

## Securities regulators seek comments on revised Non-GAAP and other financial measures rule

By Jeff Holloway

On February 13, 2020, the CSA published a second notice and request for comments (the **Second Notice**) on a revised version of the proposed NI 52-112 – *Non-GAAP and other Financial Measures* rule and its companion policy (together, the **Proposed Instrument**). A first notice and request for comments (the **First Notice**) and the original version of the Proposed Instrument were published by the CSA on September 8, 2018.

The Proposed Instrument would replace the current non-binding guidance on non-GAAP financial measures contained in CSA Staff Notice 52-306 (Revised) *Non-GAAP Financial Measures* (the **Staff Notice**). The Proposed Instrument imposes certain requirements with respect to the disclosure of non-GAAP financial measures, segment measures, capital management measures and supplementary financial measures. These requirements, as first proposed, would apply any time any of these measures are publicly disclosed by an issuer. For a full summary of the First Notice and the original Proposed Instrument, please see an article published by our Business Law Group [here](#).

After publishing the First Notice, the CSA collected comments on the Proposed Instrument up until December 5, 2018. Based on the stakeholder feedback it received, the CSA made a number of revisions to the Proposed Instrument. Some of the revisions include:

- The application of the Proposed Instrument would be limited to certain issuers. Non-reporting issuers would be exempt, unless they are disclosing non-GAAP financial measures in the context of a securities distribution. Investment funds, designated foreign issuers and SEC foreign issuers would also be exempt.
- Disclosure required under other securities instruments in relation to mineral projects and oil and gas activities would be excluded from the application of the Proposed Instrument. Third-party valuation reports and pro-forma financial statements would also be exempt.
- The scope of various definitions has been narrowed, including the scope of what is to be considered a non-GAAP financial measure, in order to better align the disclosure obligations of the Proposed Instrument with those of the Staff Notice and other international securities regulators.
- Cross-referencing back to an issuer's MD&A would be permitted in certain documents. However, cross-referencing would still be prohibited in news releases.

The CSA is now seeking additional comments on the revised version of the Proposed Instrument. As a result of the COVID-19 pandemic, the comment period for submissions in writing with respect to the Proposed Instrument has been extended from May 13, 2020 to June 27, 2020. Please contact a member of our Business Law group if you have any questions or concerns regarding the implications of the Proposed Instrument.

The full text of the Second Notice is available [here](#).

*This bulletin is intended as general information only and is not to be taken as legal advice. If you have any questions please contact any member of our [Business Law Group](#).*