

ANNEX B

Summary of Comments and CSA Responses

This annex summarizes the comment letters and our responses to these comments.

This annex contains the following sections:

1. Introduction
2. Responses to comments received on the Proposed Instrument and the Proposed Companion Policy

1. Introduction

Drafting Suggestions

We received a number of drafting suggestions and comments. While we incorporated many of these suggestions, this annex does not include a summary of all the drafting changes we made.

Categories of comments and single responses

In this annex, we consolidated and summarized the comments and our responses by the general themes of the comments. We have included section references to the Proposed Instrument for convenience.

2. Responses to Comments Received on the Proposed Instrument and the Proposed Companion Policy

General Comments on the Original Materials		
Subject	Comment	Response
General comments	There was widespread support for the general objective of the proposals, with commenters noting that this will enhance investor confidence and improve financial reporting in Canada.	We thank the commenters for their submissions.
General comments	Commenters agreed with the CSA decision to not limit the issuers' ability to disclose different types of measures and to not prescribe industry-specific non-GAAP financial measures.	No change. Fundamental to the CSA's approach to regulating non-GAAP financial measures, non-GAAP ratios, and other financial measures is a disclosure-based regime with an overall goal to improve the

		quality of information provided to investors. Due to the numerous types of ever-evolving financial measures disclosed across a range of industries, we believe that disclosure requirements are better suited to respond to investor needs for quality information. In our view, the requirements in the Proposed Materials allow investors to better analyze different financial measures within an industry or among different industries without the CSA limiting or prescribing certain measures.
General comments	A number of commenters raised concerns with a lack of consistency with international regulators, specifically the U.S. Securities and Exchange Commission (SEC), and perception that there may be a competitive disadvantage.	The Proposed Materials have been revised for better alignment with the SEC.
General comments	Commenters expressed the need for a long transition period leading up to the effective date, and that the instrument should be effective for the beginning of an annual financial reporting period to ensure consistent and comparable reporting over periods.	We agree with the comment and will consider this in determining the effective date before a final instrument is published.
General comments	A few commenters suggested that the CSA could stagger adoption dates to reduce implementation burden with different documents. For example, the CSA could replace CSA Staff Notice 52-306 (Revised) <i>Non-GAAP Financial Measures</i> (SN 52-306) with a rule for non-GAAP financial measures only, and delay disclosure requirements for other financial measures.	No change in the fundamental approach to regulate both non-GAAP financial measures, non-GAAP ratios, and other financial measures. Based on the CSA's experience, other financial measures may be equally problematic if not accompanied by appropriate disclosure. This approach is consistent with other international regulators, including the SEC.

		Refer to above comment regarding the need for a long transition period.
General comments	A few commenters expressed the emphasis on the CSA reducing regulatory burden strategic initiative and that the CSA should consider whether there is an alternative approach to achieve the CSA’s objective.	<p>As part of developing the Proposed Materials, we considered a number of alternatives to address stakeholder concerns regarding the quality of disclosures surrounding non-GAAP financial measures, non-GAAP ratios, and other financial measures, including careful consideration of updating SN 52-306 instead or developing other forms of staff guidance to supplement. Based on this work, we concluded that development of the Proposed Materials would be more effective in addressing the significant stakeholder concerns regarding quality disclosures. We also considered and agree with certain commenter responses who expressed that the Proposed Materials provide more guidance and less uncertainty regarding an issuer’s disclosure obligations.</p> <p>To address concerns regarding regulatory burden, we have significantly revised the Proposed Materials, reducing the application of the Proposed Materials and disclosure requirements.</p>
General comments	A few commenters expressed the need for the CSA to clarify that disclosures of non-GAAP financial measures and other financial measures are within the scope of National Instrument 52-109 <i>Certification of Disclosure in</i>	Companion Policy 52-109CP to <i>National Instrument 52-109 Certification of Disclosure in Issuers’ Annual and Interim Filings (52-109CP)</i> states that the forms included in NI 52-109 require each certifying officer

