

August 22, 2018

Accounting Standards Board
277 Wellington Street West – Fourth Floor
Toronto, ON M5V 3H2 Canada

Subject: Comments on the Draft Framework for Reporting Performance Measures

The Canadian Securities Administrators Chief Accountants Committee (we, or the CAC) appreciates the opportunity to provide input to the Accounting Standards Board on its Draft Framework for Reporting Performance Measures: Enhancing the relevance of financial reporting (the AcSB guidance).

The Canadian Securities Administrators (CSA) is an organization of Canada’s provincial and territorial securities regulators whose objective is to improve, coordinate and harmonize regulation of the Canadian capital markets. The CSA Chief Accountants Committee is comprised of the Chief Accountants from the provinces of British Columbia, Alberta, Ontario and Quebec.

This letter discusses key areas of possible tension between the AcSB guidance and securities legislation in Canada. As previously discussed with the AcSB, we believe that a mutual goal of the CSA and the AcSB is that the AcSB guidance complement, and not conflict with, Canadian securities regulations. It would be problematic if preparers of public disclosure (including financial statements, Management’s Discussion and Analysis, press releases, website disclosure to name a few) following the AcSB guidance resulted in non-compliance with securities regulations. This could lead to issuers having to amend and restate previously issued materials in light of such non-compliance. We therefore request that the AcSB eliminate any confusion for issuers due to inconsistent requirements.

General comments on the AcSB guidance and securities regulations

Input on performance measures from various parties involved in financial reporting helps promote understanding and best practice. We note that the AcSB guidance applies to a wide range of entities, including issuers subject to securities regulations. For issuers, we think the potential benefits of the AcSB guidance include the guidance on selecting performance measures, as well as the guidance on controls and governance practices.

Securities regulations in Canada defines an “issuer” as a person or company who has issued or plans to issue a security, and therefore securities regulations may apply to a company that is not a “public company”. Throughout this letter, our references to “issuer” are consistent with the meaning under securities regulations. The AcSB Chair’s message accompanying the AcSB guidance discusses the possibility of a separate framework for public companies subject to securities regulations. However, a “private company” may include disclosures of performance

measures in an offering memorandum or in other written communications to security-holders; these disclosures are subject to securities regulations. Therefore, the phrase “public companies subject to securities regulations” could be problematic.

We suggest it is unnecessary to have a separate framework for entities subject to CSA guidance and rules. The principles for selecting, calculating and reporting performance measures should be consistent for all entities. We recommend that the AcSB guidance include appropriate disclaimer language for entities to consider legislated disclosure requirements that may overlap with the disclosure guidance in the AcSB guidance.

The CSA has addressed, in various forms, non-GAAP financial measures and other financial measures for many years. We first published CSA Staff Notice 52-306 *Non-GAAP financial measures* in 2003 (the Notice), and have revised the notice numerous times to respond to new developments and our experience reviewing issuers’ continuous disclosure.

We intend to publish for comment a draft rule (the Proposed Rule) and companion policy on September 6th, 2018 which will address Non-GAAP and other financial measures. The Proposed Rule is intended to replace and expand on our existing Notice, and will enhance CSA staff’s ability to respond to non-compliance. The Proposed Rule will address measures presented by issuers in a broad range of written communication including MD&A, prospectuses, press releases, websites and marketing materials. We have consulted and considered feedback from a number of key stakeholders in developing the Proposed Rule, including AcSB staff.

Inconsistencies between the AcSB guidance and the Proposed Rule

1. Scope of performance measures covered by the Proposed Rule

The Proposed Rule will apply to non-GAAP and other financial measures, and include disclosure requirements not only for non-GAAP financial measures but also for three new categories of key performance measures. These new categories go beyond the traditional “non-GAAP financial measures”:

- Supplementary financial measures – disaggregation of financial statement items presented on a periodic basis – e.g., “same store sales”
- Capital management measures – measures that appear in the notes to the financial statements but are also disclosed outside of the financial statements
- Segment measures – measures that appear in the notes to the financial statements but are also disclosed outside of the financial statements.

Paragraph 16 of the AcSB guidance states it is “not intended for a financial performance measure reported in accordance with GAAP”, and paragraph 17 indicates that the AcSB guidance applies to performance measures that are not part of a set of financial statements (including note disclosures).

We recommend revisiting the scope of the AcSB guidance to indicate that while the AcSB guidance is primarily intended for measures that do not appear in the financial statements, some aspects of the AcSB guidance may be relevant when:

- certain measures appearing in the notes to the financial statements are presented outside the financial statements, or
- certain measures that are a disaggregation of financial statement line items are reported outside the financial statements to explain an aspect of performance, but are not presented in the financial statements.

