

Chapter 5

Rules and Policies

5.1.1 National Instrument 52-112 Non-GAAP and Other Financial Measures Disclosure

NATIONAL INSTRUMENT 52-112 *NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE*

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NATIONAL INSTRUMENT 52-112 NON-GAAP AND OTHER FINANCIAL MEASURES DISCLOSURE

**PART 1
DEFINITIONS AND APPLICATION**

Definitions

1. In this Instrument,

“capital management measure” means a financial measure disclosed by an issuer that

- (a) is intended to enable an individual to evaluate an entity’s objectives, policies and processes for managing the entity’s capital,
- (b) is not a component of a line item disclosed in the primary financial statements of the entity,
- (c) is disclosed in the notes to the financial statements of the entity, and
- (d) is not disclosed in the primary financial statements of the entity;

“earnings release” means a news release that is required to be filed under section 11.4 of National Instrument 51-102 *Continuous Disclosure Obligations*;

“entity” includes any of the following:

- (a) a person or company other than an individual,
- (b) an asset or a group of assets for which financial statements are prepared;

“forward-looking information” has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

“MD&A” has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*;

“non-GAAP financial measure” means a financial measure disclosed by an issuer that

- (a) depicts the historical or expected future financial performance, financial position or cash flow of an entity,
- (b) with respect to its composition, excludes an amount that is included in, or includes an amount that is excluded from, the composition of the most directly comparable financial measure disclosed in the primary financial statements of the entity,
- (c) is not disclosed in the financial statements of the entity, and
- (d) is not a ratio, fraction, percentage or similar representation;

“non-GAAP ratio” means a financial measure disclosed by an issuer that

- (a) is in the form of a ratio, fraction, percentage or similar representation,
- (b) has a non-GAAP financial measure as one or more of its components, and
- (c) is not disclosed in the financial statements of the entity;

“primary financial statements” means, with respect to an entity, any of the following:

- (a) the statement of financial position;
- (b) the statement of profit or loss and other comprehensive income;
- (c) the statement of changes in equity;
- (d) the statement of cash flows;

“registered firm” has the meaning ascribed to it in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“reportable segment” means a reportable segment as described in the accounting principles applied to the preparation of an entity’s financial statements;

“specified financial measure” means any of the following:

- (a) a non-GAAP financial measure;
- (b) a non-GAAP ratio;
- (c) a total of segments measure;
- (d) a capital management measure;
- (e) a supplementary financial measure;

“supplementary financial measure” means a financial measure disclosed by an issuer that

- (a) is, or is intended to be, disclosed on a periodic basis to depict the historical or expected future financial performance, financial position or cash flow of an entity,
- (b) is not disclosed in the financial statements of the entity,
- (c) is not a non-GAAP financial measure, and
- (d) is not a non-GAAP ratio;

“total of segments measure” means a financial measure disclosed by an issuer that

- (a) is a subtotal or total of 2 or more reportable segments of an entity,
- (b) is not a component of a line item disclosed in the primary financial statements of the entity,
- (c) is disclosed in the notes to the financial statements of the entity, and
- (d) is not disclosed in the primary financial statements of the entity.

Application – reporting issuers

- 2. This Instrument applies to a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is intended to be, or reasonably likely to be, made available to the public.

Application – issuers that are not reporting issuers

- 3. This Instrument applies to an issuer that is not a reporting issuer in respect of its disclosure of a specified financial measure in a document if the document is made available to the public and is
 - (a) subject to National Instrument 41-101 *General Prospectus Requirements*,
 - (b) filed with a regulator or a securities regulatory authority in connection with a distribution made under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*, or
 - (c) submitted to a recognized exchange in connection with a qualifying transaction, reverse takeover, change of business, listing application, significant acquisition or similar transaction.

