

**CSA STAFF NOTICE 52-306 (REVISED)*****NON-GAAP FINANCIAL MEASURES*****Revision and re-publication**

This notice is revised and re-published to clarify our expectations about the presentation of distributable cash. We have not altered other sections of the original CSA Staff Notice 52-306 published in November 2003. When CSA Staff Notice 52-306 was originally published, we considered the possibility that in some cases issuers may view distributable cash as an operating performance measure and therefore reconcile it to net income. However, since that time, staff has concluded that distributable cash is, in all circumstances, a cash flow measure, and that distributable cash is fairly presented only when reconciled to cash flows from operating activities as presented in the issuer's financial statements. As a result, this notice communicates staff's expectations for reconciliation to cash flow from operations. We also refer issuers to other staff notices that discuss expectations for distributable cash disclosure.

**Purpose**

This notice provides guidance to issuers who disclose financial measures other than those prescribed by Generally Accepted Accounting Principles (GAAP). This notice supersedes Staff Notice 52-303, which is withdrawn, dealing with non-GAAP earnings measures. Staff noted certain non-GAAP financial measures were being presented without the disclosures and reconciliations recommended for non-GAAP earnings measures. As a result, staff has decided to explicitly broaden the scope of this notice to all non-GAAP financial measures.

**Definition**

For the purpose of this staff notice, a non-GAAP financial measure is a numerical measure of an issuer's historical or future financial performance, financial position or cash flow, that is not required by GAAP, that (i) either excludes amounts that are included in the most directly comparable measure calculated and presented in accordance with GAAP; or (ii) includes amounts that are excluded from the most directly comparable measure calculated and presented in accordance with GAAP.

**Problems Identified**

Many issuers publish non-GAAP financial measures. Such measures are commonly included in press releases, Management's Discussion and Analysis (MD&A), prospectus filings and occasionally financial statements. Many non-GAAP financial measures are

derived from net income determined in accordance with GAAP and, by omission of selected items, present a more positive picture of financial performance. Terms by which non-GAAP financial measures are identified include "pro forma earnings", "operating earnings", "cash earnings", "free cash flow", "distributable cash", "EBITDA", "adjusted earnings", and "earnings before one-time charges". These terms lack standard, agreed upon meanings and each may be used differently by different companies and even by the same company from period to period. In addition, calculations such as return on assets which use an asset base or net income that differs from amounts in the GAAP financial statements are non-GAAP financial measures.

Staff has noticed improvements in issuers' disclosures of non-GAAP financial measures but there is room for further improvement. In particular, issuers commonly present a non-GAAP financial measure without any explanation of the reasons for presenting the measure or a discussion of how management uses the measure.

Staff is concerned that investors may be confused or even misled by non-GAAP financial measures. To minimize the potential for confusion, such measures need to be accompanied by clear disclosure that the measures do not have a standardized meaning, an explanation of their composition and a reconciliation to the most directly comparable measure in the issuer's GAAP financial statements.

Staff has observed instances of issuers reporting non-GAAP financial measures that appear to be defined differently from quarter to quarter or from year to year. For example, "one-time losses" may be excluded in one quarter but "one-time gains" may be included in a subsequent quarter.

When an issuer considers certain items to be "non-recurring" or "one-time charges", and removes them from GAAP net income or loss in calculating alternative measures of earnings, the issuer rarely discusses the nature of these charges and why they are not expected to recur in the future. Further, staff has observed items identified by issuers as non-recurring, infrequent or unusual, where a similar charge or gain occurred within the prior two years or when it would be reasonably likely to recur within the next two years.

Staff is also concerned that some issuers give greater prominence to one or more non-GAAP financial measures related to earnings than to net income determined in accordance with GAAP. Non-GAAP financial measures are sometimes the primary focus of earnings releases. Such releases commonly include comparisons of non-GAAP earnings measures to the previous quarter and to previously published estimates of earnings, both in aggregate and on a per share basis, together with absolute and percentage changes. Net income determined in accordance with GAAP is often presented as secondary to the non-GAAP measure and commonly lacks a similar level of analysis.

### **Staff's Expectations**

Financial statements prepared in accordance with GAAP provide investors with a clearly defined basis for financial analysis and comparison among issuers. Staff recognizes that

non-GAAP financial measures may be a useful means of providing investors with additional information to assist them in understanding critical components of an issuer's financial results. It is important, however, that such measures not be presented in a way that confuses or obscures the GAAP measures. Staff reminds issuers of their obligation to discuss in MD&A management's perspective on the results of operations. Issuers should consider whether the separate presentation of non-GAAP financial measures provides added benefit to readers. Staff suggests that a comprehensive discussion in the MD&A of operations and the impact of specific events on operations may be preferable to presenting non-GAAP financial measures.

Staff reminds issuers of their responsibility to ensure that information they provide to the public is not misleading. Selective editing of financial information may be misleading if it results in the omission of material information. Staff cautions issuers that regulatory action may be taken if issuers disclose information in a manner considered misleading and therefore potentially harmful to the public interest.