	<p><i>Issuers' Annual and Interim Filings (NI 52-109)</i>, and that the CSA should encourage issuers to establish a written disclosure policy in consideration of National Policy 51-201 <i>Disclosure Standards (NP 51-201)</i>. One commenter recommended adding specific disclosure requirements regarding internal controls over non-GAAP financial measures.</p>	<p>to certify that an issuer's financial statements and other financial information (which includes non-GAAP financial measures, capital management measures, total of segments measures and supplementary financial measures) included in the annual or interim filings fairly present, in all material respects, the financial condition, financial performance and cash flows of the issuer, as of the date and for the periods presented. In addition, both section 6.8 of 52-109CP and part 6 of NP 51-201 provide guidance to assist an issuer with the adoption of good disclosure practices.</p>
General comments	<p>A number of commenters expressed the need for application guidance.</p>	<p>We agree with the comment and have provided more application guidance in the Proposed Companion Policy.</p>
General comments	<p>Some commenters expressed that specific regulation on non-financial measures or operational measures should be considered.</p>	<p>Non-financial measures and financial measures that do not meet one of the defined terms are excluded from the scope of the Proposed Materials, although disclosures are subject to provisions in applicable securities legislation which, among other things, prohibits misleading statements.</p> <p>We caution against the general statement that operating measures are not within the scope of the Proposed Instrument, as certain measures may meet one of the defined terms within the Proposed Instrument.</p>
General comments	<p>Some commenters expressed the view that the CSA should monitor the use of information outside the</p>	<p>We thank the commenters for their submissions. The use of non-GAAP financial measures</p>

	financial statements and whether it is in the public interest for the credibility of this information to be enhanced by independent assurance.	continues to evolve, and we are actively monitoring developments in this area.
General comments	One commenter expressed that disclosure requirements should be the same for all financial measures.	No change. Disclosure requirements have been scaled to address specifically identified concerns.
General comments	Some commenters suggested delaying the Proposed Materials to allow the CSA to consider how the proposals interact with other initiatives, including the International Accounting Standards Board's (IASB) various projects under its headline theme "Better Communication in Financial Reporting".	We note that IASB project is still in the early stages of development. We are aware of the project and are monitoring developments. If necessary in the future, we may update the Proposed Materials (or other securities legislative requirements) to respond to these and other marketplace changes (if any).
General comments	A few commenters suggested that requiring additional disclosures of GAAP measures when disclosed outside the financial statements (total of segments measures and capital management measures) may create confusion or a perception that the CSA considers these measures non-GAAP. One commenter encouraged the CSA to be more explicit by indicating that the Proposed Materials are not intended to suggest that segment and capital management measures are non-GAAP.	The Proposed Materials explicitly exclude the financial measures that are presented or disclosed in the financial statements, such as total of segments measures or capital management measures, from the definition of a non-GAAP financial measure. Disclosure requirements under the Proposed Materials are intended to ensure that when these measures are disclosed outside the financial statements, that investors and other users appreciate the context.
General comments	Many commenters expressed desire to cross-reference between documents for compliance with the Proposed Materials.	Change made. We thank commenters for the suggestions on how to implement a cross-referencing framework. We agree that a form of cross-referencing would be a beneficial feature of the Proposed Materials. Refer to section 5 of Proposed Materials.

