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The Secretary
Ontario Securities Commission
20 Queen Street West, 19th Floor, Box 55
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June 22, 2020

Submitted via electronic email

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, Related Proposed Consequential Amendments and Changes

Dear:
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

Thank you for the opportunity to comment on the *CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure, Proposed Companion Policy 52-112, Related Proposed Consequential Amendments and Changes*.

The Real Property Association of Canada ("REALPAC") is Canada's senior-most voice for Canada's commercial investment real estate industry. Our members include the largest publicly traded real estate companies and real estate investment trusts (REITs) in Canada.

As an industry we strive to provide useful, consistent and transparent information to our investors and other users and respond to their changing needs. As such, we support the goal to improve disclosures across all industries and provide quality information to investors and other financial measures users.

REALPAC is pleased to see many of the changes that CSA made in response to comments received on the original version of the proposed materials and appreciate that the majority of our concerns have been addressed.

Our specific comments on the revised CSA *Proposed National Instrument 52-112* (and its accompanying Companion Policy and Consequential Amendments and Changes) follow.

1. <u>Incorporating Information by Reference</u>

Per Paragraph 5(3), the ability to incorporate by reference the information required under subparagraphs 6(e)(v) does not apply if the document that contains the specified measure is a news release issued or filed by the issuer. As such, it is our understanding that if, for example, a real estate entity discloses a non-GAAP financial measure such as FFO, AFFO or ACFO in a press release, then they are required to include a full quantitative reconciliation to the most comparable GAAP measure from the financial statements in the press release as well.

We are concerned that this requirement creates additional burden for preparers, does not add value for investors, and in fact, may create more confusion than clarity to new releases. A typical press release on an issuer's results provides a condensed snapshot of an entity's performance for the quarter. In the press release, the entity would include disclosures regarding non-GAAP measures presented therein. Cautionary language would already be included in the press release identifying the non-GAAP measures and directing investors to the appropriate section of the Management Discussion and Analysis (MD&A) for additional information. Adding the reconciliation to the press release requires presenting duplicative information that is already found in the issuer's MD&A and will result in much longer and complicated press releases. We think this is unnecessary and goes against initiatives to reduce regulatory burden.

2. <u>Reconciliation of a non-GAAP financial measure: Proportionate Share of Joint Ventures</u>

As noted in our previous comment letter, in the real estate industry a common disclosure in an entity's MD&A involves providing information on its proportionate share in joint arrangements. Current practice by many real estate entities is to present this information in a "two-column approach", reconciling the full income statement and balance sheet to show the entity's proportionate share in joint arrangements that are part of regular business operations.

Real estate entities are frequently users of debt, and debt is often utilized at the joint venture level. Presentations that do not go beyond the IFRS requirements fail to disclose the use of financial leverage at the joint venture level. Therefore, an additional benefit of the two-column approach is to better disclose IFRS off-balance sheet debt to users of reporting.

We are pleased to see that this presentation will continue to be acceptable under the CSA *Proposed National Instrument 52-112* (per proposed Companion Policy 52-112 subparagraph 6(e)(v)), provided that the reconciling items and proportionate share amounts are labelled as non-GAAP and not given more prominence than the discussion on GAAP amounts. We support continuing to allow this reconciliation.

3. <u>Reconciliation of Non-GAAP Financial Measures to Most Directly Comparable GAAP Amounts</u>

In our initial comment letter, we cited the January 2015 OSC publication of *Staff Notice 51-724 Report on Staff's Review of REIT Distribution Disclosure*. In response to this notice, many REITs provided enhanced disclosure around AFFO, including a reconciliation to cash flow from operations. Subsequently there has been some confusion on the disclosure requirements around AFFO where it is utilized by management as an earnings measure rather than as a cash flow measure. Where REITs have adopted REALPAC's guidance on AFFO and view AFFO as an earnings measure, it is our understanding that AFFO should only be reconciled to GAAP net income (with a subtotal for FFO), and not GAAP cash flow from operations as well, as, in these circumstances, net income is the most directly comparable GAAP amount.

We are pleased to see that this is clarified by "Most Comparable Measure" guidance in Subparagraph 6(e)(v) noting that this is an area of applying judgment and that, in practice, earnings-based measures and cash flow-based measures are used to disclose operational performance.

In addition, we requested clarification whether items such as "rent per square foot" amounts are required to be reconciled to a GAAP measure, and guidance on how this could be performed. For example, amounts such as "average expiring rent per square foot" and "average net rent per occupied square foot" are based on contractual rent at a point in time. We were unclear on if and how these amounts should be reconciled to IFRS rental revenue on a quarterly basis and questioned how this could be presented in a clear and useful manner to users.