Staff expects issuers to define clearly any non-GAAP financial measure and to explain its relevance to ensure it does not mislead investors. Issuers presenting non-GAAP financial measures should present those measures on a consistent basis from period to period. Specifically, issuers should:

1. state explicitly that the non-GAAP financial measure does not have any standardized meaning prescribed by GAAP and is therefore unlikely to be comparable to similar measures presented by other issuers;
2. present with equal or greater prominence than the non-GAAP financial measure the most directly comparable measure calculated in accordance with GAAP;
3. explain why the non-GAAP financial measure provides useful information to investors and how management uses the non-GAAP financial measure;
4. provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure calculated in accordance with GAAP, referencing to the reconciliation when the non-GAAP financial measure first appears in the disclosure document;
5. explain any changes in the composition of the non-GAAP financial measure when compared to previously disclosed measures.

In staff's view, it is not appropriate to present non-GAAP financial measures in the GAAP financial statements.

In staff's view, non-GAAP financial measures should not reflect adjustments for items identified as non-recurring, infrequent or unusual, when a similar charge or gain is reasonably likely to occur within the next two years or occurred during the prior two years.

## **Other Specific Matters**

### **Distributable Cash**

Certain issuers such as income trusts may disclose information about distributable cash. While cash distributions (i.e. actual distributions) are required to be disclosed in the financial statements under GAAP, distributable cash is a non-GAAP financial measure. If an issuer presents information about distributable cash, then the staff expectations set out in this notice and CSA Staff Notice 41-304 *Income trusts: prospectus disclosure of distributable cash* apply. We expect distributable cash disclosure to include a reconciliation to the most directly comparable measure calculated in accordance with GAAP. In staff's view, the most directly comparable measure calculated in accordance with GAAP is cash flows from operating activities as presented in the issuer's financial statements. For clarity, cash flows from operating activities includes changes during the period in non-cash working capital balances.

If cash distributions paid do not equal distributable cash, the issuer should also discuss the reasons for the difference between the two amounts. If cash distributions paid materially exceed distributable cash, staff would expect the disclosure of distributable cash to include a detailed explanation of how the additional distributions were financed as this impacts the issuer's liquidity. Generic boiler-plate language about the issuer's sources of available capital or financing or simply pointing the reader to the cash flow statement for further information is not sufficient.

When distributions paid are materially less than distributable cash, staff would expect the disclosure of distributable cash to include an explanation of why distributable cash was not fully distributed.

### **Segment Disclosures**

Staff is aware that some confusion exists regarding whether certain information presented in conformity with the Canadian Institute of Chartered Accountants Handbook Section 1701, Segment Disclosures, is a non-GAAP financial measure. Since issuers are required to disclose in the financial statements specified segment information as reported to the chief operating decision maker, such information is not considered to be a non-GAAP financial measure for the purpose of this notice. If the segment information discussed in MD&A or elsewhere has been adjusted in any way from the segment disclosures in the financial statements the adjusted segment information is considered to be a non-GAAP financial measure and the staff expectations set out in this notice are applicable. Whenever segment information is discussed outside the financial statements, it is appropriate to refer readers to the financial statement note on segment information. Issuers should also explain why the segment information provides useful information to investors and how management uses the segment information.

## **Forward-Looking Information**

The staff expectations set out in this notice apply equally to disclosure of forward-looking non-GAAP financial measures.

## **Questions**

Please refer your questions to any of the following individuals:

Sylvie Anctil-Bavas, Chef comptable - Marchés de valeurs  
Autorité des marchés financiers  
Phone: (514) 395-0558 ext. 4373  
Fax: (514) 873-6155  
E-mail: sylvie.anctil-bavas@lautorite.qc.ca

Nicole Parent, Analyste, Direction des marchés des capitaux  
Autorité des marchés financiers  
Phone : (514) 395-0558 ext. 4455  
Fax: (514) 873-6155  
E-mail: nicole.parent@lautorite.qc.ca

John Hughes, Manager, Corporate Finance  
Ontario Securities Commission  
Phone: (416) 593-3695  
Fax: (416) 593-3683  
E-mail: jhughes@osc.gov.on.ca

Sonny Randhawa, Senior Accountant, Corporate Finance  
Ontario Securities Commission  
Phone: (416) 593-2380  
Fax: (416) 593-3683  
E-mail: srandhawa@osc.gov.on.ca

Wayne Bridgeman, Senior Analyst  
Manitoba Securities Commission  
Phone: (204) 945-4905  
Fax: (204) 945-0330  
E-mail: wbridgeman@gov.mb.ca

Lara Gaede, Associate Chief Accountant  
Alberta Securities Commission  
Phone: (403) 297-4223  
Fax: (403) 297-2082  
E-mail: lara.gaede@seccom.ab.ca

Fred Snell, Chief Accountant  
Alberta Securities Commission  
Phone: (403) 297-6553  
Fax: (403) 297-2082  
E-mail: fred.snell@seccom.ab.ca

Jennifer Wong, Securities Analyst  
Alberta Securities Commission  
Phone: (403) 297-3617  
Fax: (403) 297-2082  
E-mail: jennifer.wong@seccom.ab.ca

Carla-Marie Hait, Chief Accountant  
British Columbia Securities Commission  
Phone: (604) 899-6726  
Fax: (604) 899-6581  
E-mail: chait@bcsc.bc.ca

Mike Moretto, Manager, Corporate Disclosure  
British Columbia Securities Commission  
Phone: (604) 899-6767  
Fax: (604) 899-6581  
E-mail: mmoretto@bcsc.bc.ca

**August 4, 2006**