Part 1 – Definitions		
s. 1	We received a significant number of comments regarding the proposed definitions, and how those definitions in the Original Materials may capture more financial measures than desired.	Changes made. Defined terms have been revised. We have also expanded examples provided within the Proposed Companion Policy.
Part 1 – Application		
General comments	Commenters generally noted that the Original Materials are overly broad, and it was unclear on the policy rationale for why new disclosure-related requirements should be applied to issuers who are not otherwise subject to obligations of continuous disclosure. One commenter recommended that the Proposed Materials should apply to reporting issuers, and non-reporting issuers that disseminate non-GAAP financial measures in the context of securities distribution.	Change made. Part 1 has been revised.
s. 2	Several commenters submitted that investment funds subject to National Instrument 81-106 <i>Investment Fund Continuous Disclosure (NI 81-106)</i> should be excluded on the basis that there are no specific concerns raised on non-GAAP financial measures used by investment funds, and investors understand and are accustomed to disclosures currently provided under NI 81-106.	Change made. See s. 4(a)
s. 2(1)	<p>Commenters generally expressed that the SEC foreign issuer exemption is appropriate.</p> <p>A number of commenters also recommended that the same exemption should apply to Canadian SEC issuers.</p> <p>A few commenters also questioned the appropriateness of exempting SEC foreign issuers on the basis that different information presented for</p>	No change made. The exemption for SEC foreign issuers is consistent, and based on similar rationale, to other exemptions provided to these issuers under current Canadian securities legislation.

	Canadian issuers and SEC foreign issuers will reduce comparability of information provided.	
s. 2(1)	Some commenters expressed confusion as to what constitutes an SEC foreign issuer, and whether it applies to Canadian “foreign private issuers” as that term is defined under SEC rules and regulations.	Refer to s. 4(b) in the Proposed Companion Policy. Clarification regarding application made.
s. 2(1)	A few commenters recommended that the exemption for SEC foreign issuers be expanded to also include designated foreign issuers.	Change made.
Application to executive compensation	A number of commenters requested for clarification on how the Proposed Materials relate to executive compensation disclosure. While some commenters provided a strong recommendation that executive compensation disclosure be added to the explicit list of documents included in the Proposed Materials and we should increase disclosure requirements for these specific measures, we heard contrary views that executive compensation should be excluded.	We thank commenters for their views. Non-GAAP financial measures are used for a variety of purposes and we did not see the policy rationale specific to executive compensation that should be different than other uses of non-GAAP financial measures.
Application to documents	Commenters provided mixed views on the application to documents made available to the public in the local jurisdiction. While we received support for this, we also received comments that the Proposed Materials should be more limited to documents that are intended to be used by the investment and/or analyst community.	Change made. We are limiting the scope of the Proposed Materials for non-reporting issuers to specific documents. However, we have retained the scope for reporting issuers and instead excluded certain disclosures required under specific securities legislation as well as disclosures in certain filings.
Application to documents	Commenters requested clarity in defining what constitutes a “document”.	Change made.
Application to documents	Commenters requested clarity in the term “made available to the public”. They questioned whether the concept noted in NP 51-201 regarding dissemination broadly to	We note that “made available to the public” is a common concept used in securities legislation. For example, a document filed electronically in

	<p>the investing public (s. 1.1(1)) may be a more appropriate standard.</p>	<p>accordance with National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval (SEDAR)</i> may be accessible to the public. National Instrument 43-101 <i>Standards of Disclosure for Mineral Projects (NI 43-101)</i> uses “made available to the public” in the definition of “disclosure”. Another example is in National Instrument 51-102 <i>Continuous Disclosure Obligations (NI 51-102)</i> where the term “public” is used in relation to proxy solicitation. In addition, the term “public” is used throughout NP 51-201.</p>
<p>Application to non-reporting issuers</p>	<p>Three commenters suggested that offering memorandums whose form is not prescribed by regulation should be excluded from the Proposed Materials on the policy basis that these offering memorandums are prepared on a voluntary basis, and the prospectus exemption upon which issuers rely is not based on the information the investors received, but on the investors’ sophistication. Issuers are already careful to ensure offering memorandums do not contain a misrepresentation.</p>	<p>Change not made. The Proposed Materials will apply to disclosures made by an issuer in a document that is filed with a securities regulatory authority in reliance on the offering memorandum exemption. There is a policy decision that non-GAAP financial measures, non-GAAP ratios, and other financial measures contained in documents being used to raise capital are included within the scope of the Proposed Materials.</p>
<p>Application to an issuer’s own financial results</p>	<p>One commenter suggested that the Proposed Materials should be limited in scope to disclosure of the issuer’s own financial results. The commenter raised the concern that an issuer may have difficulties in complying with the Proposed Materials, for example, when disclosing financial measures of an acquisition target’s financial results.</p>	<p>Change not made. The Proposed Materials are applicable to all disclosure of non-GAAP financial measures, non-GAAP ratios and other financial measures within documents as set out in the Application section. The concern is noted. However, disclosure of non-GAAP financial measures, non-GAAP ratios, and other financial measures is voluntary, and we</p>

