain threshold must be approved by the board.

In addition, while CCGG is supportive of the CSA’s proposal to streamline disclosures through incorporating by reference to the Management Discussion and Analysis (MD&A) where appropriate, we note that the Instrument uses permissive language such that an issuer “*may incorporate by reference the information required...*”¹. Because incorporating by reference is not a requirement, where an issuer does not rely on it, and uses a non-GAAP financial measure in one document that is also used in other documents, CCGG continues to advocate, as it did in its 2018 Submission, that the issuer should be required to disclose any differences in definitions between the two documents (e.g. whether “adjusted EBITDA used in the MD&A is defined differently than adjusted EBITDA used for compensation purposes).

CONCLUSION

In summary, CCGG is supportive of the approach taken in the Second Proposal and is pleased to note that the CSA’s approach is generally consistent with the recommendations in the CCGG Non-GAAP Paper. CCGG encourages the CSA, however, to consider incorporating into the Second Proposal specific disclosures with respect to the board’s oversight role in vetting, scrutinizing and approving the use of non-GAAP and other financial measures and any adjustments thereto. In addition, CCGG encourages the CSA to clarify the language permitting issuers to use incorporation by reference to ensure that where such referencing is not used, any differences in definitions between the same measures used in different documents are disclosed.

¹ CSA Second Notice and Request for Comment - Proposed National Instrument 52-112 Non-GAAP and Other Financial Disclosure Measures Disclosure – Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure – Related Proposed Consequential Amendments and Changes, February 13, 2020 (2020), 43 OSCB 1311

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 cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville at sneville@ccgg.ca.

Yours truly,



Marcia Moffat
Chair of the Board of Directors
Canadian Coalition for Good Governance

CCGG MEMBERS 2020

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- Aviva Investors Canada Inc.
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- 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
- Fiera Capital Corporation
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- 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
- 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.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
- TD Asset Management Inc.
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund