

B.1.3 Notice of Commission Approval of OSC Rule 52-503 Exemption from Disclosure of a Specified Financial Measure

**NOTICE OF COMMISSION APPROVAL OF
OSC RULE 52-503 EXEMPTION FROM DISCLOSURE OF A SPECIFIED FINANCIAL MEASURE**

July 20, 2023

Introduction

On June 27, 2023, the Ontario Securities Commission (the **Commission** or **we**) made proposed OSC Rule 52-503 *Exemption from Disclosure of a Specified Financial Measure* (the **Rule**) as a rule under the *Securities Act* (Ontario) (the **Act**).

The Rule will, if approved by the Minister of Finance, provide an exemption in Ontario from National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure* (**NI 52-112**) for a reporting issuer that is, or that has a subsidiary or an affiliate that is, a “federal financial institution” as defined in the *Bank Act* (Canada) and subject to OSFI Guidelines.

Under the *Bank Act*, “federal financial institution” means (a) a bank, (b) a body corporate to which the *Trust and Loan Companies Act* (Canada) applies, (c) an association to which the *Cooperative Credit Associations Act* (Canada) applies, or (d) an insurance company or a fraternal benefit society incorporated or formed under the *Insurance Companies Act* (Canada).

The purpose of the Rule is to make permanent the exemption set out in a blanket order issued on December 2, 2021, Ontario Instrument 52-502 *Exemption from National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure* (Interim Class Order) (the **Class Order**). The Class Order ceased to be effective on June 2, 2023. Blanket orders similar to the Class Order have been issued by members of the Canadian Securities Administrators (**CSA**). These blanket orders do not have a limited duration. The Rule will have the same effect as the orders granted by the other CSA members.

The Class Order provided an exemption to eligible issuers from NI 52-112 in respect of disclosure of a specified financial measure pursuant to an OSFI Guideline, if (a) the OSFI Guideline specifies the composition of the measure and the measure was determined in compliance with that OSFI Guideline, and (b) in proximity to the measure, the eligible issuer discloses the OSFI Guideline under which the measure is disclosed.

Terms defined in NI 52-112 and the Rule have the same meaning as used in this Notice.

The Commission has made the Rule as a rule pursuant to paragraph 143.2(5)(b) of the Act. Paragraph 143.2(5)(b) provides that publication of a notice and request for comment in respect of a proposed rule is not required if “the proposed rule grants an exemption or removes a restriction and is not likely to have a substantial effect on the interests of persons or companies other than those who benefit under it”. We have determined that the Rule meets the criteria set out in paragraph 143.2(5)(b) of the Act. Accordingly, for this reason the Rule is not being published for comment.

The Rule was delivered to the Minister of Finance (the **Minister**) on July 19, 2023.

The Minister may approve or reject the Rule or return it for further consideration. If the Minister approves the Rule or does not take any further action, the Rule will come into force on October 3, 2023.

The text of the Rule is contained in Annex A of this notice and is also available on the OSC website at www.osc.ca.

Substance and Purpose

The primary objective of NI 52-112 is to help ensure investors receive, among other things, transparent and understandable information about financial measures that are not prepared in accordance with Generally Accepted Accounting Principles (**GAAP**). The OSFI Guidelines specify the composition of certain specified financial measures and contain specific disclosure requirements related to such measures. The Rule is intended to reduce regulatory burden for eligible issuers that are subject to OSFI Guidelines since sufficient disclosure exists surrounding these measures.

Although NI 52-112 contains an application exception in respect of disclosure of a specified financial measure that is required under law, such exception does not apply to the OSFI Guidelines because they are not law.

The Rule is based on a policy rationale that influenced the application exception in subparagraph 4(1)(e) of NI 52-112. The Rule is intended to substantially mirror the current application exception in respect of disclosure of a specified financial measure that is required under law to measure(s) that are disclosed by an eligible issuer in accordance with an OSFI Guideline. In essence, the Rule recognizes that although OSFI Guidelines are not law, an eligible issuer subject to OSFI Guidelines is required to comply with such requirements.

Consistent with subparagraph 4(1)(e) of NI 52-112, the Rule would limit the exception to specified financial measures where the OSFI Guideline specifies the composition of the measure and the measure was determined in compliance with that OSFI Guideline and in proximity to the measure, the eligible issuer discloses the OSFI Guideline under which the measure is disclosed.

Rule-making authority

The following provisions of the Act provide the Commission with authority to adopt the Rule:

- Paragraph 143(1)16
- Paragraph 143(1)22
- Paragraph 143(1)22.1
- Paragraphs 143(1)25
- Paragraphs 143(1)39

Questions

If you have any questions regarding the Rule, please contact any of the following:

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