		did not see sufficient policy rationale to exclude these types of financial measures provided by an issuer in their documents.
Application to oil and gas activities	One commenter expressed concern for how disclosures of measures within National Instrument 51-101 <i>Standards of Disclosure for Oil and Gas Activities</i> will be in scope of the Proposed Materials.	Change made.
s. 2(2)	A few commenters requested clarity on the term “specific financial measures”, and provided recommendations to expand the types of specific financial measures that are excluded from the scope of the Proposed Materials.	The term “specific financial measures” has been removed and replaced with a broader category of financial measures that are excluded from the scope of the Proposed Materials.
s. 2(2)	The majority of commenters expressed that oral statements should be excluded from the scope, including transcripts of oral statements. We also received one conflicting comment that oral statements should be covered when these are relied upon for investment or voting decisions.	We thank the commenters for their submissions. We agree with our initial policy decision to exclude oral statements from scope, and have explicitly excluded transcripts of oral statements from scope. We remind issuers of the securities legislation requirements not to disclose misleading information.
s. 2	One commenter suggested that third-party valuation reports prepared by a third party firm excluded from the Proposed Materials.	Change made.
Part 2 – Disclosure Requirements for Non-GAAP Financial Measures		
General comments	A few commenters suggested additional disclosure requirements for non-GAAP financial measures, including specific labelling requirements (e.g. requiring the use of specific descriptors or terminology), and more explicit cautionary statements.	We thank commenters for their submissions. We agree with our initial policy decision to not prescribe specific labelling requirements, and consider that the cautionary language in s. 6(e)(ii) provides sufficient information to investors that non-GAAP financial measures do not have standardized meaning.

s. 3(b)	Commenters provided mixed views on the prominence requirements. While a few noted that the Proposed Materials should be consistent with the SEC rules and regulations on non-GAAP financial measures, other commenters expressed that the Proposed Materials are too prescriptive.	Change not made. We thank commenters for their submissions. Prominence is a concern of regulators.
s. 3(c)	A few commenters requested clarity on disclosure of comparative period financial measures. A few commenters requested that the Proposed Materials should contain language exempting this requirement when it is impracticable to present a comparative period.	Change made, including additional clarifying language in the Proposed Companion Policy.
s.3(d)(iii), 3(d)(iv)	Some commenters expressed concerns over the term “reasonable person”, and questioned how this standard will affect expectations on issuers’ compliance with disclosure obligations.	We thank commenters for their submissions. The term “reasonable person” has been removed in relation to providing useful information and has been changed to investor, although it has been retained in relation to providing a quantitative reconciliation in s. 6(e)(v). Clarifying language has been included in the Proposed Companion Policy.
s. 3(d)(iv)	Two commenters suggested there was overlap in the requirements to provide a quantitative reconciliation that is disaggregated in such a way that it provides a reasonable person an understanding of the reconciling items, and explained in such a way that it provides a reasonable person an understanding of each reconciling item.	Change made. We clarified that s. 6(e)(v)(A) is in regards to the quantitative reconciliation, and (B) is in regards to the narrative accompanying the reconciling items.
s. 3(d)(iv)	One commenter suggested that the most directly comparable financial measure for the purposes of providing a quantitative reconciliation could be to a financial measure within the notes to the financial statements, instead of only	Change not made. We thank the commenter for the suggestion, but confirm the policy decision that the most comparable financial measure is to a financial measure within the primary financial statements.

