

Goodmans^{LLP} Update

Canadian Securities Administrators Publish Second Notice and Request for Comment on New Rules for Disclosure of Non-GAAP and Other Financial Measures

The Canadian Securities Administrators (CSA) recently published a second notice and request for comment regarding [Proposed National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure and Companion Policy](#) (together, the “**Proposed Rules**”). The Proposed Rules are open for public comment until May 13, 2020.

Background

The Proposed Rules were originally published for comment in September 2018. See our September 25, 2018 Update, [Canadian Securities Regulators Introduce New Rules for Disclosure of Non-GAAP Financial Measures](#). In response to comments received during the first comment period, the CSA reduced the scope of the Proposed Rules and simplified the disclosure requirements.

Overview of the Proposed Rules

The Proposed Rules provide that financial disclosure presented or disclosed outside of financial statements is to be categorized as one of four financial measures: non-GAAP financial measure, supplementary financial measure, total of segments measure (previously “segment measure”) and capital management measure.

The Proposed Rules generally incorporate, expand upon and replace [CSA Staff Notice 52-306 \(Revised\) Non-GAAP Financial Measures \(“SN 52-306”\)](#). The Proposed Rules establish disclosure requirements for issuers that disclose the above-listed financial measures in documents that are intended to be, or are reasonably likely to be, made available to the public. Such disclosure can potentially be misleading due to a lack of: standard meanings, context when disclosed outside of the issuer’s financial statements and transparency or variance as to their calculation.

As SN 52-306 is non-binding, one of the key objectives of the Proposed Rules is to provide CSA staff with a stronger tool to take regulatory action as needed.

Summary of Changes to the Original Proposed Rules

The revisions to the original Proposed Rules were made with the aim of ensuring investors receive appropriate disclosure without an overall increase in regulatory burden, and include:

- reducing the scope of issuers subject to the Proposed Rules with investment funds and designated foreign issuers being excluded from their application (in addition to SEC foreign issuers who were already excluded);
- exempting certain disclosures, such as disclosure by non-reporting issuers (unless such disclosure is subject to prospectus requirements, filed in connection with reliance on the offering memorandum exemption, or is a similar document submitted to a recognized exchange), certain disclosures required under instruments related to mineral projects and oil and gas activities and specific documents, including valuation reports and pro forma financial statements;

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- narrowing the definitions of various measures to make them more consistent with SN 52-306 and the rules and guidance of other securities regulators, including the U.S. Securities and Exchange Commission;
- simplifying or limiting the disclosure requirements, most significantly for non-GAAP financial measures that are forward-looking information, the disclosure of which no longer requires quantitative reconciliation and instead requires an issuer to describe each reconciling item between the non-GAAP financial measure that is forward-looking information and the historical non-GAAP financial measure; and
- permitting cross-referencing in certain discrete documents (but not press releases) back to an issuer's MD&A through incorporation by reference.

Practical Implications

While the revised Proposed Rules are more precise and limited in scope than the original version, they still contain several key disclosure requirements that are expected to impact current disclosure practices.

Issuers, their counsel and auditors should review the Proposed Rules carefully and consider reviewing their disclosure to prepare for changes that may be required if the Proposed Rules are implemented in their current form.

Please contact any member of our [Corporate Finance and Securities Group](#) to discuss these developments.