Application – exceptions

- 4. (1) Despite sections 2 and 3, this Instrument does not apply to the following:
 - (a) an investment fund as defined in National Instrument 81-106 *Investment Fund Continuous Disclosure*;
 - (b) a designated foreign issuer, or an SEC foreign issuer, as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;
 - (c) an issuer in respect of disclosure required under any of the following:
 - (i) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*;

- (ii) section 5.4 of Form 51-102F2 *Annual Information Form*;
 - (iii) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, other than section 5.14 of that Instrument;
 - (d) an issuer in respect of disclosure in any of the following:
 - (i) a report prepared by a person or company other than the issuer or entity that is the subject of the specified financial measure;
 - (ii) a transcript of an oral statement;
 - (iii) pro forma financial statements required to be filed under securities legislation;
 - (iv) a filing required under section 12.1 or 12.2 of National Instrument 51-102 *Continuous Disclosure Obligations* or subparagraphs 9.1(1)(a)(ii) and 9.2(a)(ii) and section 9.3 of National Instrument 41-101 *General Prospectus Requirements*;
 - (e) an issuer in respect of disclosure of a specified financial measure that is required under law, or by an SRO of which the issuer is a member, if
 - (i) the law or the SRO's requirement specifies the composition of the measure and the measure was determined in compliance with that law or requirement, and
 - (ii) in proximity to the measure, the issuer discloses the law or the SRO's requirement under which the measure is disclosed;
 - (f) an issuer in respect of disclosure of a specified financial measure if the calculation of the specified financial measure is derived from a financial covenant in a written agreement;
 - (g) an issuer that is a registered firm in respect of disclosure of a specified financial measure if
 - (i) the document in which the disclosure is made is intended to be, or is reasonably likely to be, made available to a client or a prospective client of the registered firm, and
 - (ii) the measure does not relate to the registered firm's financial performance, financial position or cash flow.
- (2) Despite sections 2 and 3, this Instrument does not apply to disclosure required under Form 51-102F6 *Statement of Executive Compensation* and Form 51-102F6V *Statement of Executive Compensation — Venture Issuers*, except for the information required under paragraph 6(1)(b), clause 6(1)(e)(ii)(C), paragraph 9(c) and clause 10(1)(b)(ii)(C) of this Instrument.

PART 2 INCORPORATING INFORMATION BY REFERENCE

Incorporating information by reference

5. (1) Subject to subsections (3) and (4), an issuer may incorporate by reference the information required under any of the following provisions, if the reference is to the issuer's MD&A:
- (a) subparagraph 6(1)(e)(ii);
 - (b) paragraph 7(2)(d);
 - (c) subparagraph 8(c)(iii);
 - (d) paragraph 9(c);
 - (e) subparagraph 10(1)(b)(ii);
 - (f) paragraph 11(b).
- (2) If, as permitted under subsection (1), an issuer incorporates required information by reference into a document, the issuer must include all of the following in the document:
- (a) a statement indicating that the information is incorporated by reference;

- (b) a statement that specifies the location of the information in the MD&A;
 - (c) a statement that the MD&A is available on SEDAR at www.sedar.com.
- (3) Despite subsection (1), an issuer must not incorporate by reference the information referred to in subsection (1) in its MD&A if the document that contains the specified financial measure is another MD&A filed by the issuer.
- (4) Despite subsection (1), an issuer must not incorporate by reference the information referred to in clause 6(1)(e)(ii)(C), paragraph 7(2)(d) or 9(c) or clause 10(1)(b)(ii)(C) if the document that contains the specified financial measure is in an earnings release filed by the issuer.