We note inconsistencies in the terms and definitions between the AcSB guidance and the Proposed Rule that could lead to confusion. We recommend adding appropriate disclaimer language to avoid such confusion. The AcSB guidance includes disclaimer language for non-GAAP financial measures, however additional disclaimer language is necessary for the other types of financial measures since specific securities regulations requirements beyond non-GAAP financial measures are included in the Proposed Rule.

2. References to audit, review or other verification of performance measures

The AcSB guidance refers to audit, review or other verification in paragraphs 19(c), 54(h), and item 15 in Appendix C. We understand some stakeholders have asked for assurance on performance measures and we do not discourage board members and management from obtaining assurance on performance measures for internal purposes. However, as there are currently no generally accepted standards or principles relating specifically to performance measures, the CAC is concerned that references to “audit”, “review”, or “other verification” in public disclosure documents (e.g., MD&A) without accompanying disclosure of what procedures were performed may be misleading.

We request that the AcSB guidance highlight the securities regulatory implications of publicly referring to the existence of an assurance or verification report in an issuer’s disclosure without filing such report, including the following:

- the securities regulator may request that the issuer file a copy of the report so that a reader understands what procedures were performed, and the type of assurance (if any) that was provided with respect to the performance measure. The filing of the report at the request of the regulator could also lead to a re-filing of a document referring to the report, along with a corresponding press release to explain the reason for the re-filing,
- if the report is not filed, or if the securities regulator believes it may be misleading to include the report (depending on what procedures were performed and the appropriateness of the resulting language in the report), the securities regulator may request that references to the report be removed, which could also lead to re-filing of a document with a corresponding press release to explain the reason for the re-filing, or
- if an assurance report were filed as discussed above, it could be subject to prospectus liability if it were included in, or incorporated by reference into, a prospectus offering since the party issuing the report would be required to consent to its inclusion in the prospectus.

3. Consistent calculation and presentation of a measure from period to period

Paragraphs 22 and 24 of the AcSB guidance acknowledge the importance of consistent calculation of a measure from period to period, but paragraph 25 suggests that when an entity introduces a new measure, it may not be feasible to report a comparable measure for the prior year and that in this circumstance, reporting an inconsistent comparative measure would be acceptable. Similarly, item 13 of appendix C refers to restated measures (presumably comparable measures) “when needed”.

As previously communicated to the AcSB, the Proposed Rule requires presentation of the same non-GAAP financial measure for the comparative period, and the presentation of the same supplementary financial measure, capital management measure and segment measure for the comparative period if previously disclosed. We are concerned that the AcSB guidance is inconsistent with these CSA requirements. We request that the AcSB guidance be amended to respond to this inconsistency, and discuss the importance of presenting comparative measures.

4. Use of multiple measures

Paragraph 39 of the AcSB guidance briefly discusses the use of multiple measures. The companion policy to the Proposed Rule states that using multiple non-GAAP financial measures for the same purpose may cause the non-GAAP financial measure to be more prominent than the most comparable financial measure presented in the primary financial statements. We suggest the AcSB consider rewording the last sentence to indicate that using multiple measures may confuse or obscure the comparable financial measure presented in the primary financial statements.

5. Reporting of expected measures

Paragraph 45 of the AcSB guidance suggests that even if a measure is not the most relevant, if the measure is expected by users, then it may be cost effective for management to calculate and report it. The existing CSA Notice as well as the Proposed Rule require an issuer to explain how the non-GAAP financial measure provides useful information. We also note the IASB’s tentative decision, in relation to the IASB project on primary financial statements, is to require an entity to state that a management performance measure provides management’s view of the entity’s performance and is not necessarily comparable with other entities. In light of CSA requirements, we recommend that the AcSB guidance direct an entity to ensure that a performance measure is not misleading and to explain how a performance measure provides useful information. This is also consistent with paragraph 21 of the AcSB guidance that information be useful and transparent regarding how the entity creates and realizes value based on its strategy and objectives.

6. References to a commonly used performance measure

Paragraph 49(e) of the AcSB guidance refers to “a commonly used performance measure”; similar language appears in item 6 of appendix C. We are concerned that the phrase “commonly used” may be interpreted as “standardized”. The existing CSA Notice and Proposed Rule require disclosure that a non-GAAP financial measure does not have a standardized meaning under the financial reporting framework used to prepare the

financial statements and may not be comparable to similar financial measures presented by others. This CSA disclosure requirement is consistent with the IASB's tentative decision (relating to its project on primary financial statements) to require entities to state that a management performance measure is not necessarily comparable with other entities. We request the AcSB guidance acknowledge the CSA requirement.

In previous communications, we provided the AcSB with detailed drafting comments to ensure consistent terminology and clarity. We request the AcSB consider those drafting comments in finalizing the AcSB guidance.

Yours truly,

The CSA Chief Accountants Committee

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