We understand that under the revised guidance per Subparagraph 8(a)-(d), there is no longer a proposed requirement to reconcile non-GAAP ratios to IFRS amounts. We believe this resolves our concern around this point.

4. <u>Usefulness of Non-GAAP Financial Measures Disclosures</u>

We previously expressed concern with the use of the term "incremental" in the context of requiring information to be incremental in order to be considered "useful". For accounting purposes, the term "incremental" can be a powerful word. By using the term "incremental" we have concerns that this is intended (or could be read) to preclude disclosure of similar measures that we consider to be important and useful to investors and other users.

For example, some entities use multiple measures to explain "operating performance" – such as "net operating income" (NOI) and "funds from operations" (FFO). While both include aspects of operating income, FFO takes into account several more deductions to represent a recurring economic earnings measure.

While it is our understanding that the term "incremental" is not intended to be such a high hurdle, we would like to have clarification on the applicability of this term in the context of determining whether or not information is considered to be "useful" under the Proposed National Instrument 52-112 (and its accompanying Companion Policy and Consequential Amendments and Changes) if it is not also "incremental."

We also expressed concern with one of the examples used that would cause a non-GAAP financial measure to be more prominent than the most comparable measure presented in the financial statements, now included in Paragraph 6(c) – Prominence of a non-GAAP financial measure that is historical information: "*Multiple non-GAAP financial measures being used for the same purpose thereby obscuring disclosure of the most comparable measure".*

We are still concerned that this will limit disclosure on common metrics disclosed and used by investors and others, such as NOI, FFO, AFFO and ACFO.

While it is our understanding that this clause is not meant to indirectly restrict the common industry metrics noted above, we would like to have clarification on the applicability of this clause.

5. **Definition of Non-GAAP**

In our previous comment letter, we expressed concerns with the proposed definition of non-GAAP, and suggested that the CSA may want to simplify and clarify how non-GAAP measures are defined or consider whether a principles-based approach (such as that which exists in *CSA Staff Notice 52-306 (Revised) Non-GAAP Financial Measures*) is easier and more practical for entities to apply.

We are pleased to see that the CSA has reverted to a definition consistent with *CSA Staff Notice 52-306 (Revised) Non-GAAP Financial Measures*.

6. **Disclosure Requirements for Ratios**

As noted in our previous comment letter, in the real estate industry, it is common to disclose payout ratios for any combination of FFO, AFFO and ACFO (where relevant) to show the amount of distributions to unitholders as a percentage of funds from operations or cashflows. We were concerned about how to reconcile these ratios to GAAP amounts because under IFRS, there is no comparable payout ratio (i.e. the concept of payout ratio does not exist under IFRS).

In addition, preparers include ratios such as debt to gross book value or debt service ratio in supplemental documents. These ratios provide key information that is valued by investors and analysts because of the use of leverage in the real estate industry. Most REITs also disclose debt to assets, where the debt included in the ratio may reasonably exclude some liabilities from the IFRS financial statements. Similar to payout ratios, they have no comparable "GAAP" measure in the IFRS financial statements to which they can be reconciled.

We sought clarification on these points and are pleased to see this provided and that reconciliations to GAAP amounts are not required for ratios.

7. **Reducing Regulatory Burden**

In previous comment letters, we have expressed support for the CSA's initiative to ease the regulatory burden on non-investment fund reporting issuers. We were concerned that the initial rules proposed for NI 52-112 would significantly increase regulatory burden and costs. We are pleased to see that the CSA has reconsidered many of these requirements and decreased the extent of those previously proposed.

8. <u>Exclusion of Oral Statements</u>

In our previous comment letter, we sought clarification that the exclusion of oral statements extended to written transcripts of oral communications that are not issued or referenced directly by the issuer (such as those issued by external parties). We are pleased to see this clarification provided.

We thank the OSC for the opportunity to provide our input on *CSA Second Notice and Request for Comment – Proposed National Instrument 52-112 Non-GAAP and Other Financial Measure Disclosure – Proposed Companion Policy 52-112 Non-GAAP and Other Financial Measures Disclosure – Related Proposed Consequential Amendments and Changes*. If you would like to discuss our comments, please contact Nancy Anderson, REALPAC's Vice President Financial Reporting and Chief Financial Officer, at 416-642-2700 x226.

Respectfully submitted,

Nancy Anderson, Vice President, Financial Reporting and Chief Financial Officer
REALPAC