

ANNEX D

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

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

**PART 1
DEFINITIONS, APPLICATION AND INCORPORATING INFORMATION BY REFERENCE**

Definitions

1. In this Instrument

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

- (a) is intended to enable a person to evaluate an entity’s objectives, policies and processes for managing the entity’s capital, and
- (b) is presented in the notes to the financial statements of the entity but is not presented in the primary financial statements of the entity;

“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 presented 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 comparable financial measure presented in the primary financial statements of the entity,
- (c) is not presented in the financial statements of the entity, and
- (d) is not a ratio;

“non-GAAP ratio” means a financial measure presented by an issuer in the form of a ratio, fraction, percentage or similar representation and that has a non-GAAP financial measure as one of its components;

“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;

“reportable segment” means a reportable segment as described in the accounting principles used to prepare 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 presented 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 presented 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 presented by an issuer that

- (a) is a subtotal or total of financial measures of two or more reportable segments of an entity, and
- (b) is presented in the notes to the financial statements of the entity but is not presented 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
 - (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 in reliance on the offering memorandum exemption under 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. Despite section 2 or 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 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;
 - (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 filing required under subparagraph 9.1(1)(a)(vi) or 9.2(a)(v) of National Instrument 41-101 *General Prospectus Requirements* or section 2.5 of Form 51-102F4 *Business Acquisition Report*;

- (ii) pro forma financial statements required to be filed under securities legislation;
 - (iii) a filing required under section 12.1 or 12.2 of National Instrument 51-102 *Continuous Disclosure Obligations*;
 - (iv) a transcript of an oral statement;
- (e) an issuer in respect of disclosure of a financial measure if
- (i) disclosure of the financial measure is required under law or by an SRO of which the issuer is a member,
 - (ii) the law or the SRO's requirement specifies the composition of the financial measure and the financial measure was determined in compliance with that law or requirement, and
 - (iii) in proximity to the financial measure, the issuer discloses the law or the SRO's requirement under which the financial measure is disclosed.

Incorporating information by reference

- 5. (1)** Subject to subsection (3), an issuer may incorporate by reference the information required under any of the following provisions, if the reference is to the MD&A of the issuer:
- (a) subparagraphs 6(e)(iv), (v) and (vi);
 - (b) paragraph 7(2)(d);
 - (c) subparagraphs 8(d)(iii) and (iv);
 - (d) paragraph 9(c);
 - (e) subparagraph 10(a)(ii).
- (2)** If, as permitted under subsection (1), an issuer incorporates any information by reference into a document, the issuer must include all of the following in the document:
- (a) a statement indicating that the required information is incorporated by reference;
 - (b) a statement that specifies the location of the required information in the MD&A;
 - (c) a statement that the MD&A is available on SEDAR at www.sedar.com.
- (3)** Subsection (1) does not apply if the document that contains the specified financial measure is
- (a) the MD&A filed by the issuer, or

- (b) a news release issued or filed by the issuer.

PART 2 DISCLOSURE REQUIREMENTS

Non-GAAP financial measures that are historical information

- 6. 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 presented in the primary financial statements of the entity to which the measure relates;
 - (b) the document presents the most comparable financial measure that is presented in the primary financial statements of the entity to which the measure relates;
 - (c) the non-GAAP financial measure is presented with no more prominence in the document than that of the most comparable financial measure referred to in paragraph (b);
 - (d) the document presents the non-GAAP financial measure, determined using the same composition, for a comparative period, unless it is impracticable to present the measure for the comparative period;
 - (e) in proximity to the first instance of the non-GAAP financial measure in the document, the document
 - (i) identifies the measure as a non-GAAP financial measure,
 - (ii) 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 presented by other issuers,
 - (iii) explains the composition of the non-GAAP financial measure,
 - (iv) provides, directly or by incorporating it by reference as permitted by section 5, 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,

- (v) provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation, to the most comparable financial measure referred to in paragraph (b), that
 - (A) is disaggregated quantitatively in a way that would enable a reasonable person applying a reasonable effort to get an understanding of 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 two financial years that immediately follow the disclosure, or has occurred during the entity’s two financial years that immediately precede the disclosure, and
- (vi) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of the reason for a change from the comparative period, if any, in the label or composition of the non-GAAP financial measure.

Non-GAAP financial measures that are forward-looking information

7. (1) In this section,

“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 non-GAAP financial measure that is forward-looking information is labelled using the same label used for the historical non-GAAP financial measure;
 - (b) the document presents the 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 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 provides, directly or incorporating it by reference as permitted by section 5, a description of any

significant difference between the non-GAAP financial measure that is forward-looking information and the 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 presented in the primary financial statements of the entity to which the non-GAAP ratio relates;
 - (c) the document presents the non-GAAP ratio for a comparative period using the same means of calculation, unless
 - (i) the non-GAAP ratio is forward-looking information, or
 - (ii) it is impracticable to present a comparative period;
 - (d) in proximity to the first instance of the non-GAAP ratio in the document, the document
 - (i) explains the composition of the non-GAAP ratio and identifies each non-GAAP financial measure that is used as a component of the non-GAAP ratio,
 - (ii) 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 presented by other issuers,
 - (iii) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of 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

- (iv) provides, directly or by incorporating it by reference as permitted by section 5, an explanation of the reason for a change from the comparative period, if any, in the label or the composition of the non-GAAP ratio.

Total of segments measures

- 9.** An issuer must not disclose a total of segments measure in a document, other than financial statements of the entity to which the measure relates, unless all of the following apply:
- (a) the document presents the most comparable financial measure presented 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 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 provides, directly or by incorporating it by reference as permitted by section 5, a quantitative reconciliation of the total of segments measure to the most comparable financial measure referred to in paragraph (a);
 - (d) the document presents the total of segments measure, determined using the same composition, for a comparative period, if the total of segments measure for the comparative period has been previously disclosed.

Capital management measures

- 10.** An issuer must not disclose a capital management measure in a document, other than financial statements of the entity to which the measure relates, unless all of the following apply:
- (a) in proximity to the first instance of the capital management measure in the document, the document
 - (i) explains the composition of the capital management measure, and
 - (ii) unless presented in the notes to the financial statements of the entity to which the measure relates,
 - (A) provides, directly or by incorporating it by reference as permitted by section 5, 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
 - (B) unless the capital management measure is a ratio, fraction, percentage or similar representation, provides, directly or by

incorporating it by reference as permitted by section 5, a quantitative reconciliation of the capital management measure to the most comparable financial measure presented in the primary financial statements of the issuer;

- (b) the capital management measure is presented with no more prominence in the document than that of similar financial measures presented in the primary financial statements of the issuer;
- (c) the document presents the capital management measure, determined using the same composition, for a comparative period, if the capital management measure for the comparative period has been previously disclosed.

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 presented 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 provides an explanation of the composition of the supplementary financial measure.

PART 3 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 4
EFFECTIVE DATE

Effective date

- 13.** This Instrument comes into force on •, 202•.