PART 3
SPECIFIED FINANCIAL MEASURE DISCLOSURE

Non-GAAP financial measures that are historical information

6. (1) An issuer must not disclose a non-GAAP financial measure that is historical information in a document unless all of the following apply:
- (a) the non-GAAP financial measure is labelled using a term that,
 - (i) given the measure's composition, describes the measure, and
 - (ii) distinguishes the measure from totals, subtotals and line items disclosed in the primary financial statements of the entity to which the measure relates;
 - (b) the non-GAAP financial measure is identified as a non-GAAP financial measure;
 - (c) the document discloses the most directly comparable financial measure that is disclosed in the primary financial statements of the entity to which the measure relates;
 - (d) the non-GAAP financial measure is presented with no more prominence in the document than that of the most directly comparable financial measure referred to in paragraph (c);
 - (e) in proximity to the first instance of the non-GAAP financial measure in the document, the document
 - (i) explains that the non-GAAP financial measure is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the measure relates and might not be comparable to similar financial measures disclosed by other issuers,
 - (ii) discloses, directly or by incorporating it by reference as permitted under section 5,
 - (A) an explanation of the composition of the non-GAAP financial measure,
 - (B) an explanation of how the non-GAAP financial measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the non-GAAP financial measure,
 - (C) a quantitative reconciliation of the non-GAAP financial measure for its current and comparative period, if disclosed under paragraph (f), to the most directly comparable financial measure referred to in paragraph (c), and that reconciliation is disclosed in the permitted format, and
 - (D) if the label or composition of the non-GAAP financial measure has changed from what was previously disclosed, an explanation of the reason for the change;
 - (f) if the non-GAAP financial measure is disclosed in MD&A or in an earnings release of the issuer, the non-GAAP financial measure for a comparative period, determined using the same composition, is disclosed in the document, unless it is impracticable to do so.
- (2) For the purpose of clause (1)(e)(ii)(C), a quantitative reconciliation of the non-GAAP financial measure is in the "permitted format" if it
- (a) is disaggregated quantitatively in a way that would enable a reasonable person applying a reasonable effort to understand the reconciling items,

- (b) explains each reconciling item, and
- (c) does not describe a reconciling item as “non-recurring”, “infrequent”, “unusual”, or using a similar term, if a loss or gain of a similar nature is reasonably likely to occur within the entity’s 2 financial years that immediately follow the disclosure, or has occurred during the entity’s 2 financial years that immediately precede the disclosure.

Non-GAAP financial measures that are forward-looking information

7. (1) In this section,

“equivalent historical non-GAAP financial measure” means a non-GAAP financial measure that is historical information and has the same composition as a non-GAAP financial measure that is forward-looking information;

“SEC issuer” has the meaning ascribed to it in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*.

- (2) An issuer must not disclose a non-GAAP financial measure that is forward-looking information in a document unless all of the following apply:
 - (a) the document discloses an equivalent historical non-GAAP financial measure;
 - (b) the non-GAAP financial measure that is forward-looking information is labelled using the same label used for the equivalent historical non-GAAP financial measure;
 - (c) the non-GAAP financial measure that is forward-looking information is presented with no more prominence in the document than that of the equivalent historical non-GAAP financial measure;
 - (d) in proximity to the first instance of the non-GAAP financial measure that is forward-looking information in the document, the document discloses, directly or by incorporating it by reference as permitted under section 5, a description of any significant difference between the non-GAAP financial measure that is forward-looking information and the equivalent historical non-GAAP financial measure.
- (3) Subsection (2) does not apply if the disclosure is made
 - (a) by an SEC issuer, and
 - (b) in compliance with Regulation G under the 1934 Act.

Non-GAAP ratios

- 8. An issuer must not disclose a non-GAAP ratio in a document unless all of the following apply:
 - (a) the non-GAAP ratio is labelled using a term that, given the non-GAAP ratio’s composition, describes the non-GAAP ratio;
 - (b) the non-GAAP ratio is presented with no more prominence in the document than that of similar financial measures disclosed in the primary financial statements of the entity to which the non-GAAP ratio relates;
 - (c) in proximity to the first instance of the non-GAAP ratio in the document, the document
 - (i) explains that the non-GAAP ratio is not a standardized financial measure under the financial reporting framework used to prepare the financial statements of the entity to which the non-GAAP ratio relates and might not be comparable to similar financial measures disclosed by other issuers,
 - (ii) discloses each non-GAAP financial measure that is used as a component of the non-GAAP ratio,
 - (iii) discloses, directly or by incorporating it by reference as permitted under section 5, an explanation of
 - (A) the composition of the non-GAAP ratio,
 - (B) how the non-GAAP ratio provides useful information to an investor and explains the additional purposes, if any, for which management uses the non-GAAP ratio, and
 - (C) if the label or the composition of the non-GAAP ratio has changed from what was previously disclosed, an explanation of the reason for the change;

- (d) if the non-GAAP ratio is disclosed in MD&A or in an earnings release of the issuer, the non-GAAP ratio for a comparative period, determined using the same means of calculation, is disclosed in the document, unless
 - (i) the non-GAAP ratio is forward-looking information, or
 - (ii) it is impracticable to disclose the measure for the comparative period.