	to a measure presented in the primary financial statements.	The notes to the financial statements are intended to provide further information regarding financial measures in the primary financial statements, and we do not consider this requirement difficult to comply with.
s. 3	One commenter recommended to include further disclosure requirements if a non-GAAP measure reported by an issuer ceases to be reported, and that the issuer provide disclosure allowing users to understand why the basis for reporting a non-GAAP financial measure has changed.	Change not made. We thank the commenter for the suggestion. The disclosure requirements within section 6 should provide sufficient information when there are new or changed non-GAAP financial measures.
Part 2 – Disclosure Requirements for Non-GAAP Financial Measures that are Ratios		
General comments	A number of commenters highlighted the inconsistency with the SEC.	Change made. We have revised the framework for ratios which will typically be either a non-GAAP ratio or supplementary financial measure, and we have reduced the disclosure requirements for both.
Part 2 – Disclosures Requirements for Non-GAAP Financial Measures that are Financial Outlooks		
General comments	A number of commenters suggested that the proposed disclosure requirements for non-GAAP financial measures that are forward-looking information are complex and questioned the usefulness of certain disclosure requirements.	Changes made. We thank commenters for their suggestions. We have made changes to the disclosure requirements under section 7, including a reduction in disclosure requirements.
Part 2 – Disclosure Requirements for Segment Measures		
General comments	One commenter noted that “total of segment measures” are considered non-GAAP financial measures under SEC rules and regulations for non-GAAP financial measures (Regulation G and Item 10(e) of Regulation S-K) but are defined as “total of segments measure” under the Proposed Materials. Given the different classification under the two	We have added guidance in the Companion Policy that SEC issuers may refer to such measures as non-GAAP financial measures and provide, at minimum, the associated disclosures required in section 9.

	jurisdictions, the commenter was concerned about compliance of dual-listed reporting issuers.	
General comments	Some commenters suggested that if information on total of segments measures are provided within the financial statements, this disclosure need not be repeated in documents outside the financial statements.	We thank commenters for their suggestion. The proposed disclosures ensure readers appreciate the context of total of segments measures when these measures are disclosed outside the financial statements.
General comments	Some commenters requested clarity on the what constitutes a “segment” in comparison to a “reportable segment”.	Change made.
General comments	One commenter suggested that the requirement to disclose a comparative measure should be removed.	We thank the commenter for their suggestion. The disclosure requirement provides that if the total of segments measure has been previously disclosed in the comparative period, then in the current period, both must be disclosed for comparability.
Part 2 – Disclosure Requirements for Capital Management Measures		
General comments	Some commenters suggested that if information on capital management measures is provided within the financial statements, this disclosure need not be repeated in documents outside the financial statements.	Change made. We thank commenters for their suggestion. Issuers may include disclosure requirements under the Proposed Materials within the notes to the financial statements for compliance.
s. 7(2)(b)(iv)	Two commenters suggested that more guidance be provided on the level of detail expected for the quantitative reconciliation requirement.	Change made. Additional clarifying language has been included within the Proposed Companion Policy.
s. 7(2)(b)(iv)	One commenter suggested eliminating the quantitative reconciliation requirement for capital management measures that are ratios, as generally it is difficult to identify the most directly comparable financial measure presented in the primary financial statements.	Change made.

Part 2 – Disclosure Requirements for Supplementary Financial Measures		
General comments	Commenters provided mixed views on disclosure requirements. Some commenters were of the view that there should be additional disclosure requirements, while other commenters disagreed with including disclosure requirements for supplementary financial measures.	We thank commenters for their suggestions. We maintain the policy decision to require certain disclosures when supplementary financial measures are disclosed. However, the disclosure requirements have been scaled to address specific risks. Transparency around the composition of these measures is the primary concern we identified, which is addressed in the Proposed Materials.
General comments	One commenter raised questions on the requirement within the Original Materials to explain the reason for the change in label, composition and calculation and whether this is useful information.	Change made. The disclosure requirement has been removed.
General comments	One commenter recommended disclosure requirements for additional subtotals and totals within the financial statements.	Change not made. It is outside the scope of the project to set requirements for financial statement disclosures.