Total of segments measures

9. An issuer must not disclose a total of segments measure in a document, other than in financial statements about the entity to which the measure relates, unless all of the following apply:
- (a) the document discloses the most directly comparable financial measure disclosed in the primary financial statements of the entity;
 - (b) the total of segments measure is presented with no more prominence in the document than that of the most directly comparable financial measure referred to in paragraph (a);
 - (c) in proximity to the first instance of the total of segments measure in the document, the document discloses, directly or by incorporating it by reference as permitted under section 5, a quantitative reconciliation of the total of segments measure for its current and comparative period, if disclosed under paragraph (d), to the most directly comparable financial measure referred to in paragraph (a), in the permitted format referred to in subsection 6(2);
 - (d) if the total of segments measure is disclosed in MD&A or in an earnings release of the issuer, the total of segments measure for a comparative period, determined using the same composition, is disclosed in the document, unless it has not been previously disclosed.

Capital management measures

10. (1) An issuer must not disclose a capital management measure in a document, other than financial statements about the entity to which the measure relates, unless all of the following apply:
- (a) the capital management measure is presented with no more prominence in the document than that of similar financial measures disclosed in the primary financial statements of the entity;
 - (b) in proximity to the first instance of the capital management measure in the document, the document,
 - (i) if the capital management measure was calculated using one or more non-GAAP financial measures, discloses each such non-GAAP financial measure;
 - (ii) discloses, directly or by incorporating it by reference as permitted under section 5,
 - (A) for any capital management measure that is disclosed in the form of a ratio, fraction, percentage or similar representation, an explanation of its composition,
 - (B) an explanation of how the capital management measure provides useful information to an investor and explains the additional purposes, if any, for which management uses the capital management measure, and
 - (C) for any capital management measure that is not disclosed as a ratio, fraction, percentage or similar representation, a quantitative reconciliation of the capital management measure for its current and comparative period, if disclosed under paragraph (c), to the most directly comparable financial measure disclosed in the primary financial statements of the issuer;
 - (c) if the capital management measure is disclosed in MD&A or in an earnings release of the issuer, the capital management measure for a comparative period, determined using the same composition, is disclosed in the document, unless it has not been previously disclosed.
- (2) Subparagraph (1)(b)(ii) does not apply if the disclosure required under that subparagraph is made in the notes to the financial statements of the entity to which the measure relates.

Supplementary financial measures

11. An issuer must not disclose a supplementary financial measure in a document unless both of the following apply:

- (a) the supplementary financial measure is labelled using a term that,
 - (i) given the measure's composition, describes the measure, and
 - (ii) distinguishes the measure from totals, subtotals and line items disclosed in the primary financial statements of the issuer;
- (b) in proximity to the first instance of the supplementary financial measure in the document, the document discloses, directly or by incorporating it by reference as permitted under section 5, an explanation of the composition of the supplementary financial measure.

**PART 4
EXEMPTION**

Exemption

- 12. (1)** The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2)** Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
- (3)** Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions*, opposite the name of the local jurisdiction.

**PART 5
EFFECTIVE DATE AND TRANSITION**

Effective date and transition

- 13. (1)** This Instrument comes into force on August 25, 2021.
- (2)** In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after August 25, 2021, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.
- (3)** Despite subsections (1) and (2), this Instrument does not apply to a reporting issuer in respect of documents filed for a financial year ending before October 15, 2021.
- (4)** Despite subsections (1) and (2), this Instrument does not apply until after December 31, 2021 to an issuer that is not a reporting issuer.